

COLORADO REVISED STATUTES



TITLES 29-32

2012



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Colorado Revised Statutes 2012

Titles 29-32
Government — Local
Government — County
Government — Municipal
Special Districts



Edited, Collated, Revised,
Annotated, and Indexed
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

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*Reenacted by the General Assembly as the
Positive Statutory Law of Colorado of a General and Permanent Nature
and as the Official Statutes of the State of Colorado*

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COLORADO REVISED STATUTES**

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**CERTIFICATION
OF
COMMITTEE ON LEGAL SERVICES**

The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

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Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

“L.” is the symbol for “Session Laws” and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, “L.” also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

“Ex. Sess.” is the symbol for “Extraordinary Session”. If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

“p.” is the symbol for “page” and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

“§” is the symbol for “section” and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

“IP” is the symbol for the “introductory portion” to a section, subsection, paragraph, or subparagraph.

“Added” means the provision was newly enacted by the act (N in the Red Book).

“Added with relocations” means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

“Amended” means the provision in existing law was amended by the act (A in the Red Book).

“Amended with relocations” means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

“Repealed” means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

“R&RE” is the symbol for “Repealed and Reenacted” and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

“RC&RE” is the symbol for “Recreated and Reenacted” and means a previously repealed provision has been recreated by the act (RC in the Red Book).

“Added by revision” means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

“Initiated” means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

“Referred” means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by “L.” and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

Colorado Statutory Research

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to “Code 08”, “Code 21”, and “Code 35” are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

Comparative Tables:

- R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
- C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
- CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
- CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
- C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

Supplements to C.R.S. 1963 include:

- 1965 hardbound supplement containing laws enacted in 1964 and 1965
- 1967 hardbound supplement containing laws enacted in 1966 and 1967
- 1969 hardbound supplement containing laws enacted in 1968 and 1969
- 1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the “Official Report of the Committee on Legal Services” was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.

Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Titles 29 to 31	1975-76 Supplements	1977 Replacement Volume 1978-85 Supplements 1986 Replacement Volume 1987-96 Supplements Vol. 12A - Titles 29-30 1987-96 Supplements Vol. 12B - Title 31 1987-96 Supplements Volume 13 never had a replacement volume
Title 32	1975-96 Supplements	

Starting in 1997, annual softbound volumes are published each year.

For additional information on researching legislative history, see www.leg.state.co.us, Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

**Bills Enacted Without A Safety Clause
Explanation of Effective Date**

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor’s proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

Annotations

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.

TITLE 29
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THE
JOURNAL
OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

TITLE 29

GOVERNMENT - LOCAL

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PART 1

LOCAL GOVERNMENT BUDGET LAW OF COLORADO

Editor's note: This part 1 was numbered as article 1 of chapter 88, C.R.S. 1963. The provisions of this part 1 were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution; for standards of conduct for local government officials, see article 18 of title 24.

29-1-101. Short title. This part 1 shall be known and may be cited as the "Local Government Budget Law of Colorado".

Source: L. 90: Entire part R&RE, p. 1429, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-101 as it existed prior to 1990.

ANNOTATION

Law reviews. For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959).

29-1-102. Definitions. As used in this part 1, unless the context otherwise requires:

- (1) "Appropriation" means the authorization by ordinance or resolution of a spending limit for expenditures and obligations for specific purposes.
- (2) "Basis of budgetary accounting" means any one of the following methods of measurement of timing when revenue and other financing sources and expenditures and other financing uses are recognized for budget purposes:
 - (a) Cash basis (when cash is received and disbursed);
 - (b) Modified accrual basis (when revenue and other financing sources are due and available and when obligations or liabilities are incurred for expenditures and other financing uses, except for certain stated items such as, but not limited to, prepaids, inventories of consumable goods, and interest payable in a future fiscal year); or
 - (c) Encumbrance basis (the modified accrual basis, but including the recognition of encumbrances).
- (3) "Budget" means the complete estimated financial plan of the local government.
- (4) "Budget year" means the ensuing fiscal year.

(5) "Certified" means a written statement by a member of the governing body or a person appointed by the governing body that the document being filed is a true and accurate copy of the action taken by the governing body.

(6) "Division" means the division of local government in the department of local affairs.

(7) "Encumbrance" means a commitment related to unperformed contracts for goods or services.

(8) (a) "Expenditure" means any use of financial resources of the local government consistent with its basis of accounting for budget purposes for the provision or acquisition of goods and services for operations, debt service, capital outlay, transfers, or other financial uses.

(b) "Expenditure" shall not include the payment or transfer of moneys by the office of the public trustee created in section 38-37-101, C.R.S., that are received from and required to be paid to another person or entity pursuant to the requirements of article 37, 38, or 39 of title 38, C.R.S., including, but not limited to, recording fees and publication costs pursuant to sections 38-38-101 and 38-39-102, C.R.S., and transfers of excess funds to the county treasurer made pursuant to section 38-37-104 (3), C.R.S.

(9) "Fiscal year" means the period commencing January 1 and ending December 31; except that "fiscal year" may mean the federal fiscal year for water conservancy districts which have contracts with the federal government.

(10) "Fund" means a fiscal and accounting entity with a self-balancing set of accounts in which cash and other financial resources, all related liabilities and residual equities or balances, and changes therein are recorded and segregated to carry on specific activities or to attain certain objectives in accordance with special regulations, restrictions, or limitations.

(11) "Fund balance" means the balance of total resources available for subsequent years' budgets consistent with the basis of accounting elected for budget purposes.

(12) "Governing body" means a board, council, or other elected or appointed body in which the legislative powers of the local government are vested.

(13) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. The office of the county public trustee shall be deemed an agency of the county for the purposes of this part 1. "Local government" does not include the Colorado educational and cultural facilities authority, the university of Colorado hospital authority, collegeinvest, the Colorado health facilities authority, the Colorado housing and finance authority, the Colorado agricultural development authority, the Colorado sheep and wool authority, the Colorado beef council authority, the Colorado horse development authority, the fire and police pension association, any public entity insurance or investment pool formed pursuant to state law, any county or municipal housing authority, any association of political subdivisions formed pursuant to section 29-1-401, or any home rule city or town, home rule city and county, cities and towns operating under a territorial charter, school district, or junior college district.

(14) "Object of expenditure" means the classification of fund data by character of expenditure. "Object of expenditure" includes, but is not limited to, personal services, purchased services, debt service, supplies, capital outlay, grants, and transfers.

(15) "Objection" means a written or oral protest filed by an elector of the local government.

(16) "Revenue" means all resources available to finance expenditures.

(17) "Spending agency", as designated by the local government, means any office, unit, department, board, commission, or institution which is responsible for any particular expenditures or revenues.

Source: L. 90: Entire part R&RE, p. 1429, § 1, effective January 1, 1991. L. 91: (13) amended, p. 588, § 11, effective October 1. L. 93: (13) amended, pp. 1846, 1855, §§ 3, 4, effective July 1. L. 95: (13) amended, p. 1001, § 2, effective July 1. L. 98: (13) amended,

p. 610, § 18, effective May 4; (13) amended, p. 1262, § 8, effective June 1. **L. 2003:** (8) amended, p. 733, § 1, effective August 6. **L. 2004:** (13) amended, p. 576, § 34, effective July 1.

Editor's note: (1) Amendments to subsection (13) by Senate Bill 93-240 and Senate Bill 93-243 were harmonized.

(2) Amendments to subsection (13) by Senate Bill 98-082 and Senate Bill 98-188 were harmonized.

Cross references: For the legislative declaration contained in the act amending subsection (13) in 1991, see section 1 of chapter 99, Session Laws of Colorado 1991.

29-1-103. Budgets required. (1) Each local government shall adopt an annual budget. To the extent that the financial activities of any local government are fully reported in the budget or budgets of a parent local government or governments, a separate budget is not required. Such budget shall present a complete financial plan by fund and by spending agency within each fund for the budget year and shall set forth the following:

(a) All proposed expenditures for administration, operations, maintenance, debt service, and capital projects to be undertaken or executed by any spending agency during the budget year;

(b) Anticipated revenues for the budget year;

(c) Estimated beginning and ending fund balances;

(d) The corresponding actual figures for the prior fiscal year and estimated figures projected through the end of the current fiscal year, including disclosure of all beginning and ending fund balances, consistent with the basis of accounting used to prepare the budget;

(e) A written budget message describing the important features of the proposed budget, including a statement of the budgetary basis of accounting used and a description of the services to be delivered during the budget year; and

(f) Explanatory schedules or statements classifying the expenditures by object and the revenues by source.

(2) No budget adopted pursuant to this section shall provide for expenditures in excess of available revenues and beginning fund balances.

(3) (a) The general assembly finds and declares that the use of lease-purchase agreements by local governments creates financial obligations of those governments and that the disclosure of such obligations is in the public interest and is a matter of statewide concern.

(b) In addition to the governmental entities included in the definition of "local government" in section 29-1-102, the provisions of this subsection (3) shall apply to every home rule city, home rule city and county, school district, and junior college district.

(c) As used in this subsection (3), "lease-purchase agreement" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12), C.R.S.

(d) (I) The budget adopted by every local government shall separately set forth each of the following:

(A) The total amount to be expended during the ensuing fiscal year for payment obligations under all lease-purchase agreements involving real property;

(B) The total maximum payment liability of the local government under all lease-purchase agreements involving real property over the entire terms of such agreements, including all optional renewal terms;

(C) The total amount to be expended during the ensuing fiscal year for payment obligations under all lease-purchase agreements other than those involving real property;

(D) The total maximum payment liability of the local government under all lease-purchase agreements other than those involving real property over the entire terms of such agreements, including all optional renewal terms.

(II) Each budget required to be filed pursuant to section 29-1-113 shall include a supplemental schedule that contains the information described in this paragraph (d).

(e) (I) No local government shall enter into any lease-purchase agreement whose duration, including all optional renewal terms, exceeds the weighted average useful life of the assets being financed. In the case of a lease-purchase agreement involving both real property and other property, the lease-purchase agreement shall provide that the real property involved shall be amortized over a period not to exceed its weighted average useful life and the other property shall be separately amortized over a period not to exceed its weighted average useful life. This provision shall not prevent a local government from releasing property from a lease-purchase agreement pursuant to an amortization schedule reflecting the times when individual pieces of property have been amortized.

(II) Nothing contained in this paragraph (e) shall be construed to apply to any lease-purchase agreement entered into prior to April 9, 1990.

Source: **L. 90:** Entire part R&RE and (3) added, pp. 1431, 1289, §§ 1, 4, effective January 1, 1991. **L. 2009:** (3)(c) amended, (HB 09-1218), ch. 132, p. 573, § 8, effective July 1.

Editor's note: This section is similar to former § 29-1-104 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Lease-Purchase Financing: The Local Government Budget Law of Colorado", see 20 Colo. Law. 63 (1991).

29-1-104. By whom budget prepared. The governing body of each local government shall designate or appoint a person to prepare the budget and submit the same to the governing body.

Source: **L. 90:** Entire part R&RE, p. 1431, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-105 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Lease-Purchase Financing: The Local Government Budget Law of Colorado", see 20 Colo. Law. 63 (1991).

Applied in *Tihonovich v. Williams*, 196 Colo.

144, 582 P.2d 1051 (1978) (decided under § 29-1-105 as it existed prior to the 1990 repeal and reenactment of this part 1).

29-1-105. Budget estimates. On or before a date to be determined by the governing body of each local government, all spending agencies shall prepare and submit to the person appointed to prepare the budget estimates of their expenditure requirements and their estimated revenues for the budget year, and, in connection therewith, the spending agency shall submit the corresponding actual figures for the last completed fiscal year and the estimated figures projected through the end of the current fiscal year and an explanatory schedule or statement classifying the expenditures by object and the revenues by source. In addition to the other information required by this section, every office, department, board, commission, and other spending agency of any local government shall prepare and submit to the person appointed to prepare the budget the information required by section 29-1-103 (3) (d). No later than October 15 of each year, the person appointed to prepare the budget shall submit such budget to the governing body.

Source: **L. 90:** Entire part R&RE and entire section amended, pp. 1431, 1290, §§ 1, 5, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-106 as it existed prior to 1990.

29-1-106. Notice of budget. (1) Upon receipt of the proposed budget, the governing body shall cause to be published a notice containing the following information:

(a) The date and time of the hearing at which the adoption of the proposed budget will be considered;

(b) A statement that the proposed budget is available for inspection by the public at a designated public office located within the boundaries of the local government, or, if no public office is located within such boundaries, the nearest public office where the budget is available; and

(c) A statement that any interested elector of the local government may file any objections to the proposed budget at any time prior to the final adoption of the budget by the governing body.

(2) If the governing body has submitted or intends to submit a request for increased property tax revenues to the division pursuant to section 29-1-302 (1), the amount of the increased property tax revenues resulting from such request shall be stated in such notice or in a subsequent notice in the manner provided in subsection (3) of this section.

(3) (a) For any local government whose proposed budget is more than fifty thousand dollars, the notice required by subsection (1) of this section shall be published one time in a newspaper having general circulation in the local government.

(b) Any local government whose proposed budget is fifty thousand dollars or less shall cause copies of the notice required by subsection (1) of this section to be posted in three public places within the jurisdiction of such local government in lieu of such publication.

Source: L. 90: Entire part R&RE, p. 1432, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-108 as it existed prior to 1990.

29-1-107. Objections to budget. Any elector of the local government has the right to file or register his protest with the governing body prior to the time of the adoption of the budget.

Source: L. 90: Entire part R&RE, p. 1432, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-109 as it existed prior to 1990.

29-1-108. Adoption of budget - appropriations - failure to adopt. (1) The governing body of the local government shall hold a hearing to consider the adoption of the proposed budget, at which time objections of the electors of the local government shall be considered. The governing body shall revise, alter, increase, or decrease the items as it deems necessary in view of the needs of the various spending agencies and the anticipated revenue of the local government. Adoption of the proposed budget shall be effective only upon an affirmative vote of a majority of the members of the governing body.

(2) Before the mill levy is certified pursuant to section 39-1-111 or 39-5-128, C.R.S., the governing body shall enact an ordinance or resolution adopting the budget and making appropriations for the budget year. The amounts appropriated shall not exceed the expenditures specified in the budget. Appropriations shall be made by fund or by spending agencies within a fund, as determined by the governing body. Changes to the adopted budget or appropriation shall be made in accordance with the provisions of section 29-1-109.

(3) If the governing body fails to adopt a budget before certification of the mill levy as provided for in subsection (2) of this section, then ninety percent of the amounts appropriated in the current fiscal year for operation and maintenance expenses shall be deemed reappropriated for the purposes specified in such last appropriation ordinance or resolution.

(4) If the appropriations for the budget year have not been made by December 31 of the current fiscal year, then ninety percent of the amount appropriated in the current fiscal year for operation and maintenance expenses shall be deemed reappropriated for the budget year.

(5) Notwithstanding any other provision of law, the adoption of the budget, the appropriation of funds, and the certification of the mill levy shall be effective upon adoption.

(6) All unexpended appropriations, or unencumbered appropriations if the encumbrance basis of budgetary accounting is adopted, expire at the end of the fiscal year.

Source: L. 90: Entire part R&RE, p. 1432, § 1, effective January 1, 1991.

Editor's note: This section is similar to former §§ 29-1-110 and 29-1-111 as they existed prior to 1990.

ANNOTATION

Annotator's note. Since § 29-1-108 is similar to §§ 29-1-110 and 29-1-111 as they existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing those provisions have been included in the annotations to this section.

This section requires the governing body of such subdivisions to enact an appropriation resolution for each fiscal year and further states that the amounts appropriated shall not exceed the amounts established by the budget as adopted. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

Taxpayers may demand refund of excess school taxation. If school directors, although proceeding in form as required by law, certify an amount to be raised by taxation greatly beyond the school requirements, they thereby supply a basis for a demand by taxpayers for a refund of the excess. *Lowden v. Bd. of County Comm'rs*, 101 Colo. 52, 69 P.2d 779 (1937).

Circumstances to be considered by governing body in determining reasonableness of salaries include the amount of revenue available, the needs of other county departments, and the ability of the county's taxpayers to fund additional requests, as well as the requesting department's need for the expenditures. *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

Purpose of subsections (3) and (4) is to prevent collapse of governmental subdivision.

These provisions were designed to insure that various governmental subdivisions regulated by the budget law would not collapse through failure to adopt a budget or to appropriate moneys; rather, under it, subdivisions failing to budget or appropriate are at least allowed to maintain themselves and to carry out essential functions of public service until such time as a proper budget is adopted and appropriations made. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

Certification of tax levy no substitute. Certification of the tax levy to the board of county commissioners does not correct a water and sanitation district's failure to adopt a budget and pass an appropriation resolution. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

This section does not permit initiation of new projects or capital expenditures. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

Applied in *City of Englewood v. Ripple & Howe, Inc.*, 150 Colo. 434, 374 P.2d 360 (1962); *Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981).

29-1-109. Changes to budget - transfers - supplemental appropriations.

(1) (a) If, after adopting the budget and making appropriations, the governing body of a local government deems it necessary, it may transfer appropriated moneys between funds or between spending agencies within a fund, as determined by the original appropriation level, in accordance with the procedures established in subsection (2) of this section.

(b) If, after adoption of the budget, the local government receives unanticipated revenues or revenues not assured at the time of the adoption of the budget from any source other than the local government's property tax mill levy, the governing body may authorize the expenditure of such funds by enacting a supplemental budget and appropriation.

(c) In the event that revenues are lower than anticipated in the adopted budget, the governing body may adopt a revised appropriation ordinance or resolution as provided in section 29-1-108.

(2) (a) Any transfer, supplemental appropriation, or revised appropriation made pursuant to this section shall be made only by ordinance or resolution which complies with the notice provisions of section 29-1-106.

(b) For transfers, such ordinance or resolution shall set forth in full the amounts to be transferred and shall be documented in detail in the minutes of the meeting of the governing body. A certified copy of such ordinance or resolution shall be transmitted immediately to the affected spending agencies and the officer or employee of the local government whose duty it is to draw warrants or orders for the payment of money and to keep the record of expenditures as required by section 29-1-114. A certified copy of such ordinance or resolution shall be filed with the division.

(c) For supplemental budgets and appropriations, such ordinance or resolution shall set forth in full the source and amount of such revenue, the purpose for which such revenues are being budgeted and appropriated, and the fund or spending agency which shall make such supplemental expenditure. A certified copy of such ordinance or resolution shall be filed with the division.

Source: L. 90: Entire part R&RE, p. 1433, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-111.5 as it existed prior to 1990.

29-1-110. Expenditures not to exceed appropriation. (1) During the fiscal year, no officer, employee, or other spending agency shall expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated. Any contract, verbal or written, made in violation of this section shall be void, and no moneys belonging to a local government shall be paid on such contract.

(2) Multiple-year contracts may be entered into where allowed by law or if subject to annual appropriation.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-113 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 29-1-110 is similar to § 29-1-113 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the annotations to this section.

The purposes of this section are to protect the taxpayer against improvident use of tax revenue, to encourage citizen participation and debate prior to the institution of public projects, to insure public disclosure of proposed spending, and to encourage prudence and thrift by those elected to direct expenditures of public funds. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

Effect of no appropriation. Since there is an absolute prohibition against spending in excess of an appropriation, there can be no sum spent when there is no appropriation. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

Specific project allocations not deemed appropriations. A contractor was allowed to collect for change orders over and above his original bid because the appropriation ordinance to the sewer fund by the town board prevailed over

later specific allocations to projects by town officials which were not deemed appropriations. *R.L. Atkins, Inc. v. ARIX*, 675 P.2d 336 (Colo. App. 1983).

Required formalities. This section requires that certain formalities, such as public hearings and formal adoption of budgets, be complied with before public funds can be spent. *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970).

Recovery in specie where property furnished under unenforceable contract. Where property is furnished to a municipal corporation under an unenforceable contract and the municipality has not paid for the property, then the seller or person supplying the property may, upon equitable terms, recover it in specie. *F.J. Kent Corp. v. Town of Dillon*, 648 P.2d 669 (Colo. App. 1982).

But no recovery where property no longer in existence. There can be no recovery where the property is no longer in existence or identifiable, or where it cannot be restored to the plaintiff without serious damage to other property of the municipality. *F.J. Kent Corp. v. Town of Dillon*, 648 P.2d 669 (Colo. App. 1982).

Representations sheriff made to his deputies and clerks regarding cash compensation for overtime were made without approval of the board and, thus, are not binding on the county or the board. *Johnson v. Bd. of County Comm'rs*, 676 P.2d 1263 (Colo. App. 1984).

This section does not prohibit an award of attorney's fees pursuant to a remedy-granting provision in a contract between a municipality and a construction company. When a good faith dispute arises between a public entity and a contractor concerning the contractor's right to receive additional compensation under a remedy-granting provision of a public works

contract, § 24-91-103.6 (4) precludes the use of the defense authorized by this section that no moneys have been appropriated as long as the contractor has complied with the provisions of the contract. *Town of Alma v. AZCO Constr., Inc.*, 10 P.3d 1256 (Colo. 2000).

Applied in *City of Englewood v. Ripple & Howe, Inc.*, 150 Colo. 434, 374 P.2d 360 (1962); *People v. Losayio*, 199 Colo. 212, 606 P.2d 856 (1980); *Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981); *Groditsky v. Pinckney*, 661 P.2d 279 (Colo. 1983); *Thyssenkrupp Safway, Inc. v. Hyland Hills Parks & Recreation Dist.*, 271 P.3d 587 (Colo. App. 2011).

29-1-111. Contingencies. In cases of emergency which could not have been reasonably foreseen at the time of adoption of the budget, the governing body may authorize the expenditure of funds in excess of the appropriation by ordinance or resolution duly adopted by a majority vote of such governing body at a public meeting. Such ordinance or resolution shall set forth the facts concerning such emergency and shall be documented in detail in the minutes of the meeting of such governing body at which such ordinance or resolution was adopted. A certified copy of such ordinance or resolution shall be filed with the division.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-114 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 29-1-111 is similar to § 29-1-114 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the annotations to this section.

Absent a contingency, contract in excess of appropriations void. A contract by a city for a survey and detailed study for a sewer system is void where no appropriation had been made, where there was no casualty, accident, or unforeseen contingency. *City of Englewood v.*

Ripple & Howe, Inc., 150 Colo. 434, 374 P.2d 360 (1962).

Failure to set forth facts is technical deficiency. A city resolution authorizing an unforeseeable expenditure which fails to set forth in full the facts necessitating a departure from the normal budgeting and appropriations process is a technical deficiency and does not justify striking down a contract. *Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981).

29-1-112. Payment for contingencies. In case of an emergency and the passage of an ordinance or resolution authorizing additional expenditures in excess of the appropriation as provided in section 29-1-111 and if there is money available for such excess expenditure in some other fund or spending agency which will not be needed for expenditures during the balance of the fiscal year, the governing body shall transfer the available money from such fund to the fund from which the excess expenditures are to be paid. If available money which can be so transferred is not sufficient to meet the authorized excess expenditure, then the governing body may obtain a temporary loan to provide for such excess expenditures. The total amount of the temporary loan shall not exceed the amount which can be raised by a two-mill levy on the total assessed valuation of the taxable property within the limits of the local government of such governing body.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-115 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 29-1-112 is similar to § 29-1-115 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the annotations to this section.

Counties may use contingency funds for aid to dependent children. The counties must produce their 20% of aid to dependent children whether it be from contingency funds, an excess levy, registered warrants, sales tax or otherwise. Colo. State Bd. of Soc. Serv. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

Transfer to road and bridge fund not authorized. This section does not authorize the transfer of general fund revenue to the road and bridge fund to avoid the requirement of a mill levy pursuant to §§ 43-2-202 and 43-2-203. City of Greeley v. Bd. of County Comm'rs, 644 P.2d 76 (Colo. App. 1981).

Section 30-25-106 (1) specifically prohibits the transfer of county general fund money for expenditures for roads and bridges. City of Colo. Springs v. Bd. of County Comm'rs, 648 P.2d 671 (Colo. App. 1982).

29-1-113. Filing of budget. (1) No later than thirty days following the beginning of the fiscal year of the budget adopted pursuant to section 29-1-108, the governing body shall cause a certified copy of such budget, including the budget message, to be filed in the office of the division. Copies of such budget and of ordinances or resolutions authorizing expenditures or the transfer of funds shall be filed with the officer or employee of the local government whose duty it is to disburse moneys or issue orders for the payment of money.

(2) Notwithstanding the provisions of section 29-1-102 (13), budgets shall be filed with the division by home rule cities, cities and counties, and towns and cities operating under a territorial charter for the purpose of information and research.

(3) If the governing body of a local government fails to file a certified copy of the budget with the division as required by this section, the division, after notice to the affected local government, may notify any county treasurer holding moneys of the local government generated pursuant to the taxing authority of such local government and authorize the county treasurer to prohibit release of any such moneys until the local government complies with the provisions of this section.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-116 as it existed prior to 1990.

29-1-114. Record of expenditures. The officer or employee of the local government whose duty it is to disburse moneys or issue orders for the payment of money shall keep in his office a record showing the amounts authorized by the appropriation and the expenditures drawn against the same and also a record of the transfer of moneys from one fund to another and of any authorized additional expenditures as provided in section 29-1-111. Such record shall be kept so that it will show at all times the unexpended balance in each of the appropriated funds or spending agencies. Such officer or employee shall report on such record as may be required by the governing body. No such officer or employee shall disburse any moneys or issue orders for the payment of money in excess of the amount available as shown by said record or report.

Source: L. 90: Entire part R&RE, p. 1435, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-117 as it existed prior to 1990.

29-1-115. Violation is malfeasance - removal. Any member of the governing body of any local government or any officer, employee, or agent of any spending agency who knowingly or willfully fails to perform any of the duties imposed upon him by this part 1 or who knowingly and willfully violates any of its provisions is guilty of malfeasance in office, and, upon conviction thereof, the court shall enter judgment that such officer so convicted shall be removed from office. Any elector of the local government may file an affidavit regarding suspected malfeasance with the district attorney, who shall investigate

the allegations and prosecute the violation if sufficient cause is found. It is the duty of the court rendering any such judgment to cause immediate notice of such removal to be given to the proper officer of the local government so that the vacancy thus caused may be filled.

Source: L. 90: Entire part R&RE, p. 1435, § 1, effective January 1, 1991.

Editor's note: This section is similar to former § 29-1-118 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 29-1-115 is similar to § 29-1-118 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the annotations to this section.

Applied in *People v. Pile*, 197 Colo. 146, 595 P.2d 222 (1979); *People ex rel. Losavio v. Gen-*

try, 199 Colo. 153, 606 P.2d 57 (1980); *People v. Losavio*, 199 Colo. 212, 606 P.2d 856 (1980); *Groditsky v. Pinckney*, 661 P.2d 279 (Colo. 1983).

PART 2

INTERGOVERNMENTAL RELATIONSHIPS

Editor's note: This part 2 was numbered as article 2 of chapter 88, C.R.S. 1963. The provisions of this part 2 were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Law reviews: For article, "The IGA: A Smart Approach For Local Governments", see 29 Colo. Law. 73 (June 2000).

29-1-201. Legislative declaration. The purpose of this part 2 is to implement the provisions of section 18 (2) (a) and (2) (b) of article XIV of the state constitution, adopted at the 1970 general election, and the amendment to section 2 of article XI of the state constitution, adopted at the 1974 general election, by permitting and encouraging governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments, and to this end this part 2 shall be liberally construed.

Source: L. 71: R&RE, p. 955, § 1. C.R.S. 1963: § 88-2-1. L. 75: Entire section amended, p. 955, § 1, effective May 20.

ANNOTATION

The phrase "lawfully authorized to each" in subsection (2)(a) of section 18 of article XIV of state constitution held to mean only that each entity must have the authority to perform the subject activity within its own boundaries. This

interpretation held to be consistent with legislative intent of statutory scheme. *Durango Transp., Inc. v. City of Durango*, 824 P.2d 48 (Colo. App. 1991).

29-1-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Government" means any political subdivision of the state, any agency or department of the state government or of the United States, a federally recognized tribal entity, and any political subdivision of an adjoining state.

(2) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, city or county housing authority, or water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: L. 71: R&RE, p. 955, § 1. C.R.S. 1963: § 88-2-2. L. 99: (2) amended, p. 128, § 1, effective March 24. L. 2000: (1) amended, p. 4, § 1, effective March 2.

ANNOTATION

Applied in *People v. Bailey*, 41 Colo. App. 504, 595 P.2d 252 (1978).

29-1-203. Government may cooperate or contract - contents. (1) Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt, only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. Any such contract providing for the sharing of costs or the imposition of taxes may be entered into for any period, notwithstanding any provision of law limiting the length of any financial contracts or obligations of governments.

(2) Any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties.

(3) Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

(4) Any such contract may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.

(5) Any separate legal entity formed pursuant to the provisions of this part 2 may make loans to any government which enters into any contract pursuant to the provisions of this section, which loans may be secured by loan and security agreements, leases, or any other instruments upon such terms and conditions, including, without limitation, the terms and conditions authorized by section 31-35-402 (1) (h), C.R.S., as the board of directors of such intergovernmental entity shall determine.

(6) The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such separate legal entities.

Source: L. 71: R&RE, p. 956, § 1. C.R.S. 1963: § 88-2-3. L. 88: (5) added, p. 1098, § 1, effective April 13; (6) added, p. 429, § 8, effective April 20. L. 2005: (1) amended, p. 1352, § 1, effective June 3.

ANNOTATION

Law reviews. For article, "Cooperative Management of Urban Growth Areas Through IGAs", see 29 Colo. Law. 85 (November 2000).

29-1-204. Establishment of separate governmental entity. (1) Any combination of cities and towns of this state which are authorized to own and operate electric systems may, by contract with each other or with cities and towns of any adjoining state, establish a separate governmental entity, to be known as a power authority, to be used by such contracting municipalities to effect the development of electric energy resources or production and transmission of electric energy in whole or in part for the benefit of the inhabitants of such contracting municipalities.

(2) Any contract establishing such separate governmental entity shall specify:

(a) The name and purpose of such entity and the functions or services to be provided by such entity;

(b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation if any, and the procedure for filling vacancies on the board;

(II) The officers of the entity, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

(IV) The duties of the board which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the entity;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the entity has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

(3) The general powers of such entity shall include the following powers:

(a) To develop electric energy resources and produce or transmit electric energy in whole or in part for the benefit of the inhabitants of the contracting municipalities;

(b) To make and enter into contracts, including, without limitation, contracts with cities and towns in any adjoining state, irrespective of whether such cities and towns are parties to the contract establishing the separate governmental entity;

(c) To employ agents and employees;

(d) To acquire, construct, manage, maintain, or operate electric energy facilities, works, or improvements or any interest therein;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service;

(f) To condemn property for public use, if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the entity and which are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To deposit moneys of the power authority not then needed in the conduct of the power authority affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board of directors may appoint, by written resolution, one or more persons to act as custodians of the moneys of the power authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(o) To acquire or cross railroad rights-of-way in the manner set forth in section 40-5-105, C.R.S.

(4) The separate governmental entity established by such contracting municipalities shall be a political subdivision and a public corporation of the state, separate from the parties to the contract, and shall be a validly created and existing political subdivision and public corporation of the state, irrespective of whether a contracting municipality, including a city or town of an adjoining state, withdraws (whether voluntarily, by operation of law, or otherwise) from such entity subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such entity pursuant to its terms. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of the entity.

(5) The bonds, notes, and other obligations of such separate governmental entity shall not be the debts, liabilities, or obligations of the contracting municipalities.

(6) The contracting municipalities may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity.

(7) (a) To carry out the purposes for which the separate governmental entity was established, the entity is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the function, service, or facility or the combined functions, services, or facilities of the entity or from any other available funds of the entity. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations issued under this subsection (7) shall not constitute an indebtedness of the entity or the cooperating or contracting municipalities within the meaning of any constitutional or statutory limitation or other provision. Each bond, note, or other obligation issued under this subsection (7) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the entity pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the entity or the cooperating or contracting municipalities within the meaning of any constitutional or statutory limitations or provisions. Notwithstanding anything in this section to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the board of the entity. Notwithstanding anything in this section to the contrary, in the case of short-term notes or other obligations maturing not later than one year from the date of issuance thereof, the board of the entity may authorize officials of the entity to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the board shall prescribe by resolution. Such action may be taken by the board of the entity only at a public meeting preceded by adequate notice, and the action of the board shall be properly recorded on the permanent records of the board.

(b) The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the board of the entity to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the entity. The bonds, notes, and other obligations of the entity and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

(8) A separate governmental entity established by contracting municipalities shall, if the contract so provides, be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting municipalities to provide the same function, service, or facility, and such separate governmental entity shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(9) The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of

preference for electric systems owned by separate governmental entities over electric systems owned by other or different entities.

(10) For the purposes of subsection (1), paragraph (b) of subsection (3), and subsection (4) of this section, "cities and towns of any adjoining state" means any city or town located in any state sharing a common border with the state of Colorado which owns an electric system and which is located not more than fifteen miles from the common border of the state of Colorado and such adjoining state.

Source: **L. 75:** Entire section added, p. 955, § 2, effective May 20. **L. 76:** (1), (3)(b), and (4) amended and (10) added, pp. 683, 684, §§ 1, 2, effective May 7. **L. 77:** (4) and (10) amended, p. 286, §§ 54, 55, effective June 29. **L. 79:** (3)(n) added, p. 1616, § 11, effective June 8. **L. 82:** (1) amended, p. 453, § 1, effective March 17; (7)(a) amended, p. 455, § 1, effective April 16. **L. 2002:** (3)(o) added, p. 1948, § 5, effective June 8.

Editor's note: This section was enacted as § 29-1-203.1 in House Bill 75-1666 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (3)(o), see section 1 of chapter 350, Session Laws of Colorado 2002.

ANNOTATION

Applied in *Paulu v. Lower Ark. Valley Council of Gov'ts*, 655 P.2d 1391 (Colo. App. 1982).

29-1-204.2. Establishment of separate governmental entity to develop water resources, systems, facilities, and drainage facilities. (1) Any combination of municipalities, special districts, or other political subdivisions of this state that are authorized to own and operate water systems or facilities or drainage facilities may establish, by contract with each other, a separate governmental entity, to be known as a water or drainage authority, to be used by such contracting parties to effect the development of water resources, systems, or facilities or of drainage facilities in whole or in part for the benefit of the inhabitants of such contracting parties or others at the discretion of the board of directors of the water or drainage authority.

(2) Any contract establishing such separate governmental entity shall specify:

(a) The name and purpose of such entity and the functions or services to be provided by such entity;

(b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board;

(II) The officers of the entity, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

(IV) The duties of the board, which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the entity;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the entity has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations;

(e) The conditions or requirements to be fulfilled for adding or deleting parties to the contract in the future or for providing water services and drainage facilities to others outside the boundaries of the contracting parties.

(3) The general powers of such entity shall include the following powers:

(a) To develop water resources, systems, or facilities or drainage facilities in whole or in part for the benefit of the inhabitants of the contracting parties or others, at the discretion of the board of directors, subject to fulfilling any conditions or requirements set forth in the contract establishing the entity;

(b) To make and enter into contracts;

(c) To employ agents and employees;

(d) To acquire, construct, manage, maintain, or operate water systems, facilities, works, or improvements, or drainage facilities, or any interest therein;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized only for the purposes of water treatment, distribution, and wastewater disposal, or of drainage;

(f) To condemn property for use as rights-of-way only if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose;

(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the entity and which are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To permit other municipalities, special districts, or political subdivisions of this state that are authorized to supply water or to provide drainage facilities to enter the contract at the discretion of the board of directors, subject to fulfilling any and all conditions or requirements of the contract establishing the entity; except that rates need not be uniform between the authority and the contracting parties;

(o) To provide for the rehabilitation of any surfaces adversely affected by the construction of water pipelines, facilities, or systems or of drainage facilities through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands;

(p) To justly indemnify property owners or others affected for any losses or damages incurred, including reasonable attorney fees, or that may subsequently be caused by or which result from actions of such corporations.

(4) The separate governmental entity established by such contracting parties shall be a political subdivision and a public corporation of the state, separate from the parties to the contract. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of the entity.

(5) The bonds, notes, and other obligations of a water or drainage authority formed under the provisions of this section shall not be the debts, liabilities, or obligations of the original contracting parties or parties that may enter the establishing contract in the future.

(6) The contracting parties may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity.

(7) (a) To carry out the purposes for which the separate governmental entity was established, the entity is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived from the function, service, system, or facility or the combined functions, services, systems, or facilities of the entity or from any other available funds of the entity. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and, as nearly as may be practicable,

shall be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations issued under this subsection (7) shall not constitute an indebtedness of the entity or the cooperating or contracting parties within the meaning of any constitutional or statutory limitations or other provision. Each bond, note, or other obligation issued under this subsection (7) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the entity pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the entity or the cooperating or contracting parties within the meaning of any constitutional or statutory limitation or provision. Notwithstanding anything in this section to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the board of directors of the entity.

(b) The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the board of directors of the entity to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the entity. The bonds, notes, and other obligations of the entity and the income therefrom shall be exempt from taxation by this state, except inheritance, estate, and transfer taxes.

(8) A separate governmental entity established by contract, if the contract so provides, shall be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting parties to provide the same function, service, system, or facility, and such separate governmental entity shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(9) The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for water systems or facilities or for drainage facilities owned by separate governmental entities over water systems or facilities or over drainage facilities owned by other or different entities.

Source: **L. 77:** Entire section added, p. 1389, § 1, effective June 21. **L. 82:** (1) amended, p. 453, § 2, effective March 17. **L. 2001:** (1), (2)(e), (3)(a), (3)(d), (3)(e), (3)(n), (3)(o), (5), and (9) amended, p. 61, § 1, effective August 8.

Editor's note: This section was enacted as § 29-1-203.2 in House Bill 77-1211 but was renumbered on revision in the 1977 replacement volume for ease of location.

ANNOTATION

Law reviews. For article, "Using a Water Authority to Develop And Deliver Water Resources", see 19 Colo. Law. 651 (1990).

29-1-204.5. Establishment of multijurisdictional housing authorities. (1) Any combination of home rule or statutory cities, towns, counties, and cities and counties of this state may, by contract with each other, establish a separate governmental entity to be known as a multijurisdictional housing authority, referred to in this section as an "authority". Such

an authority may be used by such contracting member governments to effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan:

(a) To provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income; and

(b) To provide affordable housing projects or programs for employees of employers located within the jurisdiction of the authority.

(2) Any contract establishing any such authority shall specify:

(a) The name and purpose of such authority and the functions or services to be provided by such authority;

(a.5) The boundaries of the authority, which boundaries may include less than the entire area of the separate governmental entities and may be modified after the establishment of the authority as provided in the contract;

(b) The establishment and organization of a governing body of the authority, which shall be a board of directors, referred to in this section as the "board", in which all legislative power of the authority is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board;

(II) The officers of the authority, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

(IV) The duties of the board, which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the authority;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations;

(e) The expected sources of revenue of the authority and any requirements that contracting member governments consent to the levying of any taxes or development impact fees within the jurisdiction of such member. If the authority levies any taxes or development impact fees, the contract shall further include requirements that:

(I) Prior to and as a condition of levying any such taxes or fees, the board shall adopt a resolution determining that the levying of such taxes or fees will fairly distribute the costs of the authority's activities among the persons and businesses benefited thereby and will not impose an undue burden on any particular group of persons or businesses;

(II) Each such tax or fee shall conform with any requirements specified in subsection (3) of this section; and

(III) The authority shall designate a financial officer who shall coordinate with the department of revenue regarding the collection of a sales and use tax authorized pursuant to paragraph (f.1) of subsection (3) of this section. This coordination shall include but not be limited to the financial officer identifying those businesses eligible to collect the sales and use tax and any other administrative details identified by the department.

(3) The general powers of such authority shall include the following powers:

(a) To plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate housing projects and programs pursuant to a multijurisdictional plan within the means of families of low or moderate income;

(a.5) To plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate affordable housing projects or programs for employees of employers located within the jurisdiction of the authority;

(b) To make and enter into contracts with any person, including, without limitation, contracts with state or federal agencies, private enterprises, and nonprofit organizations also involved in providing such housing projects or programs or the financing for such housing

projects or programs, irrespective of whether such agencies are parties to the contract establishing the authority;

- (c) To employ agents and employees;
- (d) To cooperate with state and federal governments in all respects concerning the financing of such housing projects and programs;
- (e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service;
- (f) To condemn property for public use, if such property is not owned by any governmental entity or any public utility and devoted to public use pursuant to state authority;

(f.1) (I) Subject to the provisions of subsection (7.5) of this section, to levy, in all of the area within the boundaries of the authority, a sales or use tax, or both, at a rate not to exceed one percent, upon every transaction or other incident with respect to which a sales or use tax is levied by the state, excluding the sale or use of cigarettes. The tax imposed pursuant to this paragraph (f.1) is in addition to any other sales or use tax imposed pursuant to law. The executive director of the department of revenue shall collect, administer, and enforce the sales or use tax, to the extent feasible, in the manner provided in section 29-2-106. However, the executive director shall not begin the collection, administration, and enforcement of a sales and use tax until such time as the financial officer of the authority and the executive director have agreed on all necessary matters pursuant to subparagraph (III) of paragraph (e) of subsection (2) of this section. The executive director shall begin the collection, administration, and enforcement of a sales and use tax on a date mutually agreeable to the department of revenue and the authority.

(II) The executive director shall make monthly distributions of the tax collections to the authority, which shall apply the proceeds solely to the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs within the means of families of low or moderate income.

(III) The department of revenue shall retain an amount not to exceed the cost of the collection, administration, and enforcement and shall transmit the amount retained to the state treasurer, who shall credit the same amount to the multijurisdictional housing authority sales tax fund, which fund is hereby created in the state treasury. The amounts so retained are hereby appropriated annually from the fund to the department to the extent necessary for the department's collection, administration, and enforcement of the provisions of this section. Any moneys remaining in the fund attributable to taxes collected in the prior fiscal year shall be transmitted to the authority; except that, prior to the transmission to the authority of such moneys, any moneys appropriated from the general fund to the department for the collection, administration, and enforcement of the tax for the prior fiscal year shall be repaid.

(f.2) Subject to the provisions of subsection (7.5) of this section, to levy, in all of the area within the boundaries of the authority, an ad valorem tax at a rate not to exceed five mills on each dollar of valuation for assessment of the taxable property within such area. The tax imposed pursuant to this paragraph (f.2) shall be in addition to any other ad valorem tax imposed pursuant to law. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county within the authority, or having a portion of its territory within the district, the levy of ad valorem property taxes in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the designated portion of the area within the boundaries of the authority. It is the duty of the body having authority to levy taxes within each county to levy the taxes provided by this subsection (3). It is the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the authority ordering the levy and collection. The payment of such collections shall be made monthly to the authority or paid into the depository thereof to the credit of the authority. All taxes levied under this paragraph (f.2), together with interest thereon and penalties for default in payment thereof, and all costs of

collecting the same shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general taxes.

(f.5) (I) To establish, and from time to time increase or decrease, a development impact fee and collect such fee from persons who own property located within the boundaries of the authority who apply for approval for new residential, commercial, or industrial construction in accordance with applicable ordinances, resolutions, or regulations of any county or municipality.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (f.5), an impact fee may only be imposed by an authority if all of the following conditions have been satisfied:

(A) No portion of the authority is located in a county with a population of more than one hundred thousand;

(B) The fee is not levied upon the development, construction, permitting, or otherwise in connection with low or moderate income housing or affordable employee housing;

(C) The rate of the fee is two dollars per square foot or less; and

(D) The authority also imposes a sales and use tax pursuant to paragraph (f.1) of this subsection (3), an ad valorem tax pursuant to paragraph (f.2) of this subsection (3), or both.

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rents, security deposits, and charges for functions, services, or facilities provided by the authority;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

(l) To exercise any other powers that are essential to the provision of functions, services, or facilities by the authority and that are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To establish enterprises for the ownership, planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, or operation, or any combination of the foregoing, of housing projects or programs authorized by this section on the same terms as and subject to the same conditions provided in section 43-4-605, C.R.S.

(4) The authority established by such contracting member governments shall be a political subdivision and a public corporation of the state, separate from the parties to the contract, and shall be a validly created and existing political subdivision and public corporation of the state, irrespective of whether a contracting member government withdraws (whether voluntarily, by operation of law, or otherwise) from such authority subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such authority pursuant to its terms. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The authority may deposit and invest its moneys in the manner provided in section 43-4-616, C.R.S.

(5) The bonds, notes, and other obligations of such authority shall not be the debts, liabilities, or obligations of the contracting member governments.

(6) The contracting member governments may provide in the contract for payment to the authority of funds from proprietary revenues for services rendered or facilities provided by the authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the authority.

(7) (Deleted by amendment, L. 2001, p. 966, § 1, effective August 8, 2001.)

(7.1) The authority may issue revenue or general obligation bonds, as the term bond is defined in section 43-4-602 (3), C.R.S., and may pledge its revenues and revenue-raising powers for the payment of such bonds. Such bonds shall be issued on the terms and subject to the conditions set forth in section 43-4-609, C.R.S.

(7.3) The income or other revenues of the authority, all properties at any time owned by an authority, any bonds issued by an authority, and the transfer of and the income from any bonds issued by the authority are exempt from all taxation and assessments in the state.

(7.5) (a) No action by an authority to establish or increase any tax or development impact fee authorized by this section shall take effect unless first submitted to a vote of the registered electors of the authority in which the tax or development impact fee is proposed to be collected.

(b) No action by an authority creating a multiple-fiscal year debt or other financial obligation that is subject to section 20 (4) (b) of article X of the state constitution shall take effect unless first submitted to a vote of the registered electors residing within the boundaries of the authority; except that no such vote is required for obligations of enterprises established under paragraph (n) of subsection (3) of this section or for obligations of any other enterprise under section 20 (4) of article X of the state constitution.

(c) The questions proposed to the registered electors under paragraphs (a) and (b) of this subsection (7.5) shall be submitted at a general election or any election to be held on the first Tuesday in November of an odd-numbered year. The action shall not take effect unless a majority of the registered electors voting thereon at the election vote in favor thereof. The election shall be conducted in substantially the same manner as county elections and the county clerk and recorder of each county in which the election is conducted shall assist the authority in conducting the election. The authority shall pay the costs incurred by each county in conducting such an election. No moneys of the authority may be used to urge or oppose passage of an election required under this section.

(7.7) (a) For the purpose of determining any authority's fiscal year spending limit under section 20 (7) (b) of article X of the state constitution, the initial spending base of the authority shall be the amount of revenues collected by the authority from sources not excluded from fiscal year spending pursuant to section 20 (2) (e) of article X of the state constitution during the first full fiscal year for which the authority collected revenues.

(b) For purposes of this subsection (7.7), "fiscal year" means any year-long period used by an authority for fiscal accounting purposes.

(8) An authority established by contracting member governments shall, if the contract so provides, be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting member governments to provide the same function, service, or facility, and such authority shall be entitled to all the rights and privileges and shall assume all the obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(9) The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their individual powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for housing projects owned by authorities over housing projects owned by other or different entities.

(10) An authority and the property of an authority shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities in sections 29-4-226 and 29-4-227.

Source: **L. 77:** Entire section added, p. 1393, § 1, effective July 7. **L. 2001:** Entire section amended, p. 966, § 1, effective August 8. **L. 2002:** (10) added, p. 1937, § 1, effective June 7. **L. 2008:** (3)(f.1)(I) amended, p. 990, § 3, effective August 5. **L. 2009:** (3)(f.1)(I) amended, (HB 09-1342), ch. 354, p. 1846, § 2, effective July 1.

Editor's note: (1) This section was enacted as § 29-1-203.5 in Senate Bill 77-488 but was renumbered on revision in the 1977 replacement volume for ease of location.

(2) Section 4 of chapter 346, Session Laws of Colorado 2002, provides that the act enacting subsection (10) applies only with respect to taxable years beginning after December 31, 2000.

29-1-205. List of contracts. On or before February 1 of each year, each political subdivision shall file with the division of local government an updated informational list of all contracts in effect with other political subdivisions. Said list shall contain the names of

the contracting political subdivisions, the nature of the contract, and the expiration date thereof. Within ten days after the execution of a contract establishing a separate governmental entity pursuant to section 29-1-204, or an amendment or a modification thereof, a copy of such contract, amendment, or modification shall be filed with the division of local government. Failure to make any filing under this section shall not invalidate any contract referred to in this section.

Source: **L. 71:** R&RE, p. 956, § 1. **C.R.S. 1963:** § 88-2-4. **L. 75:** Entire section amended, p. 958, § 3, effective May 20.

Editor's note: This section was originally numbered as § 29-1-204 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-1-206. Law enforcement agreements. (1) Any county in this state that shares a common border with a county in another state, and any municipality located in such a bordering county of this state, may enter into an agreement with the bordering county of the other state or with a municipality located in the bordering county of the other state to provide for reciprocal law enforcement between the entities. The agreement shall meet the requirements of section 29-1-203 and shall include, but shall not be limited to, an additional requirement that any person who is assigned to law enforcement duty in this state pursuant to such intergovernmental agreement and section 29-5-104 (2) shall be certified as a peace officer in the other state and shall apply to the peace officers standards and training board created pursuant to section 24-31-302, C.R.S., for recognition prior to an assignment in Colorado.

(2) Repealed.

Source: **L. 93:** Entire section added, p. 245, § 1, effective March 31. **L. 96:** Entire section amended, p. 1574, § 7, effective June 3. **L. 2000:** Entire section amended, p. 43, § 4, effective March 10. **L. 2008:** Entire section amended, p. 698, § 1, effective May 1.

Editor's note: Subsection (2)(b) provided for the repeal of subsection (2), effective September 15, 2008. (See L. 2008, p. 698.)

29-1-207. Notification to military installations by local governments of land use changes - legislative declaration - definitions. (Repealed)

Source: **L. 2005:** Entire section added, p. 222, § 1, effective August 8. **L. 2010:** Entire section repealed, (HB 10-1205), ch. 242, p. 1079, § 4, effective August 11.

Editor's note: This section was relocated to § 29-20-105.6 in 2010.

PART 3

ANNUAL LEVY - INCREASE OR REDUCTION - LIMITATION

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

29-1-301. Levies reduced - limitation. (1) (a) All statutory tax levies for collection in 1989 and thereafter when applied to the total valuation for assessment of the state, each of the counties, cities, and towns not chartered as home rule except as provided in this subsection (1), and each of the fire, sanitation, irrigation, drainage, conservancy, and other special districts established by law shall be so reduced as to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus five and one-half percent plus the amount of revenue abated or refunded by the taxing entity by August 1 of the current year less the amount of revenue received by the taxing entity by August 1 of the current year as taxes paid on any taxable property that had previously been omitted from the assessment

roll of any year, except to provide for the payment of bonds and interest thereon, for the payment of any contractual obligation that has been approved by a majority of the qualified electors of the taxing entity, for the payment of expenses incurred in the reappraisal of classes or subclasses ordered by or conducted by the state board of equalization, for the payment to the state of excess state equalization payments to school districts which excess is due to the undervaluation of taxable property, or for the payment of capital expenditures as provided in subsection (1.2) of this section. For purposes of this subsection (1), the amount of revenues received as taxes paid on any taxable property that had been previously omitted from the assessment roll shall not include the amount of such revenues received as taxes paid on oil and gas leaseholds and lands that had been previously omitted from the assessment roll due to underreporting of the selling price or the quantity of oil or gas sold therefrom. In computing the limit, the following shall be excluded: The increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the taxing entity for the preceding year; the increased valuation for assessment attributable to new construction and personal property connected therewith, as defined by the property tax administrator in manuals prepared pursuant to section 39-2-109 (1) (e), C.R.S., within the taxing entity for the preceding year; the increased valuation for assessment attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if said increase in volume of production causes an increase in the level of services provided by the taxing entity; and the increased valuation for assessment attributable to previously legally exempt federal property which becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(b) For property tax years beginning on or after January 1, 1991, any taxing entity may apply to the division of local government in the department of local affairs for authorization to exclude the following from the computation of the limitation set forth in paragraph (a) of this subsection (1): All or any portion of the increased valuation for assessment attributable to new primary oil or gas production for the preceding year from any producing oil and gas leasehold or land if such oil and gas leasehold or land is wholly or partially within the taxing entity and if such new primary oil or gas production has caused or will cause an increase in the level of services provided by the taxing entity.

(c) Any application submitted by a taxing entity pursuant to paragraph (b) of this subsection (1) shall contain the following information:

(I) An explanation of the causal relationship between the new primary oil or gas production specified in paragraph (b) of this subsection (1) and the increase in the level of services provided or to be provided by the taxing entity;

(II) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is authorized;

(III) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is not authorized;

(IV) The nature and amount of the expenditures which would be made from any increased amount of revenues collected if said exclusion is authorized.

(d) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government may grant or deny authority to the taxing entity to exclude all or any portion of such increased valuation for assessment specified in paragraph (b) of this subsection (1). Any authorization granted pursuant to this paragraph (d) shall specify the amount of such valuation for assessment which may be excluded. If said exclusion is authorized by said division, the taxing entity shall deposit any increased amount of revenues collected as a result of said exclusion into a fund created by the taxing entity which shall consist solely of such revenues. Moneys in such fund shall be used exclusively for any increase in the level of services provided by the taxing entity which occurs as a result of the new primary oil or gas production specified in paragraph (b) of this subsection (1).

(e) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government shall provide a copy of such

application to the oil and gas operators of record wherein the taxing jurisdiction the increased valuation from new primary oil and gas production has occurred.

(f) Standing to challenge any determination made by the division of local government pursuant to this subsection (1) shall be limited to the owners of taxable property located wholly or partially within the taxing entity on the date the taxing entity is granted or denied authorization to make an exclusion pursuant to this subsection (1).

(1.2) (a) The limitation provided for in subsection (1) of this section shall not apply for the purpose of raising revenue to pay for capital expenditures. Such revenue shall not be included in determining the limitation in following years. For the purposes of this paragraph (a), "capital expenditure" means an expenditure made by a taxing entity for long-term additions or betterments, which expenditure, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. This paragraph (a) shall apply to counties, cities, and towns.

(b) If a county imposes an increased mill levy pursuant to paragraph (a) of this subsection (1.2) for a one-time, nonrecurring expenditure for a county road or bridge capital project or county road or bridge capital asset, the county may also request that the division of local government waive application of the provisions of section 43-2-202 (2), C.R.S., to the revenue received from that increased levy. In that event, said division shall notify the governing body of each municipality in the county of the request and of the period of time, not less than twenty days, during which the division will receive comment on the request. In considering whether to waive application of said section 43-2-202 (2), C.R.S., the division shall consider, among other relevant matters, the benefit of the project or asset to the municipalities in the county, the need for the project or asset, and alternative methods of and timing for financing the project or asset. No approval for such waiver shall be granted or continued until the division determines that the property tax revenues in the road and bridge fund, excluding the revenues from such increased levy, for the year for which the increase is imposed bear at least the same proportion to all countywide property tax revenues as in the immediate prior year budget.

(c) Any decision to exceed the limitation for the purpose of raising revenue for capital expenditures pursuant to this subsection (1.2) shall conform with the advertising and public hearing requirements of this paragraph (c). No taxing entity may exceed the limitation to raise such revenue unless the governing board of such taxing entity has advertised its intention to do so and unless such excess has been approved by at least two-thirds of the members of such governing board voting at a public hearing. The advertisement specified in this paragraph (c) shall be in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity and shall appear twice therein. The second such appearance shall not be more than eight days prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a public hearing shall be held to consider increasing your property taxes for capital expenditures". Such advertisement shall be in a type no smaller than eighteen-point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, and the purpose of such hearing and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed matter. Such advertisement shall also state what the property taxes would be without such excess and what the property taxes will be with such excess and the percentage difference between such property taxes. Any public hearing held pursuant to this paragraph (c) shall be open to the general public. An opportunity shall be provided for all persons to present oral testimony within such reasonable time limits as shall be set by the board conducting the hearing. Prior to the conclusion of the public hearing, the governing board of the taxing entity shall publicly announce the percent by which the mill levy required to raise such excess exceeds the mill levy computed without such excess.

(1.3) Repealed.

(1.5) All property tax revenues, except such revenues as are exempted in subsection (1) of this section, raised from any property tax levied by a taxing entity which is subject to this

section, shall be combined for the purpose of determining the total amount of property tax revenue which the taxing entity is allowed to raise subject to the limitation imposed by this section. The limitation shall be applied to such aggregate property tax revenues. However, such aggregate amount shall not include any property tax revenue which is raised by or on behalf of a district, authority, or area which is within but is not comprised of the entire taxing entity and which is raised by a tax upon only property within such district, authority, or area; such property tax revenue is subject to a limitation independent of the limitation which is applied to the taxing entity within which such district, authority, or area is located. No statute establishing a set mill levy or establishing a maximum mill levy or authorizing an additional mill levy for a special purpose shall be construed as authorizing the taxing entity to exceed the limitation imposed by this section.

(1.7) For property tax years commencing on or after January 1, 1988, any taxing entity which is subject to the provisions of this section shall not levy any property tax for purposes which are exempt from the limitation imposed by subsection (1) of this section in an amount which is greater than the amount of revenues required to be raised for such purposes during any year as specified by the provisions of any contract entered into by such taxing entity or any schedule of payments established for the payment of any obligation incurred by such taxing entity. Where bonds, contractual obligations, or capital expenditures have been approved, but actual revenues required for such purposes are not known at the time the levy is set, the taxing entity may base its levy on the estimated revenues which are so required for one year only and in subsequent years the levy shall be based on the actual revenues which are so required. Nothing in this subsection (1.7) shall preclude refunding of any obligation or contract.

(2) If an increase over said limitation is allowed by the division of local government in the department of local affairs or voted by the electors of a taxing entity under the provisions of section 29-1-302, the increased revenue resulting therefrom shall be included in determining the limitation in the following year. However, any portion of such increased revenue which is allowed as a capital expenditure pursuant to section 29-1-302 (1.5) shall not be included in determining the limitation in the following year.

(3) The limitations of this part 3 shall apply to home rule counties unless provisions are included in the county home rule charter which are, as determined by the division of local government, equal to or more restrictive than the provisions of this part 3.

(4) In the event of a consolidation or merger, in whole or in part, of two or more political subdivisions or taxing entities, the surviving entity or the entity assuming service responsibilities shall use a direct proportion of the combined entities' prior year property tax revenues as the base for computing the limitation in the year first succeeding such consolidation or merger.

(5) Repealed.

(6) Where a taxing entity exceeds the limitation imposed by subsection (1) of this section during any year, the division of local government shall order a reduction in the authorized revenue of the taxing entity for the subsequent year in an amount which offsets the excess revenues levied in the preceding year. Such order shall be preceded by notice to the taxing entity of the proposed order and an opportunity for the taxing entity to respond prior to issuance of the order.

Source: L. 13: p. 560, § 11. L. 15: p. 403, § 1. L. 17: p. 429, § 1. C.L. § 7214. L. 29: p. 546, § 1. L. 31: p. 701 § 1. CSA: C. 142, § 39. L. 52: p. 142, § 1. CRS 53: § 36-3-2. L. 55: p. 253, § 1. C.R.S. 1963: § 88-3-1. L. 69: p. 1053, § 24. L. 70: p. 378, § 3. L. 71: p. 957, § 1. L. 76: Entire section amended, p. 685, § 1, effective July 1. L. 80: (1) amended, p. 678, § 2, effective April 13. L. 81: (1) and (2) amended and (1.3) and (1.5) added, p. 1395, § 5, effective June 19; (1) amended, p. 1612, § 6, effective June 19. L. 83: (1) amended and (1.2) added, p. 1199, § 1, effective May 25; (1) amended, p. 1196, § 1, effective June 3; (1) amended, p. 2085, § 3, effective October 13. L. 85: (1.2)(c) amended, p. 1024, § 1, effective July 1. L. 86: (1), (1.2)(a), (1.2)(c), (1.5), and (2) amended and (1.3) R&RE, pp. 1021, 1023, §§ 2, 3, effective May 16. L. 87: (1) amended, p. 1178, § 1, effective April 16; (1.2)(a), (1.5), and (4) amended, p. 1181, § 1, effective April 30; (1.2)(c) amended, p. 1184, § 1, effective May 1. L. 88: (1) and (1.3) amended

and (1.7) and (6) added, p. 1279, § 3, effective May 23; (1) and (1.3) amended and (5) added, pp. 1099, 1268, §§ 1, 3, effective May 29. **L. 89:** (1) amended, p. 1467, § 35, effective June 7. **L. 90:** (1) amended, p. 1704, § 39, effective June 9. **L. 91:** (1) amended, p. 1969, § 1, effective April 19. **L. 93:** (1)(a) amended, p. 1281, § 1, effective June 6. **L. 96:** (1)(a) amended, p. 16, § 1, effective February 22.

Editor's note: (1) Amendments to subsection (1) by House Bill 81-1320 and House Bill 81-1613 were harmonized.

(2) Amendments to subsection (1) by House Bill 83-1011 and House Bill 83-1405 were harmonized.

(3) Subsection (1.3)(c) provided for the repeal of subsection (1.3), effective June 30, 1991. (See L. 88, p. 1279.) Subsection (5)(c) provided for the repeal of subsection (5), effective January 1, 1991. (See L. 88, p. 1268.)

(4) Amendments to subsection (1) by Senate Bill 88-184, House Bill 88-1016, and Senate Bill 88-126 were harmonized.

(5) Amendments to subsection (1.3) by House Bill 88-1016 and Senate Bill 88-184 were harmonized.

ANNOTATION

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For comment, "Colorado Public School Financing: Constitutional Issues", see 59 U. Colo. L. Rev. 149 (1988).

Decreased debt service not offset against revenue increase to reduce increase and avoid special election. Any decrease in a district's debt service is a separate matter and cannot be offset against the increase in general revenue so as to reduce the percentage increase for purposes of determining whether a special election is required for a proposed tax levy. *Stegon v. Pueblo W. Metro. Dist.*, 198 Colo. 128, 596 P.2d 1206 (1979).

County exempt from the five and one half percent revenue limitation of this section where voters had approved a ballot question allowing the county to keep all property tax revenues generated by its existing mill levy even though the ballot question did not specifically refer to that limitation. *Wilber v. Bd. of County Comm'rs of County of La Plata*, 42 P.3d 49 (Colo. App. 2001).

Applied in *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978); *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

29-1-301.1. Levies reduced - limitation - 1988. (Repealed)

Source: **L. 86:** Entire section added, p. 1020, § 1, effective January 1, 1987. **L. 87:** (2) amended, p. 1187, § 1, effective March 12; (1) amended, p. 1179, § 2, effective April 16; (1) amended, p. 1181, § 2, effective April 30.

Editor's note: Subsection (3) provided for the repeal of this section, effective January 1, 1988. (See L. 86, p. 1020.)

29-1-302. Increased levy - submitted to people at election. (1) If the board of any special district authorized to levy a tax or any officer charged with the duty of levying a tax in any special district is of the opinion that the amount of tax limited by section 29-1-301 will be insufficient for the needs of such special district for the current year, the question of an increased levy may be submitted to the division of local government in the department of local affairs, and it is the duty of said division to consider the public awareness of the question, the public support therefor, and the public objection thereto and to examine the needs of such special district and ascertain from such examination the financial condition thereof, and, if in the opinion of the division such special district is in need of additional funds, the said division may grant an increased levy for such special district above the limits specified in this part 3, and such special district is authorized to make such excess levy. The division of local government shall not under any circumstance grant an increased levy based upon increased valuation for assessment purposes from reappraisals. As used in this section, "special district" means any district organized pursuant to law, except school districts

operating pursuant to title 22, C.R.S., which is authorized to levy an ad valorem tax on property within its boundaries, and the term includes, but is not limited to, districts organized under article 20 of title 30, C.R.S., articles 25 and 35 of title 31, C.R.S., and titles 32 and 37, C.R.S.

(1.5) (a) The general assembly recognizes the need for periodic increased levies in order to finance capital projects and purchases of capital assets which are a one-time, nonrecurring expenditure. It is the intent of the general assembly that the division of local government may grant an increased levy for such expenditures if, in its opinion, a special district, to which section 29-1-301 (1.2) (a) does not apply, is in need of additional funds for such expenditures. Any increased levy granted by the division of local government in a given year which is designated by it as a capital expenditure shall not be included in determining the limitation in the following year. If the division is of the opinion that such additional funds will be needed for two or more years after reviewing the long-range plan of the special district concerning the expenditure of such funds, it may grant an increased levy, and such increased levy shall automatically be allowed for each year during which such additional funds will be needed. During such years, the increased levy for each year shall not be included in determining the limitation in the following year.

(b) Repealed.

(2) (a) In case the division of local government, after consideration of the public awareness of the question, the public support therefor, and the public objection thereto, refuses or fails within ten days after submission to it of an adopted budget to grant an increased levy to a special district pursuant to subsection (1) or (1.5) of this section, the question may be submitted to the qualified electors of said district at a general or special election called for the purpose and in the manner provided by law for calling special elections in such special district.

(b) Any taxing entity to which section 29-1-301 (1) applies may, at its discretion, submit the question of an increased levy directly to an election of the qualified electors without first submitting the question of an increased levy to the division of local government.

(c) In lieu of utilizing the provisions of section 29-1-303, any city or town having a population of two thousand or less, based upon the latest estimates of the department of local affairs, may utilize the provisions of subsections (1) and (1.5) of this section and paragraph (a) of this subsection (2).

(3) Due notice of submission of the question of whether to grant the increased levy shall be given as required by articles 1 to 13 of title 1, C.R.S. If a majority of the votes cast at any such election is in favor of the increased levy, then the officers charged with levying taxes may make such increased levy for the year or years voted upon.

(4) to (6) Repealed.

Source: L. 13: p. 560, § 12. C.L. § 7216. CSA: C. 142, § 41. L. 52: p. 142, § 2. CRS 53: § 36-3-5. L. 55: p. 253, § 2. C.R.S. 1963: § 88-3-2. L. 69: p. 1053, § 25. L. 70: p. 378, § 4. L. 71: p. 957, § 2. L. 72: p. 611, § 127. L. 76: (1) and (2) amended, p. 685, § 2, effective July 1. L. 77: (3) added, p. 1748, § 21, effective January 1, 1978. L. 81: (1) amended, p. 1388, § 1, effective May 27; (1.5) added, p. 1397, § 6, effective June 19; (6) added, p. 1390, § 1, effective June 19. L. 83: (1.5) amended, p. 1203, § 1, effective April 29; (1.5) R&RE, p. 1201, § 3, effective May 25; (1) amended, p. 2072, § 1, effective October 13. L. 85: (1.5)(b) and (3) amended, p. 1025, § 2, effective May 22; (4) repealed, p. 1363, § 26, effective June 28. L. 86: (1), (1.5)(a), and (2) amended and (1.5)(b), (5), and (6) repealed, pp. 1024, 1027, §§ 4, 8, effective January 1, 1987. L. 87: (3) amended, p. 1181, § 3, effective April 30; (3) amended, p. 1185, § 2, effective May 1. L. 94: (3) amended, p. 1187, § 82, effective July 1.

Editor's note: (1) Amendments to subsection (3) by House Bill 87-1011 and House Bill 87-1012 were harmonized.

(2) The internal reference in subsection (2)(c) to § 29-1-303 refers to that section as it existed prior to its repeal on January 1, 1990.

ANNOTATION

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983).

This section is not opposed to § 7 of art. X, Colo. Const. This provision of the fundamental law has not the effect of prohibiting legislation to limit the tax which may be imposed for county purposes. *Tallon v. Vindicator Consol., Gold Mining Co.*, 59 Colo. 316, 149 P. 108 (1915).

Notice requirements for special elections should be construed more strictly than for general elections. *Stegon v. Pueblo W. Metro. Dist.*, 198 Colo. 128, 596 P.2d 1206 (1979).

Statutory language requiring 30 days notice is mandatory and should be strictly con-

strued. *Stegon v. Pueblo W. Metro. Dist.*, 198 Colo. 128, 596 P.2d 1206 (1979).

County not required to lower existing mill levy where voters had approved ballot question to allow the county to keep all property tax revenues generated by its existing mill levy. Approval of the ballot question exempted the county from the five and one half percent revenue limitation of § 29-1-301 (1) even though the ballot question did not specifically refer to that limitation. *Wilber v. Bd. of County Comm'rs of County of La Plata*, 42 P.3d 49 (Colo. App. 2001).

Applied in *Colo. & S. Ry. v. Bd. of Comm'rs*, 70 Colo. 8, 196 P. 331 (1921).

29-1-303. Revenue-raising limitation exemption - public disclosure of tax levy. (Repealed)

Source: **L. 81:** Entire section added, p. 1392, § 1, effective January 1, 1995. **L. 82:** (2)(b) amended, p. 457, § 1, effective March 15. **L. 83:** (2)(b) amended, p. 2073, § 2, effective October 13. **L. 85:** (1)(b) and (4) amended, p. 1026, § 3, effective July 1. **L. 86:** (1)(a), (2), and (10) amended, p. 1025, § 5, effective May 16; (9) repealed, p. 1027, § 8, effective January 1, 1987. **L. 87:** (2)(b) amended, p. 1187, § 2, effective March 12; (1)(b) and (4) amended, p. 1185, § 3, effective May 1. **L. 89:** (2) amended, p. 1464, § 28, effective June 7.

Editor's note: Subsection (10) provided for the repeal of this section, effective January 1, 1990. (See L. 86, p. 1025.)

29-1-304. Funding for state-mandated programs. (Repealed)

Source: **L. 81:** Entire section added, p. 1394, § 2, effective June 19. **L. 86:** Entire section amended, p. 1026, § 6, effective January 1, 1987. **L. 91:** Entire section repealed, p. 914, § 4, effective June 7.

29-1-304.5. State mandates - prohibition - exception. (1) No new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service. In the event that such additional moneys for reimbursement are not provided, such mandate or increased level of service for an existing state mandate shall be optional on the part of the local government.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of federal law;

(b) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of a final state or federal court order;

(c) Any modification in the share of school districts for financing the state public school system;

(d) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level or service which is the result of any state law enacted

prior to the second regular session of the fifty-eighth general assembly or any rule or regulation promulgated thereunder;

(e) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is undertaken at the option of a local government which results in additional requirements or standards; and

(f) Any order from the state board of education pertaining to the establishment, operation, or funding of a charter school or any modification of the statutory or regulatory responsibilities of school districts pertaining to charter schools.

(3) For purposes of this section:

(a) "Increase in the level of service for an existing state mandate" does not include any increase in expenditures necessary to offset an increase in costs to provide such service due to inflation or any increase in the number of recipients of such service unless such increase results from any requirement of law which either enlarges an existing class of recipients or adds a new class of recipients.

(b) "Local government" means any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state.

(c) "Requirement of federal law" means any federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which either requires the state to take action or does not directly require the state to take action but will, according to federal law, result in the loss of federal funds if state action is not taken to comply with such federal action.

(d) "State mandate" means any legal requirement established by statutory provision or administrative rule or regulation which requires any local government to undertake a specific activity or to provide a specific service which satisfies minimum state standards, including, but not limited to:

(I) Program mandates which result from orders or conditions specified by the state as to what activity shall be performed, the quality of the program, or the quantity of services to be provided; and

(II) Procedural mandates which regulate and direct the behavior of any local government in providing programs or services, including, but not limited to, reporting, fiscal, personnel, planning and evaluation, record-keeping, and performance requirements.

Source: L. 91: Entire section added, p. 912, § 3, effective June 7. **L. 2004:** (2)(f) added, p. 1591, § 23, effective June 3.

ANNOTATION

Requirement in subsection (1) of this section that state reimburse counties for costs associated with an increased level of service inapplicable to requirement in § 1-8-113 (1)(a) that counties must provide drop-off boxes for mail-in ballots at every polling place on election day, notwithstanding that this increase in service may create additional costs to the county. Statute requiring that the costs of conducting an election be a county charge, § 1-5-505 (1), is in irreconcilable conflict with subsection (1). However, § 1-5-505 (1), which pertains only to election funding, is more specific than subsection (1), which broadly

applies its reimbursement requirement to most existing state programs. Although subsection (1) was adopted after § 1-5-505 (1), there is no manifest intent that it should prevail in a conflict with the other statute. Rather, the intent of the legislature was to prioritize citizens' access to free and fair elections over convenience or cost savings to counties. Thus, § 1-5-505 (1) should prevail over subsection (1), making the unfunded mandate requirement of subsection (1) inapplicable to the requirement of § 1-8-113 (1)(a) that counties provide drop-off boxes for mail-in ballots at every polling place on election day. *Gessler v. Doty*, 2012 COA 4, __ P.3d __.

29-1-304.7. Programs delegated by the general assembly - termination or reduction - requirements. (1) Any local government which, pursuant to section 20 (9) of article X of the state constitution, intends to reduce or terminate its subsidy to any program delegated to such local government by the general assembly for administration shall provide written notice of such intention to the governor, the president of the senate, the speaker of

the house of representatives, the chairman of the joint budget committee of the general assembly, and the head of any state department or agency affected.

(2) The notice required by this section shall contain information sufficient to identify the program and shall state whether the local government intends to reduce or terminate its subsidy to the program. If a reduction is intended, the notice shall also specify the amount of such reduction.

(3) The notice may specify an effective date for such reduction or termination; except that in no event shall the reduction or termination take effect prior to ninety days after receipt of the notice by all of the parties named in subsection (1) of this section.

(4) Any reduction or termination for which notice is given pursuant to this section shall take place over a three-year period in three equal annual amounts.

(5) The director of the division of local government of the department of local affairs is authorized and empowered, after consultation with the affected departments or agencies, if any, to promulgate, adopt, amend, and repeal such rules and regulations, as may be necessary for the implementation and administration of this section.

Source: L. 93: Entire section added, p. 5, § 1, effective February 16.

29-1-304.8. Programs not delegated by the general assembly. (1) A local district, within the meaning of section 20 (2) of article X of the state constitution, shall not reduce or end its subsidy pursuant to section 20 (9) of said article to any program if:

(a) The program is one of the inherent powers, duties, or functions of an officer whose office is created as a county office by the state constitution, including but not limited to the county clerk and recorder, the county sheriff, the county coroner, the county treasurer, the county surveyor, the county assessor, and the county attorney; or

(b) The program is required by the state constitution to be administered by the local district, including but not limited to duties related to the maintenance of the state court system and the equalization of property tax assessments.

(2) Nothing in the general assembly's enactment of a requirement that a local district contribute toward the funding of a program operated by an agency or officer which is not under the jurisdiction of that local district, including but not limited to the requirement that counties pay a portion of the costs of maintaining the office of the district attorney, shall imply that the general assembly has delegated the program to the local district for administration within the meaning of section 20 (9) of article X of the state constitution.

(3) A board of county commissioners shall not cease exercising or performing its inherent legislative, executive, or quasi-judicial powers, duties, or functions in the guise of reducing or ending its subsidy to a program pursuant to the provisions of section 20 (9) of article X of the state constitution.

(4) As used in this section:

(a) "Administration" means the executive management or superintendence of public affairs, as distinguished from policy-making.

(b) "Inherent" means in the essential character of or belonging by nature or settled habit to.

Source: L. 93: Entire section added, p. 1517, § 21, effective June 6.

29-1-304.9. Fiscal note. (1) For any proposed legislation introduced after December 31, 2009, that may have a fiscal impact on a county, school district, or board of cooperative services, the staff of the legislative council shall consider and provide in the local government impact section of the accompanying fiscal note, when possible, taking into account reasonable time constraints, the following:

(a) A reasonable and timely estimate of the fiscal impact on the counties, school districts, or boards of cooperative services chosen in accordance with subsection (2) of this section that would result from the proposed legislation; and

(b) Potential staffing and other administrative aspects of the proposed legislation.

(2) In order to compile the information required by subsection (1) of this section, the staff of the legislative council shall request from a statewide association of county commissioners or the department of education fiscal information regarding the impact of the proposed legislation on certain counties to be determined by the association, school districts, or boards of cooperative services, to be determined by the department of education.

(3) The staff of the legislative council shall consider the information received from the association, school districts, or boards of cooperative services, if any, when completing the local government impact section of any fiscal note.

Source: L. 2009: Entire section added, (HB 09-1200), ch. 163, p. 701, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1277), ch. 306, p. 1503, § 29, effective August 10.

29-1-305. Mill levy limits - temporary exceptions - repeal. (Repealed)

Source: L. 83: Entire section added, p. 1197, § 2, effective June 3. **L. 86:** Entire section repealed, p. 1027, § 8, effective January 1, 1987.

PART 4

ASSOCIATIONS OF POLITICAL SUBDIVISIONS

29-1-401. Associations formed - purpose. Two or more of the political subdivisions of the state may, in their discretion and in addition to powers granted before April 22, 1957, form and maintain associations for the purposes of promoting through investigation, discussion, and cooperative effort interests and welfare of the several political subdivisions of the state of Colorado and to promote a closer relation between the several political subdivisions of the state.

Source: L. 57: p. 522, § 1. **CRS 53:** § 88-3-1. **C.R.S. 1963:** § 88-4-1.

29-1-402. Instrumentality of subdivision. Any such association so formed shall be an instrumentality of the political subdivisions which are members thereof.

Source: L. 57: p. 522, § 2. **CRS 53:** § 88-3-2. **C.R.S. 1963:** § 88-4-2.

29-1-403. Legislative representation - expenses - definitions. (1) The legislative bodies of local, political subdivisions may enter into associations and, through a representative of the association, attend the general assembly of the state of Colorado and the United States Congress and any committees thereof, and present information to aid the passage of legislation which the association deems beneficial to the local agencies in the association or to prevent the passage of legislation which the association deems detrimental to the local agencies in the association. The cost and expense incident thereto are proper charges against the local agencies comprising the association; but proper expenditures of the association shall include only the actual and necessary expenses for one representative of each association and shall not include any expenditures for expenses, travel, or entertainment of any persons other than the representative of the association.

(2) "Local agency", as used in this part 4, means county, city, or city and county. "Legislative body", as used in this part 4, means board of county commissioners in the case of a county or city and county and city council or board of trustees in the case of a city or town.

Source: L. 57: p. 522, § 3. **CRS 53:** § 88-3-3. **C.R.S. 1963:** § 88-4-3. **L. 72:** p. 611, § 128.

PART 5

LOCAL GOVERNMENT UNIFORM ACCOUNTING LAW

29-1-501. Short title. This part 5 shall be known and may be cited as the "Colorado Local Government Uniform Accounting Law".

Source: L. 65: p. 857, § 1. C.R.S. 1963: § 88-5-1.

29-1-502. Definitions. As used in this part 5, unless the context otherwise requires:

- (1) "Auditor" means the state auditor.
- (2) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado, any institution, department, agency, or authority of any of the foregoing, including any county or municipal housing authority; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. Effective January 1, 1990, the office of the county public trustee shall be deemed an agency of the county for the purposes of this part 5. "Local government" does not include the fire and police pension association, any public entity insurance pool formed pursuant to state law, the university of Colorado hospital authority created in section 23-21-503, C.R.S., or any association of political subdivisions formed pursuant to section 29-1-401.

Source: L. 65: p. 857, § 2. C.R.S. 1963: § 88-5-2. L. 81: (2)(e) added, p. 1401, § 1, effective April 24. L. 89: (2) R&RE, p. 1256, § 3, effective May 2. L. 91: (2) amended, p. 588, § 13, effective October 1.

Cross references: For the legislative declaration contained in the act amending subsection (2), see section 1 of chapter 99, Session Laws of Colorado 1991.

29-1-503. Appointment of advisory committee - powers and duties. (1) The governor, with the advice and consent of the senate, shall appoint an advisory committee on governmental accounting to assist the auditor in formulating and prescribing a classification of accounts which shall consist of six members, one of whom shall be a member of the Colorado society of certified public accountants and the remaining five of whom shall be active in finance matters either as elected officials or finance officers employed by a unit of local government as defined in section 29-1-502 and each of whom shall represent one of the following levels of local government: Counties, cities and counties, cities and towns, school districts and junior college districts, and local improvement or special service districts and other local entities having authority under the general laws of this state to levy taxes or impose assessments.

(2) Prior to June 15, 1987, the terms of the members shall be six years, except for initial appointments when two members shall be appointed for terms of two years, two members shall be appointed for terms of four years, and two members shall be appointed for terms of six years. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, members shall be appointed for terms of four years each.

(3) The state auditor and the controller shall be ex officio nonvoting members of the advisory committee on governmental accounting; except that the state auditor shall act as chairman of the committee and shall cast a vote only in the case of a tie.

(4) Any decision shall be adopted only upon the majority vote of the members present.

(5) (Deleted by amendment, L. 93, p. 674, § 10, effective May 1, 1993.)

Source: L. 65: p. 857, § 3. C.R.S. 1963: § 88-5-3. L. 86: (5) added, p. 423, § 51, effective March 26. L. 87: (2) amended, p. 912, § 24, effective June 15. L. 93: (5) amended, p. 674, § 10, effective May 1.

29-1-504. Auditor - powers and duties. (1) The auditor shall formulate, prescribe, and publish a classification of accounts with the approval of the advisory committee on

governmental accounting which shall be uniform for every level of local government as defined in section 29-1-502; except that each level of government may be classified according to population, and, in that event, each classification of accounts shall be uniform within each class; and except that the classification of accounts prescribed for the purpose of public schools shall be subject to the approval of the state board of education; and further except that the classification of accounts prescribed for the purpose of junior college districts shall be subject to the approval of the state board for community colleges and occupational education.

(2) Upon completion of the classification of accounts for each level of government, the auditor shall distribute the published copies of the classification of accounts promulgated by his office to each unit of local government defined in section 29-1-502 and may distribute such copies to other interested parties. Any amendments or alterations to the original published copies shall also be distributed to each unit of local government in the same manner.

(3) Upon request of the local government officials, the auditor shall assist local government officials in implementing the classification of accounts promulgated under the provisions of this section. Any travel and subsistence expense incurred by the auditor in performing such requests shall be paid by the local government.

(4) In accordance with the provisions of subsection (1) of this section, the auditor shall formulate classifications of inventory accounts for local governments; such accounts shall be required to be kept only with respect to items of property having an original cost that equals or exceeds an amount established by the governing body of each local government, unless such items having a value of less than the amount established by such governing body are required to be inventoried by directive of the state auditor. In no event shall the amount established by the governing body of any local government pursuant to this subsection (4) exceed the amount specified in rules promulgated by the state controller pursuant to section 24-30-202, C.R.S., regarding inventory accounts for items of state property.

Source: L. 65: p. 858, § 4. C.R.S. 1963: § 88-5-4. L. 69: p. 698, § 2. L. 75: (1) amended, p. 787, § 12, effective July 1. L. 98: (4) amended, p. 140, § 1, effective August 5.

29-1-505. Annual compendium. (1) Upon completion of the first calendar year following the completion of the classification of accounts and at the close of each calendar year thereafter, the division of local government in the department of local affairs shall publish or cause to be published an annual compendium of local government as derived from the annual audit reports filed under the provisions of the Colorado local government audit law and shall include audit reports for any fiscal years ending within the calendar year. The compendium shall be arranged by the type of local government and by classes within each type as required by the classification of accounts promulgated under section 29-1-504; but, if an annual compendium of any type of local government is published by any state agency, such compendium may be accepted by the division of local government as a part of the annual compendium set out in this section.

(2) The division, with the approval of the executive director of the department of local affairs, may include such other information as may be deemed important for use by local government officials to promote and encourage sound fiscal management.

Source: L. 65: p. 859, § 5. C.R.S. 1963: § 88-5-5. L. 71: p. 959, § 1.

29-1-506. Continuing inventory. (1) The governing body of each local government shall make or cause to be made an annual inventory of property, both real and personal, belonging to such political subdivision; except that an inventory shall be required only with respect to items of property having an original cost that equals or exceeds an amount established by the governing body of each local government, unless such items having a value of less than the amount established by such governing body are required to be

inventoried by directive of the state auditor. In no event shall the amount established by the governing body of any local government pursuant to this subsection (1) exceed the amount specified in rules promulgated by the state controller pursuant to section 24-30-202, C.R.S., regarding inventory accounts for items of state property.

(2) Repealed.

Source: L. 69: p. 698, § 1. C.R.S. 1963: § 88-5-6. L. 75: Entire section amended, p. 707, § 7, effective July 14. L. 88: Entire section amended, p. 821, § 31, effective May 24. L. 89: (1) amended and (2) repealed, pp. 1259, 1260, §§ 10, 11, effective May 3. L. 98: (1) amended, p. 140, § 2, effective August 5.

PART 6

LOCAL GOVERNMENT AUDIT LAW

29-1-601. Short title. This part 6 shall be known and may be cited as the “Colorado Local Government Audit Law”.

Source: L. 65: p. 860, § 1. C.R.S. 1963: § 88-6-1.

29-1-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) “All funds and activities” means all financial activities of the reporting local government as those activities are defined by generally accepted accounting principles for governments.

(2) “Auditor” means a certified public accountant licensed to practice in Colorado as an individual, partnership, or professional corporation pursuant to article 2 of title 12, C.R.S., who makes an audit and prepares a report thereon as provided in this part 6.

(3) “Financial statement” means a report made by a local government summarizing the results of all funds and activities of the local government for a particular period, the duration of that period to be determined by the local government.

(4) “Fiscal year” means the period commencing January 1 and ending December 31; except that, for school districts and junior college districts, “fiscal year” means the period commencing July 1 and ending June 30, and “fiscal year” may mean the federal fiscal year for water conservancy districts which have contracts with the federal government.

(5) (a) “Local government” means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. Effective January 1, 1990, the office of the county public trustee shall be deemed an agency of the county for the purposes of this part 6.

(b) Except for purposes of sections 29-1-603, 29-1-604, and 29-1-606, “local government” does not include the fire and police pension association, any county or municipal housing authority, any public entity insurance pool formed pursuant to state law, the Colorado sheep and wool authority, the Colorado beef council authority, the Colorado horse development authority, the statewide internet portal authority, or any association of political subdivisions formed pursuant to section 29-1-401.

Source: L. 65: p. 860, § 2. C.R.S. 1963: § 88-6-2. L. 69: p. 699, §§ 1, 2. L. 89: Entire section R&RE, p. 1256, § 4, effective May 2. L. 92: (4) amended, p. 550, § 27, effective May 28. L. 93: (5)(b) amended, pp. 1846, 1856, §§ 4, 5, effective July 1. L. 95: (5)(b) amended, p. 1001, § 3, effective July 1. L. 98: (5)(b) amended, p. 1262, § 9, effective June 1. L. 2007: (5)(b) amended, p. 702, § 1, effective May 3. L. 2009: (5)(b) amended, (HB 09-1024), ch. 15, p. 85, § 1, effective September 1.

Editor’s note: (1) Amendments to subsection (5)(b) by Senate Bill 93-240 and Senate Bill 93-243 were harmonized.

(2) Section 2 of chapter 191, Session Laws of Colorado 2007, provides that the act amending subsection (5)(b) applies to the statewide internet portal authority and audits made thereof before, on, or after May 3, 2007.

29-1-603. Audits required. (1) The governing body of each local government in the state shall cause to be made an annual audit of the financial statements of the local government for each fiscal year. To the extent that the financial activities of any local government, or of any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among local governments, are fully reported in the audit or audits of a parent local government or governments, a separate audit is not required. Such audit shall be made as of the end of the fiscal year of the local government, or, at the option of the governing body, audits may be made at more frequent intervals. As part of the audit of a school district, the auditor shall ensure that the school district is complying with the provisions of section 22-44-204 (3), C.R.S., concerning the use of the financial policies and procedures handbook adopted by the state board of education. The audit report shall contain a fiscal year report of receipts and expenditures of each fund with designated program reports in accordance with the financial policies and procedures handbook. The supplemental schedules of receipts and expenditures for each fund shall be in the format prescribed by the state board of education and shall be in agreement with the audited financial statements of the school district. The department of education shall provide assistance to auditors and school districts in implementing and following these requirements.

(1.5) Notwithstanding the provisions of this part 6, beginning January 1, 2013, the office of the county public trustee of any trustee who is appointed by the governor pursuant to section 38-37-102 (1), C.R.S., shall cause to be made an annual audit of the financial activities of the office of the public trustee that is separate from the audit made pursuant to subsection (1) of this section, and such offices of the public trustee need not be included in the county audit made pursuant to subsection (1) of this section. The office of the county public trustee of any trustee who is the county treasurer pursuant to section 38-37-102 (2), C.R.S., shall continue to be included in the county audit made pursuant to subsection (1) of this section.

(2) The audits of each local government shall be conducted in accordance with generally accepted auditing standards by an auditor, as defined in section 29-1-602, but in no event shall any auditor audit the records, books, or accounts which he has maintained.

(3) The expenses of audits required by this part 6, whether ordered by the local government or the state auditor, shall be paid by the local government for which the audit is made. It is the duty of the governing body of the local government to make provision for payment of said expenses.

(4) The entities listed in section 29-1-602 (5) (b) shall annually have an audit made by a certified public accountant and shall file a copy of the audit report made pursuant to such audit with the state auditor no later than thirty days after the report is received by such entity.

(5) For the audit for the 1994-95 budget year and budget years thereafter, the audit report of each school district shall include a calculation of the school district's fiscal year spending under section 20 of article X of the state constitution; except that, if a school district has received voter approval to retain revenues in excess of its spending limits under said section 20 (7), the school district shall include a calculation of its fiscal year spending for the first fiscal year following said voter approval but need not include such calculation for fiscal years thereafter.

Source: L. 65: p. 860, § 3. C.R.S. 1963: § 88-6-3. L. 75: (2) amended, p. 960, § 1, effective June 16; (1) amended, p. 708, § 8, effective July 14. L. 88: (1) amended, p. 822, § 32, effective May 24. L. 89: (1) and (2) amended and (4) added, p. 1257, § 5, effective May 2. L. 91: (1) amended, p. 1918, § 43, effective June 1. L. 95: (5) added, p. 619, § 21, effective May 22. L. 99: (5) amended, p. 177, § 6, effective March 30. L. 2012: (1.5) added, (HB 12-1329), ch. 190, p. 764, § 2, effective August 8.

29-1-604. Exemptions. (1) Any local government where neither revenues nor expenditures exceed one hundred thousand dollars in any fiscal year commencing on or after January 1, 1998, may, with the approval of the state auditor, be exempt from the provisions of section 29-1-603.

(2) Any local government where revenues or expenditures for any fiscal year commencing on or after January 1, 2004, are at least one hundred thousand dollars but not more than five hundred thousand dollars may, with the approval of the state auditor, be exempt from the provisions of section 29-1-603.

(3) The governing body of any local government wishing to claim exemption from the audit requirements pursuant to subsection (1) or (2) of this section shall file an application for exemption from audit. Any application filed pursuant to subsection (1) of this section shall be prepared by a person skilled in governmental accounting. Any application filed pursuant to subsection (2) of this section shall be prepared by an independent accountant with knowledge of governmental accounting. Any application filed pursuant to this subsection (3) shall be completed in accordance with regulations issued by the state auditor and shall be personally reviewed, approved, and signed by a majority of the members of the governing body. The application is to be filed with the state auditor within three months after the close of the local government's fiscal year. No exemption shall be granted prior to the close of said fiscal year. Failure to file such application shall cause the local government to lose its exemption from the provisions of section 29-1-603 for that fiscal year and the ensuing fiscal year.

Source: L. 65: p. 861, § 4. C.R.S. 1963: § 88-6-4. L. 77: Entire section amended, p. 1397, § 1, effective March 16. L. 83: Entire section amended, p. 1206, § 1, effective March 22. L. 85: (3) amended, p. 1019, § 3, effective July 1. L. 89: (1) and (3) amended, p. 1258, § 6, effective May 2. L. 98: Entire section amended, p. 292, § 1, effective August 5. L. 2004: (2) amended, p. 186, § 1, effective August 4.

29-1-605. Contents of report. (1) All reports on audits of local governments shall contain at least the following:

(a) Financial statements which shall be prepared, insofar as possible, in conformity with generally accepted governmental accounting principles setting forth the financial position and results of operation of each fund and activity of the local government and a comparison of actual figures with budgeted figures for each fund or activity for which a budget has been prepared, which financial statements shall be the representations of the local government;

(b) The unqualified opinion of the auditor with respect to the financial statements of the local government or, if an unqualified opinion cannot be expressed, a qualified opinion or disclaimer of opinion containing an explanation of the reasons therefor;

(c) Full disclosure by the auditor of violations of state or local law which come to his attention.

(2) In addition to the information required by subsection (1) of this section, the report on the audit of a special district, as defined in section 32-1-103 (20), C.R.S., that has authorized but unissued general obligation debt as of the end of the fiscal year of the special district shall specify the amount of the authorized but unissued debt and any current or anticipated plan to issue the debt.

Source: L. 65: p. 861, § 5. C.R.S. 1963: § 88-6-5. L. 2008: (2) added, p. 61, § 1, effective August 5.

29-1-606. Submission of reports. (1) (a) Except as otherwise required in paragraph (b) of this subsection (1), each audit required by this part 6 shall be completed and the audit report thereon submitted by the auditor to the local government within six months after the close of the fiscal year of the local government.

(b) The audit required by this part 6 for school districts shall be completed and the audit report thereon submitted by the auditor to the school district within five months after the close of the fiscal year of the school district.

(c) The audit required by this part 6 for housing authorities shall be completed and the audit report thereon submitted by the auditor to the housing authority within seven months after the close of the fiscal year of the housing authority.

(2) One copy of the audit report shall be maintained by the local government as a public record for public inspection at all reasonable times at the principal office of the local government.

(3) The local government shall forward a copy of the audit report to the state auditor within thirty days after receipt of said audit. The state auditor shall retain such copy in his office as a public record where it shall be available for public inspection at all reasonable times. In the case of a school district, a copy of the audit report shall also be submitted to the commissioner of education within thirty days after the audit report is received.

(4) If within one month after the time period provided in subsection (1) of this section the local government is unable to file an audit report with the state auditor, the governing body of the local government shall submit to the state auditor a written request for extension of time to file. Such request for extension shall be submitted no later than one month after the time period provided in subsection (1) of this section. The state auditor may authorize an extension of such time for not more than sixty days.

(5) (a) If the audit report of a local government is not filed with the state auditor within two months after the time period provided in subsection (1) of this section and the local government has not been granted an extension or exemption from the filing requirement, the state auditor shall make written notice to the local government of its delinquent status.

(b) If the audit report of a local government is not filed with the state auditor within three months after the time period provided in subsection (1) of this section, the state auditor shall either:

(I) Notify any county treasurer holding moneys of the local government which were generated pursuant to the taxing authority of such local government of the delinquent audit status of such local government and authorize such county treasurer to prohibit the release of any such moneys until the local government submits an audit report to the state auditor; or

(II) Make or cause such audit to be made at the expense of the local government. The local government shall reimburse the state auditor for all amounts advanced for the making of such audit, including any legal and court costs incurred in the making of such audit.

(6) Repealed.

(7) In addition to the other requirements of this section, a special district, as defined in section 32-1-103 (20), C.R.S., that has authorized but unissued general obligation debt as of the end of the fiscal year of the special district shall submit its audit report or a copy of its application for exemption from audit to the board of county commissioners or the governing body of the municipality that adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7, C.R.S.

(8) Notwithstanding any other requirement of this part 6, in preparing the audit report required by section 29-1-603 (4), the entities listed in section 29-1-602 (5) (b) shall be subject to the additional requirements of this section to the extent practicable regardless of whether the entity is otherwise subject to the requirements of this part 6.

Source: L. 65: p. 862, § 6. C.R.S. 1963: § 88-6-6. L. 75: (1) amended, p. 708, § 9, effective July 14. L. 85: (4) and (5) amended and (6) added, p. 1019, § 4, effective March 1; (6) amended, p. 1372, § 53, effective July 1. L. 88: (1) amended, p. 822, § 33, effective May 24. L. 89: (1) and (4) amended, (5) R&RE, and (6) repealed, pp. 1258, 1259, 1260, §§ 7, 8, 11, effective May 2. L. 93: (1), (4), (5)(a), and IP(5)(b) amended, p. 889, § 14, effective May 6. L. 2008: (7) added, p. 61, § 2, effective August 5. L. 2009: (1)(c) and (8) added, (HB 09-1024), ch. 15, p. 85, §§ 2, 3, effective September 1.

29-1-607. Duties of state auditor. (1) The state auditor shall examine all reports submitted to him to determine whether the provisions of this part 6 have been complied with. If the state auditor finds that they have not been complied with, he shall notify the governing body of the local government and the auditor who submitted said audit report by submitting to them a statement of deficiencies. If the deficiencies are not corrected within

ninety days from the date of the statement of deficiencies or within twelve months after the end of the fiscal year of the local government, whichever is later, the state auditor shall proceed in the same manner as provided in section 29-1-606 (5) as though no report had been filed.

(2) If the state auditor, in examining any audit report, finds an indication of violation of state law, he shall, after making such investigation as he deems necessary, consult with the attorney general, and if after such investigation and consultation he has reason to believe that there has been a violation of state law on the part of any person, he shall certify the facts to the district attorney of the judicial district in which the alleged violation occurred who shall cause appropriate proceedings to be brought.

(3) The auditor shall formulate classifications of inventory accounts for local governments, which accounts shall be required to be kept only with respect to items of property having an original cost that equals or exceeds an amount established by the governing body of each local government, unless such items having a value of less than the amount established by such governing body are required to be inventoried by directive of the state auditor. In no event shall the amount established by the governing body of any local government pursuant to this subsection (3) exceed the amount specified in rules promulgated by the state controller pursuant to section 24-30-202, C.R.S., regarding inventory accounts for items of state property.

Source: L. 65: p. 862, § 7. C.R.S. 1963: § 88-6-7. L. 69: p. 698, § 3. L. 89: (3) amended, p. 1259, § 9, effective May 2. L. 98: (3) amended, p. 141, § 3, effective August 5.

29-1-608. Violations - penalties. (1) If it appears that an auditor has knowingly issued an audit report under the provisions of this part 6 containing any false or misleading statement, the state auditor shall report the matter in writing to the state board of accountancy and to the local government.

(2) Any member of the governing body of the local government or any member, officer, employee, or agent of any department, board, commission, or other agency who knowingly and willfully fails to perform any of the duties imposed upon him by this part 6, or who knowingly and willfully violates any of the provisions of this part 6, or who knowingly and willfully furnishes to the auditor or his employee any false or fraudulent information is guilty of malfeasance and, upon conviction thereof, the court shall enter judgment that such person be removed from office or employment. It is the duty of the court rendering such judgment to cause immediate notice of such removal from office or employment to be given to the proper officer of the local government so that the vacancy thus caused may be filled.

Source: L. 65: p. 863, § 8. C.R.S. 1963: § 88-6-8.

PART 7

CONSTRUCTION BIDDING FOR STATE-FUNDED LOCAL PROJECTS

29-1-701. Short title. This part 7 shall be known and may be cited as the "Construction Bidding for State-funded Local Projects Act".

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 64, § 21, effective January 1, 1990.

29-1-702. Legislative declaration. The general assembly hereby declares that the procedures for procurement by local government of construction projects which will be funded in whole or in part by the state through the highway users tax fund is a matter of statewide concern; that the identification and widespread publication of such projects will increase the competition for such projects leading to a decreased cost to taxpayers throughout the state; that increased privatization of such projects by local governments will aid in the development and retention of local small businesses, industries, and construction

firms, will broaden the economic base of local areas, and will contribute to increased economic vitality throughout the state; and that the provisions of this part 7 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and welfare of the people of this state.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 64, § 21, effective January 1, 1990.

29-1-703. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Agency of local government" means any municipality, county, home rule county, or home rule city or any agency, department, division, board, bureau, commission, institution, or other authority thereof which is a budgetary unit exercising construction contracting authority or discretion and which is located in a county of thirty thousand persons or more, or a city or town of thirty thousand persons or more, according to the state demographer.

(2) "Construction contract" or "contract" means any agreement to construct, alter, improve, repair, or demolish any state-funded public project of any kind.

(3) "Cost" means the total cost of labor, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, supervision, engineering, and clerical and accounting services; the reasonable value of the use of equipment, including its replacement value, owned by the agency; and the reasonable estimates of other administrative or indirect costs not otherwise directly attributable to the state-funded public project which may be reasonably apportioned to such project in accordance with generally accepted cost-accounting principles and standards. To determine the reasonable value of the use of equipment owned by the agency, the agency may utilize rates established in the department of transportation's published equipment rate schedule in force at the time of the estimate or rates established in any other similar, generally accepted, published equipment rate schedule. To determine administrative and indirect costs, the agency may utilize a good faith percentage estimate of not less than fifteen percent of the total direct costs.

(4) "Defined maintenance project" means any project that involves a significant reconstruction, alteration, or improvement of any existing road, highway, bridge, structure, facility, or other public improvement, including but not limited to repairing or seal coating of roads or highways or major internal or external reconstruction or alteration of existing structures. "Defined maintenance project" does not include routine maintenance activities such as snow removal, minor surface repair of roads or highways, cleaning of ditches, regrading of unsurfaced roads, repainting, replacement of floor coverings, or minor reconstruction or alteration of existing structures.

(5) "State-funded public project" means any construction, alteration, repair, demolition, or improvement by any agency of local government of any land, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any defined maintenance project, which are funded in whole or in part from the highway users tax fund and which may be reasonably expected to exceed one hundred fifty thousand dollars in the aggregate for any fiscal year.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 64, § 21, effective January 1, 1990. L. 91: (3) amended, p. 1069, § 41, effective July 1.

29-1-704. Construction of public projects - competitive sealed bidding. (1) All construction contracts for state-funded public projects shall be awarded by competitive sealed bidding except as provided in subsection (2) of this section.

(2) Competitive sealed bidding shall not be required for:

(a) A state-funded public project for which the agency of local government receives no bids or for which all bids have been rejected;

(b) A state-funded public project for which the responsible officer determines it is necessary to make emergency procurements or contracts because there exists a threat to public health, welfare, or safety under emergency conditions, but such emergency procure-

ments or contracts shall be made with such competition as is practicable under the circumstances; however, a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(3) Nothing in this part 7 shall be construed to affect or limit any additional requirements imposed upon an agency of local government for awarding contracts for state-funded public projects.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

29-1-705. Agency of local government to submit cost estimate. (1) Whenever an agency of local government proposes to undertake the construction of a state-funded public project, by any means or method other than by a contract awarded by competitive bid, it shall prepare and submit a cost estimate in the same manner as other bidders. Such agency of government itself may not undertake the proposed state-funded public project unless it shows the lowest and most responsive cost estimate.

(2) Agencies of local government shall not be required to be bonded when performing the work on a state-funded public project.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

29-1-706. Finality of determinations. The determinations required by section 29-1-704 (2) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law or are not supported by substantial evidence.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

29-1-707. Prohibition of dividing work of state-funded public project. It is unlawful for any person to divide the work of a state-funded public project into two or more separate projects for the sole purpose of evading or attempting to evade the requirements of this part 7.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

PART 8

LAND DEVELOPMENT CHARGES

Law reviews: For article, "Developer Exactions and Impact Fees", see 19 Colo. Law. 67 (1990).

29-1-801. Legislative declaration. The general assembly hereby finds and determines that statewide standards governing accountability for land development charges imposed by local governments to finance capital facilities and services are necessary and desirable to ensure reasonable certainty, stability, and fairness in the use to which moneys generated by such charges are put and to promote public confidence in local government finance. The general assembly therefore declares that this part 8 is a matter of statewide concern.

Source: L. 90: Entire part added, p. 1438, § 1, effective January 1, 1991.

29-1-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Capital expenditure" means any expenditure for an improvement, facility, or piece of equipment necessitated by land development which is directly related to a local government service, has an estimated useful life of five years or longer, and is required by charter or general policy of a local government pursuant to resolution or ordinance.

(2) "Land development" means any of the following:

(a) The subdivision of land;

(b) Construction, reconstruction, redevelopment, or conversion of use of land or any structural alteration, relocation, or enlargement which results in an increase in the number of service units required; or

(c) An extension of use or a new use of land which results in an increase in the number of service units required.

(3) "Land development charge" means any fee, charge, or assessment relating to a capital expenditure which is imposed on land development as a condition of approval of such land development, as a prerequisite to obtaining a permit or service. Nothing in this section shall be construed to include sales and use taxes, building or plan review fees, building permit fees, consulting or other professional review charges, or any other regulatory or administrative fee, charge, or assessment.

(4) "Local government" means a county, city and county, municipality, service authority, school district, local improvement district, law enforcement district, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, any other kind of municipal, quasi-municipal, or public corporation, or any agency or instrumentality thereof organized pursuant to law.

(5) "Service unit" means a standard unit of measure of consumption, use, generation, or discharge of the services provided by a local government.

Source: L. 90: Entire part added, p. 1438, § 1, effective January 1, 1991.

ANNOTATION

Law reviews. For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

29-1-803. Deposit of land development charge. (1) All moneys from land development charges collected, including any such moneys collected but not expended prior to January 1, 1991, shall be deposited or, if collected for another local government, transmitted for deposit, in an interest-bearing account which clearly identifies the category, account, or fund of capital expenditure for which such charge was imposed. Each such category, account, or fund shall be accounted for separately. The determination as to whether the accounting requirement shall be by category, account, or fund and by aggregate or individual land development shall be within the discretion of the local government. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account. At least once annually, the local government shall publish on its official web site, if any, in a clear, concise, and user-friendly format information detailing the allocation by dollar amount of each land development charge collected to an account or among accounts, the average annual interest rate on each account, and the total amount disbursed from each account, during the local government's most recent fiscal year.

(2) (Deleted by amendment, L. 2011, (HB 11-1113), ch. 23, p. 58, § 1, effective December 31, 2011.)

Source: L. 90: Entire part added, p. 1439, § 1, effective January 1, 1991. **L. 2011:** Entire section amended, (HB 11-1113), ch. 23, p. 58, § 1, effective December 31.

ANNOTATION

This section contains no substantive authority for the imposition of fees, but rather the accounting and reporting requirements for local

governments that receive a fee. *County Comm'rs of Douglas County v. Bainbridge*, 929 P.2d 691 (Colo. 1996).

29-1-804. Exceptions - state-mandated charges. This part 8 shall not apply to rates, fees, charges, or other requirements which a local government is expressly required to collect by state statute and which are not imposed to fund programs, services, or facilities of the local government.

Source: L. 90: Entire part added, p. 1439, § 1, effective January 1, 1991.

PART 9

LOCAL GOVERNMENT-FINANCED ENTITY

29-1-901. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Local government-financed entity" means any organization, group, or entity other than a political subdivision that:

(a) Is composed of members that are political subdivisions or who are officials or employees of political subdivisions; and

(b) Derives any of its annual operating budget from dues, contributions, or other payments received from political subdivisions.

(2) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: L. 96: Entire part added, p. 140, § 1, effective April 8.

29-1-902. Local government-financed entity - records - public inspection. (1) A local government-financed entity shall make the following information available for public inspection and copying during regular business hours:

(a) A list of the members of the entity;

(b) The annual operating budget of the entity that is government financed;

(c) The compensation paid to officers and employees of and to any other person performing services for the entity, including expense allowances and benefits;

(d) The name of any person lobbying, as defined in section 24-6-301 (3.5), C.R.S., on behalf of the entity and the total amount expended by the entity for lobbying over the previous twelve months;

(e) The most recent disclosure statement filed by the entity or by any person lobbying on behalf of the entity pursuant to section 24-6-302, C.R.S.

Source: L. 96: Entire part added, p. 140, § 1, effective April 8.

PART 10

LIMITATIONS ON SOURCES OF REVENUE

29-1-1001. Moratorium on taxes, fees, and charges - internet and on-line services - definitions. (1) (a) From May 1, 1998, to and including April 30, 2001, there shall be a temporary moratorium during which no statutory or home rule city and county, county, city, or town, nor any political subdivision of the state, including, without limitation, a special purpose authority, special district, or school district, shall impose, assess, or collect any tax, fee, or charge, however designated, upon the direct charges for provision of internet access services.

(b) Paragraph (a) of this subsection (1) shall not apply to taxes on internet access services actually collected and enforced by a home rule city on or before April 15, 1998.

(c) Paragraph (a) of this subsection (1) shall not apply to any franchise fee on interactive computer services delivered via a cable television system unless the federal communications commission or a court of competent jurisdiction determines that such services are not cable services within the meaning of 47 U.S.C. sec. 522 (6).

(1.5) (a) On and after April 30, 2001, no statutory or home rule city and county, county, city, or town, or any political subdivision of the state, including, without limitation, a special purpose authority, special district, or school district, shall impose, assess, or collect any tax, fee, or charge, however designated, upon the direct charges for provision of internet access services, whether offered separately or as part of a package or bundle of services.

(b) Paragraph (a) of this subsection (1.5) shall not apply to taxes on internet access services actually collected and enforced by a home rule city on or before April 15, 1998.

(c) Paragraph (a) of this subsection (1.5) shall not apply to any franchise fee on interactive computer services delivered via a cable television system unless the federal communications commission or a court of competent jurisdiction determines that such services are not cable services within the meaning of 47 U.S.C. sec. 522 (6).

(2) From May 1, 1998, to and including April 30, 2001, there shall be a temporary moratorium during which no provider of internet access services shall be required to collect sales or use taxes from persons who purchase taxable property or services through use of the internet unless such provider acts as a vendor of taxable property or services.

(2.5) On and after April 30, 2001, no provider of internet access services shall be required to collect sales or use taxes from persons who purchase taxable property or services through use of the internet unless such provider acts as a vendor of taxable property or services.

(3) As used in this section:

(a) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled, switched data networks.

(b) "Internet access services" means services that provide or enable computer access by multiple users to the internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

(4) (a) The general assembly hereby finds, determines, and declares that:

(I) Access to the internet insures access to information and government services, therefore, it is crucial that all people living in Colorado have equal access to the internet regardless of economic standing, educational background, or location. It is in the state's interest to ensure that local governments do not impose taxes on internet access, as such local taxation would inhibit equal access to the internet and the accessibility of on-line services for the people living in any local jurisdiction that imposes an internet access tax.

(II) Any tax on internet access imposed by a local government would present unique administrative challenges for the internet service providers required to collect that tax. Such issues include, but are not limited to, tracking which local governments impose a tax, ascertaining the location of every customer, and determining the customers from which a tax must be collected. These logistical concerns may result in an internet service provider refusing to offer service to customers living in local jurisdictions that impose a tax on internet access, thus reducing competition and disenfranchising certain localities from affordable on-line services.

(III) The promotion of economic development is of the utmost importance for Colorado. To foster the state's economic growth, Colorado strives to become a center for electronic commerce and taxing internet access on the state or local level would impede that goal.

(b) The general assembly further finds, determines, and declares that the imposition, assessment, or collection of any tax, fee, or charge, however designated, upon the direct charges for the provision of internet access service is a matter of statewide concern and the provisions of this section shall preempt any provisions of any local government ordinance, resolution, regulation, or other restriction to the contrary.

Source: L. 98: Entire part added, p. 735, § 2, effective May 18. L. 2000: (1.5), (2.5), and (4) added and (3)(b) amended, p. 735, § 2, effective August 2.

29-1-1002. Mobile telecommunications services - taxation by local governments - remedies - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

- (b) "Customer" means customer as defined in section 124 (2) of the act.
- (c) "Home service provider" means home service provider as defined in section 124 (5) of the act.
- (d) "Local government" means any statutory or home rule city and county, county, city, or town, and any political subdivision of the state, including, without limitation, any authority, special district, or school district.
- (e) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.
- (f) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.
- (g) "Taxing jurisdiction" means taxing jurisdiction as defined in section 124 (12) of the act.
- (2) (a) On and after August 1, 2002, any local government that imposes a sales tax pursuant to section 39-26-104 (1) (c), C.R.S., on a mobile telecommunications service shall impose such tax in accordance with the provisions of the act.
- (b) Pursuant to section 117 (b) of the act, mobile telecommunications service taxable by a local government on or after August 1, 2002, may be subject to any sales tax or other charge imposed by said local government on the service only if the customer's place of primary use is within the geographical boundaries of the local government.
- (3) (a) If a customer believes that a tax, charge, or fee assessed by a local government in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider may require.
- (b) No later than sixty days after receipt of notice from a customer pursuant to paragraph (a) of this subsection (3), the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer.
- (c) Any customer that believes a tax, charge, or fee assessed by a local government in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect may file a claim in the appropriate district court only after complying with the provisions of this subsection (3).

Source: L. 2002: Entire section added, p. 251, § 2, effective April 12.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 92, Session Laws of Colorado 2002.

PART 11

LOCAL GOVERNMENT DELINQUENCY CHARGES

- 29-1-1101. Definitions.** As used in this part 11, unless the context otherwise requires:
- (1) "Amount due" means the amount of a fee, fine, penalty, or other separate charge due and owing to a local government.
- (2) "Delinquency charge" means a separate fee, fine, or penalty levied as a result of the late payment of an amount due. For purposes of this part 11, a delinquency charge shall not include any fee, fine, or other penalty imposed:
- (a) In accordance with the express terms of a written contractual provision;

- (b) As a result of the late payment of a tax;
 - (c) By a state, county, municipal, or other court;
 - (d) As a result of a check, draft, or order for the payment of money that is not paid upon presentment;
 - (e) In connection with the unlawful stopping, standing, or parking of a motor vehicle;
 - (f) By a public library upon overdue, damaged, or destroyed materials; and
 - (g) By a local liquor licensing authority pursuant to article 47 of title 12, C.R.S.
- (3) "Local government" shall have the same meaning as defined in section 29-1-602
- (5) (a).

Source: L. 99: Entire part added, p. 1334, § 3, effective January 1, 2000.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 320, Session Laws of Colorado 1999.

29-1-1102. Delinquency charges. (1) Notwithstanding any other provision to the contrary, no local government shall impose a delinquency charge except as provided in this section.

(2) No delinquency charge may be collected by a local government on any amount due that is paid in full within five days after the scheduled due date.

(3) No delinquency charge shall exceed the amount of fifteen dollars or up to five percent per month, or fraction thereof, not to exceed a total of twenty-five percent of the amount due, whichever is greater.

(4) No more than the amount set forth in subsection (3) of this section shall be collected by a local government on any amount due regardless of the period of time during which the amount due remains in default.

(5) In the event that an amount due is one of a series of payments to be made toward the satisfaction of a single fee, fine, penalty, or other charge assessed by a local government, no more than the amount set forth in subsection (3) of this section shall be collected by a local government on any one of such payments regardless of the period of time during which the payment remains in default.

(6) No interest shall be assessed on a delinquency charge.

(7) Nothing in this section shall be construed to prohibit a local government from charging interest on an amount due. In no event shall such interest be charged upon a delinquency charge or any amount other than the amount due. In no event shall any such interest charge exceed an annual percentage rate of eighteen percent or the equivalent for a longer or shorter period of time. The provisions of this subsection (7) restricting the charging of interest shall not apply to delinquent interest imposed after a tax lien is sold at a tax lien sale pursuant to article 11 of title 39, C.R.S.

(8) Nothing in this section shall be construed to prohibit a local government from recovering the costs of collection, including but not limited to disconnection or reconnection fees, reinstatement charges, or penalties assessed where fraud is involved.

Source: L. 99: Entire part added, p. 1335, § 3, effective January 1, 2000.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 320, Session Laws of Colorado 1999.

PART 12

PROHIBITION OF LOCAL LIMITS ON THE FREQUENCY OF RELIGIOUS MEETINGS IN HOMES

29-1-1201. Legislative declaration - matter of statewide concern. The general assembly hereby finds, determines, and declares that the imposition of restrictions by a local government upon when or how often individuals may meet upon private residential property to pray, worship, or otherwise study or discuss issues relating to religious beliefs

infringes upon the fundamental right to the free exercise of religion. The general assembly further finds and declares that such restrictions are of significant interest to people living outside the jurisdiction of the local government. In addition, the ability of individuals to freely determine when and how often they wish to meet for such purposes should be uniform throughout the state. Accordingly, the general assembly finds that restrictions that specifically limit when or how often individuals may meet upon private residential property to pray, worship, or otherwise study or discuss issues relating to religious beliefs are a matter of statewide concern and the provisions of this section shall preempt any provisions of any local government ordinance, resolution, regulation, or other restriction to the contrary.

Source: L. 2000: Entire part added, p. 26, § 1, effective August 2.

29-1-1202. Local limits on time or frequency of religious meetings - definitions. On or after August 2, 2000, a local government shall be prohibited from enacting or enforcing any ordinance, resolution, regulation, or other restriction that specifically limits when or how frequently individuals in the state may meet upon private residential property to pray, worship, or otherwise study or discuss issues related to religious beliefs. For the purposes of this part 12, the term “local government” shall mean any county, city and county, city, or town, including any county, city and county, city, or town that has adopted a home rule charter.

Source: L. 2000: Entire part added, p. 27, § 1, effective August 2.

29-1-1203. Applicability to other local laws. This part 12 shall not be construed to affect the enactment or enforcement of laws generally regulating traffic, parking, excessive noise, or other adverse conditions affecting the health, welfare, and safety of citizens of a local government.

Source: L. 2000: Entire part added, p. 27, § 1, effective August 2.

ANNOTATION

Section does not apply to ordinance to re-strict parking because the ordinance not only regulates parking but also establishes a land use regulation. Town of Foxfield v. Archdiocese of Denver, 148 P.3d 339 (Colo. App. 2006).

ARTICLE 2

County and Municipal Sales or Use Tax

Law reviews: For article, “Local Government Sales and Use Taxes”, see 40 Colo. Law. 61 (July 2011).

29-2-101.	Legislative declaration.	29-2-105.	Contents of sales tax ordi- nances and proposals - re- peal.
29-2-102.	Municipal sales or use tax - referendum.	29-2-106.	Collection - administration - enforcement.
29-2-103.	Countywide sales or use tax - multiple-county municipality excepted.	29-2-106.1.	Deficiency notice - dispute resolution.
29-2-103.5.	Sales tax for mass transit.	29-2-106.2.	Location guides - precinct locators.
29-2-103.7.	Special taxes for water rights.	29-2-107.	Limitation on applicability.
29-2-103.8.	Sales tax for health care ser- vices.	29-2-108.	Limitation on amount. (Re- pealed)
29-2-103.9.	Sales tax for mental health care services.	29-2-109.	Contents of use tax ordi- nances and proposals.
29-2-104.	Adoption procedures.		

29-2-110.	Filing with executive director - when deemed to have been made.	29-2-112.	Sales and use tax revenue bonds.
29-2-111.	Pledging of sales and use tax for capital improvements.	29-2-113.	Sales and use tax simplification task force - repeal of section. (Repealed)

29-2-101. Legislative declaration. The general assembly hereby declares that the imposition of sales or use taxes, or both, by counties, cities, and incorporated towns in this state affects the flow of commerce within this state and the welfare of the people of this state. The purpose of the general assembly in the enactment of this article is to provide a higher degree of uniformity in any sales taxes imposed by such entities.

Source: L. 67: p. 660, § 1. **C.R.S. 1963:** § 138-10-1. **L. 73:** p. 1477, § 1. **L. 75:** Entire section amended, p. 961, § 1, effective July 14.

ANNOTATION

State's interest in uniformity does not outweigh the home rule city's interest in preventing tax avoidance. Where a home rule city's excise tax is intended to collect only the difference between what it would have collected in sales tax had the purchase been made locally and any sales or use tax previously paid to another municipality, the state's interest in uni-

formity does not outweigh the home rule city's interest in preventing tax avoidance by purchasing outside of the city limits. *Winslow Constr. Co. v. City & County of Denver*, 960 P.2d 685 (Colo. 1998).

Applied in *Deluxe Theatres, Inc. v. City of Englewood*, 198 Colo. 85, 596 P.2d 771 (1979).

29-2-102. Municipal sales or use tax - referendum. (1) Any incorporated town or city in this state may adopt a municipal sales or use tax, or both, by ordinance in accordance with the provisions of this article, but only if the ordinance provides for the submission of the tax proposal to an election by the registered electors of the town or city for their approval or rejection at a regular municipal election or at a special election called for the purpose if no regular municipal election will be held within ninety days after the adoption of the ordinance. The election shall be conducted in the manner provided in the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.

(2) (a) No incorporated town or city shall adopt a sales or use tax ordinance pursuant to subsection (1) of this section on or after the date of the adoption of a resolution for a countywide sales tax, use tax, or both by the board of county commissioners of the county in which all or any portion of the town or city is located until after the date of the election on the county proposal.

(b) Paragraph (a) of this subsection (2) shall not apply to any incorporated town or city that has been incorporated for less than five years as of the date of adoption of the sales or use tax ordinance.

(c) Nothing in this article shall preclude the initiation of a sales or use tax proposal by the registered electors of any incorporated town or city pursuant to section 31-11-104, C.R.S.

Source: L. 67: p. 660, § 2. **C.R.S. 1963:** § 138-10-2. **L. 73:** p. 1477, § 2. **L. 75:** Entire section amended, p. 961, § 2, effective July 14. **L. 79:** Entire section amended, p. 1126, § 1, effective April 25. **L. 87:** Entire section amended, p. 322, § 67, effective July 1. **L. 93:** Entire section amended, p. 697, § 4, effective May 4. **L. 95:** Entire section amended, p. 440, § 25, effective May 8. **L. 2003:** Entire section amended, p. 2581, § 1, effective June 5.

29-2-103. Countywide sales or use tax - multiple-county municipality excepted. (1) Each county in this state is authorized to levy a county sales tax, use tax, or both in accordance with the provisions of this article. No proposal for a county sales tax, use tax, or both shall become effective until approved by a majority of the registered electors of the

county voting on such proposal pursuant to section 29-2-104. Such a proposal for a sales tax, use tax, or both, upon approval by a majority of the registered electors voting thereon, shall be effective throughout the incorporated and unincorporated portions of the county except when less than countywide application is authorized pursuant to subsection (2) of this section.

(2) A county may levy a sales tax, use tax, or both, in whole or in part, in less than the entire county when the following conditions are met:

(a) (Deleted by amendment, L. 2008, p. 990, § 4, effective August 5, 2008.)

(b) The area to be excluded from the tax levy is comprised solely of a portion of a municipality whose boundaries are located in more than one county; and

(c) All other counties in which a portion of the municipality described in paragraph (b) of this subsection (2) is located have agreed to provide fair compensation to the county for any services extended to such municipality as a result of revenues derived from the county tax levy from which the municipality is excluded.

(3) The approval provisions of subsection (1) of this section, the restrictions on contents of sales or use tax proposals set forth in section 29-2-105, and the collection procedures of section 29-2-106 shall apply to county sales or use taxes or both levied pursuant to subsection (2) of this section.

Source: L. 67: p. 660, § 3. C.R.S. 1963: § 138-10-3. L. 75: Entire section amended, p. 962, § 3, effective July 14. L. 79: Entire section amended, p. 1126, § 2, effective April 25. L. 85: Entire section amended, p. 1028, § 1, effective May 2. L. 2008: (2)(a) and (2)(b) amended, p. 990, § 4, effective August 5.

ANNOTATION

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982).

29-2-103.5. Sales tax for mass transit. (1) (a) Except as provided in paragraph (b) of this subsection (1), in addition to any sales tax imposed pursuant to section 29-2-103, each county in this state which lies outside the jurisdiction of the regional transportation district is authorized to levy a county sales tax, use tax, or both of up to one-half of one percent for the purpose of financing, constructing, operating, or maintaining a mass transportation system within the county.

(b) On and after July 1, 2001, in addition to any sales tax imposed pursuant to section 29-2-103, each county in this state that lies outside the jurisdiction of the regional transportation district is authorized to levy a county sales tax, use tax, or both of up to one percent for the purpose of financing, constructing, operating, or maintaining a mass transportation system within the county.

(2) (a) Any county in which such mass transportation system is based may enter into intergovernmental agreements with any municipality or other county or may enter into contractual agreements with any private carrier for the purpose of providing mass transportation services either within the county or in a county in which the county mass transportation system is permitted to operate.

(b) Any county which uses sales tax revenues which are imposed pursuant to this section for the provision of mass transportation services shall establish standards for such service.

(c) The county shall issue a request for proposals for such service in order to compare the costs of a private carrier in providing such service with the costs of the county, as determined in accordance with generally accepted accounting principles, in providing such service directly.

(d) If the costs to the county are less when the service is provided by the private carrier, the county shall contract with the private carrier for the mass transportation service.

(e) Any private carrier selected to provide mass transportation service pursuant to this

subsection (2) shall provide such performance bond or other surety as the county may reasonably require.

(f) In the event that no private carriers are able to provide mass transportation services, the county shall provide such services.

(g) In contracting with a private carrier, the county shall require that the carrier not use the contract to cross-subsidize any other services provided by the carrier.

(3) (a) No sales tax, use tax, or both shall be levied pursuant to the provisions of subsection (1) of this section until such proposal has been referred to and approved by the registered electors of the county in accordance with the provisions of this article.

(b) During the calendar year 1990, the proposal for a sales or use tax increase pursuant to this section may be submitted at the primary election held on the first Tuesday in August of each even-numbered year or at the next general election. For any year thereafter, such sales and use tax increase proposal may only be submitted on the first Tuesday after the first Monday in November of each year and shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) The provisions of this section shall not be construed to expand the use tax base of any county in this state as such base is described in section 29-2-109 (1).

(5) All revenues collected from such county sales tax shall be credited to a special fund in the county treasury known as the county mass transportation fund. The fund shall be used only for the financing, constructing, operating, or maintaining of a mass transportation system within the county.

Source: L. 90: Entire section added, p. 1440, § 1, effective May 4. L. 92: (3)(b) amended, p. 873, § 99, effective January 1, 1993. L. 2001: (1) amended, p. 1519, § 1, effective June 8. L. 2002: (3)(a) amended, p. 1035, § 80, effective June 1. L. 2008: (3)(a) amended, p. 991, § 5, effective August 5.

29-2-103.7. Special taxes for water rights. (1) On and after July 1, 2003, in addition to any sales tax imposed pursuant to section 29-2-103, counties are authorized to levy a county sales tax, use tax, or any combination of such taxes of up to one percent for the purposes of purchasing, adjudicating changes of, leasing, using, banking, and selling water rights that have been adjudicated for use within such county or in a municipality or county that is subject to an intergovernmental agreement concerning such tax pursuant to subsection (2) of this section.

(2) (a) A county may enter into an intergovernmental agreement with any municipality or other county or may enter into a contractual agreement with any private entity to facilitate the achievement of the purposes enumerated in subsection (1) of this section.

(b) Any county that uses tax revenues imposed pursuant to this section shall establish standards for the use of such revenues.

(3) (a) No sales tax, use tax, or combination of such taxes shall be levied pursuant to subsection (1) of this section until a ballot proposal for the levying of such taxes has been referred to and approved by the registered electors of the county in accordance with this article.

(b) The proposal for a tax pursuant to this section may be submitted only on the first Tuesday after the first Monday in November of each year and shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) This section shall not be construed to expand the use tax base of any county in this state, as such base is described in section 29-2-109 (1).

(5) All revenues collected from such county taxes shall be credited to a special fund in the county treasury known as the county water fund. The county water fund shall be used only for the purposes enumerated in subsection (1) of this section.

Source: L. 2003: Entire section added, p. 884, § 5, effective August 6. L. 2008: (3)(a) amended, p. 991, § 6, effective August 5.

29-2-103.8. Sales tax for health care services. (1) In addition to any sales tax imposed pursuant to section 29-2-103, each county in the state is authorized to levy a county sales tax for the purpose of providing, directly or indirectly, health care services to residents of the county who are in need of health care services.

(2) (a) Any county in which health care services are provided may enter into intergovernmental agreements with any municipality or other county or may enter into contractual agreements with any private provider or health service district, as defined in section 32-1-103 (9), C.R.S., for the purpose of providing health care services within the county.

(b) Any county that uses sales tax revenues imposed pursuant to this section for the provision of health care services shall establish standards for such services.

(3) (a) No sales tax shall be levied pursuant to the provisions of subsection (1) of this section until the proposal has been referred to and approved by the eligible electors of the county in accordance with the provisions of this article.

(b) Any proposal for the levy of a sales tax in accordance with paragraph (a) of this subsection (3) shall only be submitted to the eligible electors of the county on the date of the state general election or on the first Tuesday in November of an odd-numbered year, and any election on the proposal shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) All revenues collected from a county sales tax imposed pursuant to this section shall be credited to a special fund in the county treasury known as the county health care services fund. The fund shall be used only for the purpose of providing health care services in accordance with this section.

Source: L. 2007: Entire section added, p. 1200, § 16, effective July 1. **L. 2008:** (3)(a) amended, p. 991, § 7, effective August 5.

29-2-103.9. Sales tax for mental health care services. (1) In addition to any sales tax imposed pursuant to section 29-2-103, each county in this state is authorized to levy a county sales tax of up to one-quarter of one percent for the purpose of providing, directly or indirectly, mental health care services to residents of the county who are in need of mental health care services and to family members of such residents.

(2) (a) Any county in which mental health care services are provided may enter into intergovernmental agreements with any municipality or other county or may enter into contractual agreements with any private provider for the purpose of providing mental health care services within the county.

(b) Any county that uses sales tax revenues imposed pursuant to this section for the provision of mental health care services shall establish standards for such services.

(3) (a) No sales tax shall be levied pursuant to the provisions of subsection (1) of this section until the proposal has been referred to and approved by the eligible electors of the county in accordance with the provisions of this article.

(b) Any proposal for the levy of a sales tax in accordance with paragraph (a) of this subsection (3) shall only be submitted to the eligible electors of the county on the first Tuesday after the first Monday in November of each year and any election on the proposal shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) All revenues collected from a county sales tax imposed pursuant to this section shall be credited to a special fund in the county treasury known as the county mental health care services fund. The fund shall be used only for the purpose of providing mental health care services in accordance with this section.

Source: L. 2005: Entire section added, p. 1042, § 5, effective June 2. **L. 2008:** (3)(a) amended, p. 991, § 8, effective August 5.

29-2-104. Adoption procedures. (1) A proposal for a countywide sales tax, use tax, or both shall be referred to the registered electors of the county either by resolution of the board of county commissioners or by petition initiated and signed by five percent of the

registered electors of the county. The right of petition allowed pursuant to this subsection (1) shall extend only to the initial proposal of a tax and shall not extend to the extension of an expiring tax, use of tax revenues, or changes in distribution of tax revenues among local governments.

(2) Such proposal shall contain a description of the tax in accordance with the provisions of this article and shall make provision for any distribution of revenue collections between the county and the incorporated cities and towns within the county. Such proposal shall also state the amount of tax to be imposed. Unless otherwise agreed to by the governing bodies of the county and municipalities within the county, any use tax proceeds shall be distributed among such county and municipalities in the same proportion as the sales tax proceeds distributed to each jurisdiction.

(3) A proposal for a countywide sales tax, use tax, or both, by resolution of the board of county commissioners, shall be submitted at the next regular general election if there is one within the next succeeding one hundred twenty days after the adoption of such resolution. If no general election is scheduled within such time, the board of county commissioners, in its resolution, shall submit the same to the registered electors of the county at a special election called for the purpose, to be held not less than thirty days nor more than ninety days after the adoption of such resolution.

(4) Upon being presented with a petition requesting a proposal for a countywide sales tax, use tax, or both signed by five percent of the registered electors of the county, the board of county commissioners shall, upon certification of the signatures on the petition, submit such proposal to the registered electors of the county. The proposal shall be submitted at the next general election if there is one within one hundred twenty days of the filing of the petition. If no general election is scheduled within one hundred twenty days following the date of filing of the petition, the board of county commissioners shall submit such proposal at a special election called not less than thirty days nor more than ninety days from the date of filing of the petition.

(5) Upon the adoption of a resolution by the board of county commissioners as provided in subsection (3) of this section or upon the filing of a proper petition as provided in subsection (4) of this section, the county clerk and recorder shall publish the text of such proposal for a sales tax, use tax, or both four separate times, a week apart, in the official newspaper of the county and each city and incorporated town within the county. The cost of the election shall be paid from the general fund of the county. The conduct of the election shall conform, so far as practicable, to the general election laws of the state.

(6) If approved by a majority of the registered electors voting thereon, the countywide sales tax, use tax, or both shall become effective as provided by section 29-2-106 (2).

(7) If a majority of the registered electors voting thereon fail to approve the countywide sales tax, use tax, or both at any election, the question shall not be submitted again to the registered electors for a period of one year three hundred fifty days.

Source: L. 67: p. 660, § 4. C.R.S. 1963: § 138-10-4. L. 75: Entire section amended, p. 962, § 4, effective July 14. L. 79: (1)(d) amended, p. 1127, § 3, effective July 3. L. 81: (7) amended, p. 1402, § 1, effective June 9. L. 2002: (1) amended, p. 1944, § 1, effective August 7.

ANNOTATION

Prior to the submission of a proposal initiated pursuant to subsection (1) to the electorate, a county has a discretionary duty to review the proposal for compliance with the procedural requirements of the county sales tax act and a court has jurisdiction to determine whether such an initiative complies with those procedural requirements. In contrast to a municipal or statewide initiative explicitly allowed by the Colorado Constitution, a statutorily authorized

county initiative is limited and defined by the procedural and substantive provisions of the authorizing statute and the exercise of the statutory power of the initiative must comply with that statute. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Writ of mandamus ordering a county to submit a proposal initiated pursuant to subsection (1) to the electorate was inappropriate where the proposal failed to comply with the

procedural requirements of the county sales tax act. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Distribution to all municipalities within a county is not required by subsection (2). Orchard City v. Delta County Comm'rs, 751 P.2d 1003 (Colo. 1988).

Any distribution of sales tax revenue by a county may not arbitrarily exclude an incorporated municipality within the county. Orchard City v. Delta County Comm'rs, 751 P.2d 1003 (Colo. 1988).

29-2-105. Contents of sales tax ordinances and proposals - repeal. (1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1). Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(a) A provision imposing a tax on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1);

(b) A provision that, for the purpose of the sales tax ordinance or proposal enacted in accordance with this article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the local taxing entity or to a common carrier for delivery to a destination outside the limits of the incorporated town, city, or county. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by article 26 of title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in such incorporated town, city, or county, or has more than one place of business, the place at which the retail sales are consummated for the purpose of a sales tax imposed by ordinance pursuant to this article shall be determined by the provisions of article 26 of title 39, C.R.S., and by rules and regulations promulgated by the department of revenue.

(c) A provision that the amount subject to tax shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S.;

(d) (I) A provision that the sale of tangible personal property and services taxable pursuant to this article shall be the same as the sale of tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., except as otherwise provided in this paragraph (d). The sale of tangible personal property and services taxable pursuant to this article shall be subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39, C.R.S.; except that the sale of the following may be exempted from a town, city, or county sales tax only by the express inclusion of the exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto:

(A) The exemption for sales of machinery or machine tools specified in section 39-26-709 (1), C.R.S.;

(B) The exemption for sales of electricity, coal, wood, gas, fuel oil, or coke specified in section 39-26-715 (1) (a) (II), C.R.S.;

(C) The exemption for sales of food specified in section 39-26-707 (1) (e), C.R.S.;

(D) The exemption for vending machine sales of food specified in section 39-26-714 (2), C.R.S.;

(E) The exemption for sales by a charitable organization specified in section 39-26-718 (1) (b), C.R.S.;

(F) The exemption for sales of farm equipment and farm equipment under lease or contract specified in section 39-26-716 (2) (b) and (2) (c), C.R.S.;

(G) The exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.;

(H) Before July 1, 2012, the exemption for sales of pesticides specified in section 39-26-716 (2) (e), C.R.S. This sub-subparagraph (H) is repealed, effective June 30, 2013.

(I) The exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as specified in section 39-26-723, C.R.S.;

(J) The exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source specified

in section 39-26-724, C.R.S.; except that this sub-subparagraph (J) shall not apply to any incorporated town, city, or county that adopted the exemption specified in sub-subparagraph (A) of this subparagraph (I) prior to May 27, 2008;

(K) The exemption for sales that benefit a Colorado school specified in section 39-26-725, C.R.S.; and

(L) The exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in section 39-26-718 (1) (c), C.R.S.

(II) Repealed.

(III) In the absence of an express provision for any exemption specified in subparagraph (I) of this paragraph (d), all sales tax ordinances and resolutions shall be construed as imposing or continuing to impose the town, city, or county sales tax on such items.

(e) A provision that all sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from said county, town, or city sales tax when such sales meet both of the following conditions:

(I) The purchaser is a nonresident of or has his principal place of business outside of the local taxing entity; and

(II) Such personal property is registered or required to be registered outside the limits of the local taxing entity under the laws of this state.

(f) Repealed.

(1.5) (a) All sales tax ordinances or resolutions adopted by a county, town, or city prior to, on, or after August 1, 2002, that impose a sales tax pursuant to section 39-26-104 (1) (c), C.R.S., on a mobile telecommunications service shall impose such tax in accordance with the provisions of the act, and, pursuant to section 117 (b) of the act, mobile telecommunications service taxable by the county, town, or city on or after August 1, 2002, may be subject to any sales tax or other charge imposed by said entity on the service only if the customer's place of primary use is within the geographical boundaries of the entity.

(b) As used in this subsection (1.5), unless the context otherwise requires:

(I) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(II) "Customer" means customer as defined in section 124 (2) of the act.

(III) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(IV) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(2) No sales tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of construction and building materials, as the term is used in section 29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.

(3) No sales tax of any statutory or home rule county shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the subsequent statutory or home rule county. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule county with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule county.

(4) No sales tax of any statutory or home rule city and county, city, or town shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by the subsequent statutory or home rule city and county, city, or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city, or town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to

the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city, or town.

(5) The following provision shall apply in defining the applicability of its higher rate to the sales tax ordinance or resolution of any statutory or home rule city, town, city and county, or county which provides a higher rate of taxation on prepared food or food for immediate consumption than its general rate of taxation: Prepared food or food for immediate consumption shall exclude any food for domestic home consumption.

(6) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with food stamps. For the purposes of this subsection (6), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(7) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. sec. 1786. For the purposes of this subsection (7), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(8) Any statutory or home rule city, town, city and county, or county which provides an exemption for the sale of food shall define "food" as defined in section 39-26-102 (4.5), C.R.S.

(9) Notwithstanding any provision of this section to the contrary, sales of cigarettes shall be exempt from a town, city, county, or city and county sales tax that is created pursuant to the authority set forth in this article.

(10) (a) Notwithstanding any provision of this section to the contrary, and except as provided in paragraph (b) of this subsection (10), a town, city, or county may exempt from its sales tax sales to a telecommunications provider of equipment used directly in the provision of telephone service, cable television service, broadband communications service, or mobile telecommunications service.

(b) A town, city, or county may not adopt a sales tax exemption pursuant to the authority set forth in paragraph (a) of this subsection (10) unless the exemption applies in a uniform and nondiscriminatory manner to the telecommunications providers of telephone service, cable television service, broadband communications service, and mobile telecommunications service.

Source: L. 67: p. 661, § 5. C.R.S. 1963: § 138-10-5. L. 69: pp. 1145, 1146, §§ 1, 1. L. 73: p. 343, § 26. L. 77: (1)(b) amended, p. 1398, § 1, effective July 1. L. 79: (1)(d) amended, p. 1429, § 13, effective July 3. L. 80: (1)(d) amended, p. 684, § 7, effective May 1; (1)(d) amended, p. 734, § 4, effective May 2; (1)(d) amended, p. 799, § 68, effective June 5. L. 81: (1) amended and (1)(f) added, p. 1402, § 2, effective June 9. L. 83: (1)(d) amended, p. 1208, § 1, effective April 28. L. 85: (2), (3), and (4) added, p. 1030, § 1, effective January 1, 1986. L. 87: (5) to (8) added, p. 1462, effective October 1. L. 94: (1)(d) amended, p. 1325, § 7, effective May 25. L. 95: (1)(d) amended, p. 329, § 2, effective April 27. L. 99: (1)(d) amended, p. 980, § 3, effective May 28; (1)(d) amended, p. 1324, § 5, effective July 1; (1)(d) amended, p. 1275, § 3, effective July 1; (1)(d) amended, p. 1356, § 4, effective January 1, 2000. L. 2000: (1)(d) amended, p. 550, § 5, effective July 1. L. 2001: (1)(d) amended, p. 382, § 3, effective July 1. L. 2002: (1.5) added, p. 253, § 3, effective April 12; (1)(f) amended, p. 1036, § 81, effective June 1. L. 2004: (1)(d) amended, p. 1036, § 3, effective July 1. L. 2008: (1)(d) R&RE, p. 1321, § 5, effective May 27; (1)(d) R&RE, p. 1545, § 3, effective May 28; (1)(d) R&RE, p. 967, § 1, effective August 5; (1)(f) repealed, p. 991, § 9, effective August 5; (1)(d) R&RE, p. 971, § 1, effective September 1. L. 2009: (1)(d)(I)(J) amended, (HB 09-1126), ch. 254, p. 1149, § 4, effective May 15; (9) added, (HB 09-1342), ch. 354, p. 1847, § 3, effective July 1. L. 2011: (1)(d)(II) repealed, (SB 11-178), ch. 216, p. 945, § 1, effective August 10; (10) added, (HB 11-1109), ch. 221, p. 954, § 1, effective August 10. L. 2012: (1)(d)(I)(I) amended, (HB 12-1045), ch. 191, p. 765, § 2, effective May 21; (1)(d)(I)(H) amended, (HB 12-1037), ch. 251, p. 1247, § 1, effective June 4.

Editor's note: (1) Amendments to subsection (1)(d) by House Bill 99-1002, House Bill 99-1015, House Bill 99-1271, and House Bill 99-1381 were harmonized.

(2) Amendments to subsection (1)(d) by House Bill 08-1269, House Bill 08-1013, House Bill 08-1358, and House Bill 08-1368 were harmonized.

(3) Section 4 of chapter 191, Session Laws of Colorado 2012, provides that the act amending subsection (1)(d)(I)(I) applies to the sales, storage, and use on or after July 1, 2012, of wood from salvaged trees killed or infested in Colorado by spruce beetles.

Cross references: (1) For the legislative declaration contained in the 1999 act amending subsection (1)(d), see section 1 of chapter 318, Session Laws of Colorado 1999.

(2) For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 92, Session Laws of Colorado 2002.

(3) For the legislative declaration contained in the 2008 act amending subsection (1)(d), see section 1 of chapter 332, Session Laws of Colorado 2008.

(4) For the legislative intent contained in the 2008 act amending subsection (1)(d), see section 9 of chapter 302, Session Laws of Colorado 2008.

(5) For the legislative declaration contained in the 2009 act amending subsection (1)(d)(I)(J), see section 1 of chapter 254, Session Laws of Colorado 2009.

ANNOTATION

Prior to the submission of a proposal initiated pursuant to subsection (1) to the electorate, a county has a discretionary duty to review the proposal for compliance with the procedural requirements of the county sales tax act and a court has jurisdiction to determine whether such an initiative complies with those procedural requirements. In contrast to a municipal or statewide initiative explicitly allowed by the Colorado Constitution, a statutorily authorized county initiative is limited and defined by the procedural and substantive provisions of the authorizing statute and the exercise of the statutory power of the initiative must comply with that statute. *Bd. of County Comm'rs v. County Road Users Ass'n*, 11 P.3d 432 (Colo. 2000).

Writ of mandamus ordering a county to submit a proposal initiated pursuant to subsection (1) to the electorate was inappropriate where the proposal failed to comply with the

procedural requirements of the county sales tax act. *Bd. of County Comm'rs v. County Road Users Ass'n*, 11 P.3d 432 (Colo. 2000).

Applicability of use tax to rotatable aircraft parts held constitutional and not violative of the commerce clause of the federal constitution. *United Air Lines, Inc. v. City and County of Denver*, 973 P.2d 647 (Colo. App. 1998).

This section cannot be extended by statutory construction to allow the regional transportation district to impose sales or use tax on transactions exempt from state taxation other than transactions exempted from state taxation pursuant to § 39-26-114 (11)(d). *Ball Corp. v. Fisher*, 51 P.3d 1053 (Colo. App. 2001).

Applied in *Associated Dry Goods Corp. v. City of Arvada*, 197 Colo. 491, 593 P.2d 1375 (1979).

29-2-106. Collection - administration - enforcement. (1) The collection, administration, and enforcement of any countywide or any city or town sales tax adopted pursuant to this article shall be performed by the executive director of the department of revenue in the same manner as the collection, administration, and enforcement of the Colorado state sales tax. Unless otherwise provided in this article, the provisions of article 26 of title 39, C.R.S., shall govern the collection, administration, and enforcement of sales taxes authorized under this article. In collecting, administering, and enforcing a sales tax authorized under this article, the state sales tax authorized under part 1 of article 26 of title 39, C.R.S., or any other sales tax imposed within the boundaries of a county, the executive director of the department of revenue may enter into an intergovernmental agreement with a county pursuant to the provisions of section 39-26-122.5, C.R.S., to enhance systemic efficiencies in the collection of such taxes.

(2) The effective date of any countywide sales tax or city or town sales tax adopted under the provisions of this article shall be either January 1 or July 1 following the date of the election in which such county sales tax proposal is approved; and notice of the adoption of any county sales tax proposal shall be submitted by the county clerk and recorder or by the clerk of the city council or board of trustees of a city or town to the executive director of the department of revenue at least forty-five days prior to the effective date of such tax. If such a sales tax proposal is approved at an election held less than forty-five days prior to

the January 1 or July 1 following the date of election, such tax shall not be effective until the next succeeding January 1 or July 1.

(3) (a) The executive director of the department of revenue shall, at no charge, except as provided in paragraph (b) of this subsection (3), administer, collect, and distribute any sales tax imposed in conformity with this article. The executive director shall make monthly distributions of sales tax collections to the appropriate official in each county and in each incorporated city or town in the amount determined under the distribution formula established in accordance with this article. Except as provided in section 39-26-208, C.R.S., any use tax imposed pursuant to section 29-2-109 shall be collected, administered, and enforced by the city, town, or county as provided by ordinance or resolution.

(b) The executive director is hereby authorized to contract and enter into agreements with the county clerk and recorder and municipalities for the collection of state, county, and city or town use taxes upon motor vehicles, and the county clerk and recorder may charge and retain a fee as the director may approve to fully cover the cost of such collection by the county clerk and recorder.

(c) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any countywide sales tax or city or town sales tax imposed on any sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax imposed on any sale made to the qualified purchaser pursuant to this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(4) (a) (I) The executive director of the department of revenue shall, at no charge, administer, collect, and distribute the sales tax of any home rule municipality upon request of the governing body of such municipality:

(A) If the provisions of the sales tax ordinance of said municipality, other than those provisions relating to local procedures followed in adopting the ordinance, correspond to the requirements of this article for sales taxes imposed by counties, towns, and cities;

(B) If no use tax is to be collected by the department of revenue except as provided in section 39-26-208, C.R.S.; and

(C) Whether or not the ordinance applies the sales tax to the exemptions listed in section 29-2-105 (1) (d) (I).

(II) When the governing body of any home rule municipality requests the department of revenue to administer, collect, and distribute the sales tax of said municipality as specified in subparagraph (I) of this paragraph (a), said governing body shall certify to the executive director of the department a true copy of the home rule municipality's sales tax ordinance.

(b) The executive director of the department of revenue shall furnish the governing body of each municipality and county a monthly listing of all returns filed by the retailers in such municipality or county. The governing body of such municipality or county shall notify the executive director of the department of revenue of any retailers omitted from this listing as soon as practicable, but in no event more than one hundred eighty days after receiving said monthly listing. Failure of the governing body of such municipality or county to notify the executive director of the department of revenue of any omitted retailers, within such period, shall preclude the municipality or county from making any further claims based upon such omissions. Neither the executive director of the department of revenue nor any municipality or county shall be held liable for any omissions which have not been called to the executive director's attention within this period.

(c) (I) Notwithstanding the provisions of section 39-21-113, C.R.S., the executive director of the department of revenue shall report monthly to each municipality and county for which the department of revenue collects a sales tax information identifying licensed

vendors within the municipality or county and, where the chief administrative officer or his designee has executed a memorandum of understanding with the department of revenue providing for control of confidential data, the status of each vendor's account including the amount of such municipality's or county's sales tax collected and paid by each such vendor. The executive director of the department may, in his discretion, provide additional information to a municipality or county concerning collection and administration of such municipality's or county's sales tax if such a memorandum has been executed.

(II) Except in accordance with judicial order or as otherwise provided by law, no official or employee of a municipality or county receiving sales tax information from the department of revenue pursuant to this paragraph (c) shall divulge or make known to any person not an official or employee of such municipality or county any information which identifies or permits the identification of the amount of sales taxes collected or paid by any individual licensed vendor. The municipal or county officials or employees charged with the custody of such sales tax information shall not be required to produce any such information in any action or proceeding in any court except in an action or proceeding under the provisions of this article to which the municipality or county having custody of the information is a party, in which event the court may require the production of, and may admit in evidence, so much of said sales tax information as is pertinent to the action or proceeding. Any municipal or county official or employee who willfully violates any of the provisions of this paragraph (c) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and shall be dismissed from office.

(5) The executive director of the department of revenue may promulgate rules and regulations to carry out the provisions of this article.

(6) The executive director of the department of revenue may, in his discretion, exchange information with the proper official of any home rule city which imposes a sales and use tax relative to gross sales reported, changes in gross sales resulting from audits, and other information concerning licensed vendors within the jurisdiction of the home rule city.

(7) For the purpose of the administration by the state of the provisions of this article, as well as any other state or federal program, each county, home rule county, statutory town or city, home rule town or city, city and county, or territorial charter town or city shall file, pursuant to section 29-2-110, with the executive director of the department of revenue a copy of each sales or use tax ordinance or resolution, or any amendment thereto, no later than ten days after the effective date thereof. A copy of any sales or use tax ordinance or resolution in effect on March 11, 1982, shall be filed no later than July 1, 1982. The failure to file a copy of any such ordinance or resolution shall not give rise to any claim for refund by any taxpayer, other than for overpayment which is determined to be allowable under such ordinance or resolution.

(8) **Uniform collection procedures.** Each home rule city, town, and city and county shall follow, and conform its ordinances where necessary to, the statute of limitations applicable to the enforcement of state sales and use tax collections, the statute of limitations applicable to refunds of state sales and use taxes, the amount of penalties and interest payable on delinquent remittances of state sales and use taxes, and the posting of bonds pursuant to section 39-21-105 (4), C.R.S.

(9) **Standard sales and use tax reporting form.** (a) The executive director of the department of revenue shall adopt, by regulation, a standard municipal sales and use tax reporting form. Such form shall be separate from the state form and shall be the only sales and use tax reporting form required to be used by any person collecting the sales or use tax of any home rule city, town, or city and county which collects its own sales or use tax.

(b) Such form shall be designed so as to permit reporting of variations in base, rate, and vendor's fee, and shall contain adequate location coding and use tax remittance items. Prior to the adoption of and any revision to the form, each home rule city, town, and city and county which collects its own sales tax shall be given the opportunity to comment on the proposed form or revision to the form.

(c) Such standard form and any subsequent revisions shall be used by each home rule city, town, and city and county which collects its own sales tax by the first full month

commencing one hundred twenty days after the effective date of the regulation adopting or revising the standard form.

(d) (I) In addition to the standard municipal sales and use tax form set forth in paragraph (a) of this subsection (9), on or before December 1, 1994, the executive director of the department of revenue shall cooperate with and assist local governments in the development of a common local sales and use tax form. For purposes of this paragraph (d), "local government" means a city, home rule city, town, city and county, or other political subdivision of the state which collects its own sales or use tax.

(II) The common local sales and use tax form shall:

(A) Allow a person collecting the sales and use tax of any local government to report all sales and use taxes collected for a local government on the common local sales and use tax reporting form;

(B) Be accepted by all local governments; and

(C) Be made available at all state and local sales and use tax reporting locations.

(III) The executive director of the department of revenue shall cooperate with and assist local governments in the development of a uniform local government sales and use tax license application form. Any uniform local government sales and use tax license application form developed shall be made available at all state and local sales and use tax reporting locations.

(IV) The provisions of paragraph (a) of this subsection (9) notwithstanding, in addition to the standard sales and use tax form set forth in paragraph (a) of this subsection (9), the common local sales and use tax form developed pursuant to this paragraph (d) may be used by a person collecting the sales or use tax of any city, home rule city, town, city and county, or other political subdivision of the state which collects its own sales or use tax.

(10) **Delayed distributions.** (a) If any sales tax to be distributed pursuant to this section is not distributed within sixty days after the processing date, interest shall be added to the undistributed amount from the sixtieth day after the processing date until the date such sales tax is distributed. The rate of said interest shall be equal to the average rate, rounded to one-thousandth of a percent, being earned by the investment of moneys in the state treasury for the same period.

(b) The provisions of this subsection (10) shall apply only to sales tax collected by the department of revenue with a processing date occurring on or after January 1, 2001. The provisions of this subsection (10) shall not apply in the event that the distribution of sales tax was delayed as a result of unforeseen circumstances or caused primarily by an entity other than the department of revenue. Such determination shall be made in good faith by the department.

Source: L. 67: p. 662, § 6. C.R.S. 1963: § 138-10-6. L. 71: p. 1267, § 1. L. 73: p. 1478, § 3. L. 75: (3)(a) amended, p. 963, § 5, effective July 14. L. 77: (4) amended, p. 1400, § 1, effective May 26. L. 79: (4)(a) amended, p. 1430, § 14, effective July 3. L. 80: (2) amended, p. 728, § 26, effective May 1; (4)(a) amended, p. 735, § 5, effective May 2. L. 81: (3)(b) amended, p. 1404, § 1, effective July 1. L. 82: (7) added, p. 460, § 1, effective March 11. L. 85: (8) and (9) added, p. 1031, § 2, effective January 1, 1986. L. 90: (3)(a) amended, p. 1746, § 2, effective May 8. L. 94: (9)(d) added, p. 1314, § 1, effective May 25. L. 97: (9)(d)(I) and (9)(d)(III) amended, p. 527, § 10, effective July 1. L. 99: (4)(a) amended, p. 981, § 4, effective May 28; (4)(a) amended, p. 1276, § 4, effective July 1; (4)(a) amended, p. 1326, § 6, effective July 1; (3)(c) added, p. 13, § 5, effective January 1, 2000; (4)(a) amended, p. 1357, § 5, effective January 1, 2000. L. 2000: (4)(a) amended, p. 552, § 6, effective July 1; (4)(b) amended and (10) added, p. 421, § 1, effective August 2. L. 2001: (4)(a) amended, p. 163, § 3, effective July 1; (4)(a) amended, p. 384, § 4, effective July 1. L. 2002: (3)(a) amended, p. 1036, § 82, effective June 1. L. 2004: (4)(a) amended, p. 1038, § 4, effective July 1. L. 2008: (4)(a) R&RE, p. 1322, § 6, effective May 27; (4)(a) R&RE, p. 1546, § 4, effective May 28; (4)(a) R&RE, p. 968, § 2, effective August 5. L. 2009: (1) amended, (HB 09-1130), ch. 229, p. 1042, § 1, effective August 5.

Editor's note: (1) Amendments to subsection (4)(a) by House Bill 99-1002, House Bill 99-1015, House Bill 99-1271, and House Bill 99-1381 were harmonized.

(2) Amendments to subsection (4)(a) by Senate Bill 01-055 and House Bill 01-1256 were harmonized.

Cross references: (1) For the legislative declaration contained in the 1999 act amending subsection (4)(a), see section 1 of chapter 318, Session Laws of Colorado 1999.

(2) For the legislative declaration contained in the 2008 act amending subsection (4)(a), see section 1 of chapter 332, Session Laws of Colorado 2008.

(3) For the legislative intent contained in the 2008 act amending subsection (4)(a), see section 9 of chapter 302, Session Laws of Colorado 2008.

ANNOTATION

Applied in *Rancho Colo., Inc. v. City of Broomfield*, 196 Colo. 444, 586 P.2d 659 (1978).

29-2-106.1. Deficiency notice - dispute resolution. (1) The general assembly hereby finds, determines, and declares that the enforcement of sales and use taxes can affect persons and entities across the jurisdictional boundaries of taxing jurisdictions and that dispute resolution is a matter of statewide concern for which the procedures set forth in this section shall be applied uniformly throughout the state.

(2) (a) When a local government asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, such local government shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional local sales and use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, of the time limit to file a protest to the notice and that the taxpayer has the right to elect a hearing on the deficiency pursuant to subsection (3) of this section. Any protest to the deficiency notice shall be filed with the local government within thirty days after the date of the notice.

(b) The taxpayer shall also have the right to elect a hearing pursuant to subsection (3) of this section on a local government's denial of such taxpayer's claim for a refund of sales or use tax paid.

(c) The taxpayer shall request the hearing pursuant to subsection (3) of this section within thirty days after the taxpayer's exhaustion of local remedies. For purposes of this paragraph (c), "exhaustion of local remedies" means that one of the following events has occurred:

(I) The taxpayer has timely requested in writing a hearing before the local government, and such local government has held such hearing and issued a final decision thereon. Such hearing, if any, shall be held and any decision thereon issued within one hundred eighty days after the taxpayer's request in writing therefor or within such further time as the taxpayer and local government may agree upon in writing.

(II) The taxpayer and local government agree in writing that no hearing before the local government will be held, or that no final decision will issue from the local government. Such written agreement shall state that the taxpayer exhausted local remedies in accordance with this section, shall identify the date of such exhaustion, and shall advise the taxpayer of the right to pursue further review pursuant to subsection (3) or (8) of this section within thirty days after such exhaustion.

(III) One hundred eighty days or more after the date of the taxpayer's request for a hearing, the local government notifies the taxpayer in writing that the local government does not intend to conduct a hearing. In such instance, the written notification shall also state that the taxpayer exhausted local remedies in accordance with this section, that such exhaustion occurred on the date of the written notification, and that the taxpayer may pursue further review pursuant to subsection (3) or (8) of this section within thirty days after such exhaustion.

(d) In the event the taxpayer has timely requested in writing a hearing before the local government and none of the events described in paragraph (c) of this subsection (2) have

occurred, the taxpayer may request a hearing pursuant to subsection (3) of this section at any time after the period prescribed in subparagraph (I) of paragraph (c) of this subsection (2).

(e) Any hearing before a local government shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief.

(3) (a) If a taxpayer satisfies the requirements of paragraph (c) of subsection (2) of this section, the taxpayer may request the executive director of the department of revenue to conduct a hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in section 39-21-103, C.R.S. Any local government to which the deficiency notice being appealed claims taxes are due, or, in the case of a claim for refund, the local government that denied such claim, shall be notified by the executive director that a hearing is scheduled and shall be allowed to participate in the hearing as a party.

(b) If the taxpayer requests a hearing before the executive director, then the local government whose decision is being appealed may not require a bond or payment of tax in lieu thereof until thirty days after the final decision of the executive director or his delegate; but such local government may require a bond or payment of tax in lieu thereof in the manner provided in section 39-21-111, C.R.S., prior to the hearing before such local government or the executive director if either such local government reasonably finds that collection of the tax will be jeopardized by delay or the taxpayer requests a postponement of the hearing before such local government or the executive director, other than on account of a death, physical illness or injury, or catastrophe, which substantially impairs the taxpayer's ability to present his case. Any such bond or payment of tax in lieu thereof shall be filed with and payable to the local government whose decision is being appealed, and such bond shall be filed or such tax shall be paid in the manner provided in section 39-21-105, C.R.S. In the event that payment of the tax or posting of a bond is required by the local government, the taxpayer, after payment of the tax or posting of the bond, may appeal such decision of the local government to the executive director and shall be granted an expedited hearing on such appeal pursuant to section 39-21-103 (6), C.R.S., and the executive director may affirm, reverse, or modify such decision.

(c) If the taxpayer appeals the decision of the executive director on the hearing pursuant to this subsection (3) the district court in the manner provided in section 39-21-105, C.R.S., then the tax shall be paid to or a bond shall be posted with the local government whose decision is being appealed in the manner provided in that section, unless payment of tax or posting of bond was previously required, in which case such previous payment or posting shall continue in effect.

(d) Any hearings before the executive director of the department of revenue or his delegate shall be de novo, without regard to the decision of the local government. The taxpayer shall have the burden of proof in any such hearings.

(4) In the event that all parties to a hearing arrive at a settlement prior to the hearing, such parties may agree to cancel such hearing. No party shall thereafter have a right to a hearing before the executive director on the deficiency notice or claim for refund. By agreement of all parties to the hearing, the hearing may be cancelled and the matter may be determined by the executive director upon written briefs submitted by the parties in the same manner as provided in section 39-21-103 (7) and (8), C.R.S.

(5) If the taxpayer asserts that all or part of a sales or use tax which is the subject of the hearing has been paid to or is due to another local government, then such other local government shall be joined as a party to the hearing. The taxpayer need not file a claim for refund in order to pursue the remedy provided by this subsection (5). If the executive director determines that the disputed tax was paid, but to the wrong local government, then the taxpayer shall be relieved of the tax due up to the amount paid together with an abatement of interest thereon and all penalties.

(6) If the amount paid exceeds the tax found to be due, then the government in receipt of such payment shall refund the overpayment to the taxpayer within thirty days of the executive director's decision, together with interest thereon from the date the taxpayer made the payment until the date the overpayment is refunded, unless a timely appeal is taken by

such government pursuant to subsection (7) of this section. If the amount paid is found to be less than the taxes due, then the taxpayer shall pay the deficiency, less any amount paid in lieu of bond, to the appropriate local government within thirty days of the executive director's decision with interest from the date full payment was due until the date that the deficiency is paid, unless a timely appeal is taken by the taxpayer pursuant to subsection (7) of this section. A local government which is found to have erroneously received payment from the taxpayer shall forward such payment to the appropriate local government within thirty days of the executive director's decision with interest from the date the amount was received from the taxpayer until the date the amount was forwarded to the appropriate local government, unless a timely appeal is taken pursuant to subsection (7) of this section by a local government which is found to have erroneously received payment from the taxpayer. All interest payable pursuant to this subsection (6) shall be at the same rate which applies to deficiency payments.

(7) Appeals from the final determination of the executive director may be taken in the same manner as provided in and shall be governed by section 39-21-105, C.R.S., by any party bound by the executive director's decision. Any such appeal shall be heard de novo and shall be heard as provided in section 39-21-105, C.R.S., except as follows: If the appellant is a local government, the taxpayer shall have the burden of proof as to all factual matters, and the appellant shall have the burden with respect to any legal determination of the executive director of the department of revenue which the appellant seeks to reverse; except that the local government shall always have the burden of proof with respect to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax and with respect to the issue of whether the taxpayer is liable as a transferee of property of another taxpayer, but not to show that the transferor taxpayer was liable for the tax; and except that the executive director may, at his request, be a party to any such appeal.

(8) (a) If a deficiency notice or claim for refund involves only one local government, in lieu of requesting a hearing pursuant to subsection (3) of this section, the taxpayer may appeal such deficiency or denial of a claim for refund to the district court.

(b) The taxpayer shall appeal to the district court pursuant to this subsection (8) within thirty days after the taxpayer's exhaustion of local remedies. For purposes of this subsection (8), "exhaustion of local remedies" means that one of the following events has occurred:

(I) The taxpayer has timely requested in writing a hearing before the local government, and such local government has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief. Such hearing, if any, shall be held and any decision thereon issued within one hundred eighty days of the taxpayer's request in writing therefor or within such further time as the taxpayer and local government may agree upon in writing.

(II) The taxpayer and local government agree in writing that no hearing before the local government will be held or that no final decision will issue from the local government. Such written agreement shall state that the taxpayer exhausted local remedies in accordance with this section, shall identify the date of such exhaustion, and shall advise the taxpayer of the right to pursue further review pursuant to subsection (3) of this section or this subsection (8) within thirty days after such exhaustion.

(III) One hundred eighty days or more after the date of the taxpayer's request for a hearing, the local government notifies the taxpayer in writing that the local government does not intend to conduct a hearing. In such instance, the written notification shall also state that the taxpayer exhausted local remedies in accordance with this section, that such exhaustion occurred on the date of the written notification, and that the taxpayer may pursue further review pursuant to subsection (3) of this section or this subsection (8) within thirty days after such exhaustion.

(c) In the event the taxpayer has timely requested in writing a hearing before the local government and none of the events described in paragraph (b) of this subsection (8) have occurred, the taxpayer may appeal such deficiency or denial of a claim for refund to the district court at any time after the period prescribed in subparagraph (I) of paragraph (b) of this subsection (8).

(d) An appeal pursuant to paragraph (c) of this subsection (8) shall be conducted in the same manner as provided in section 39-21-105, C.R.S.; except that venue shall be in the district court of the county wherein the local government whose decision is being appealed is located.

(9) In lieu of electing a hearing pursuant to this section on a notice of deficiency or claim for refund, a taxpayer may pursue judicial review of a local government's final decision thereon as otherwise provided in such local government's ordinance.

(10) As used in this section, "local government" means home rule and statutory cities, towns, cities and counties, and counties.

(11) If any local government which collects its own sales or use tax to which the deficiency notice claims taxes are due reasonably finds that the collection of the tax will be jeopardized by delay, it may utilize the procedures set forth in section 39-21-111, C.R.S.; however, utilization of such procedures shall not preclude the taxpayer from appealing to the executive director pursuant to subsection (3) of this section.

Source: L. 85: Entire section added, p. 1032, § 3, effective January 1, 1996. L. 2010: (2)(a) amended, (SB 10-142), ch. 51, p. 194, § 1, effective August 11. L. 2011: (2)(c), (3)(a), and (8) amended and (2)(d) and (2)(e) added, (SB 11-086), ch. 52, p. 135, § 1, effective July 1.

ANNOTATION

Party claiming that administrative methods for challenging municipal sales and use tax as set forth in municipal code were unconstitutional and conflicted with provisions of this section is not required to exhaust all administrative remedies prior to seeking declaratory judgment on issue. *Fred Schmid Appliance & Tel. v. Denver*, 811 P.2d 31 (Colo. 1991).

A local government cannot undercut or supplant the right to judicial review afforded by this section by precluding de novo review. *Service Merch. Co., Inc. v. Schwartzberg*, 971 P.2d 654 (Colo. App. 1997).

Under subsection (9), a local government that enacts an alternative avenue for appeals of sales and use tax assessments must comply with the procedure it creates for such appeals. Where a local government has created a sales or use tax assessment appeals process that requires a taxpayer to obtain a final decision rendered after a hearing as a prerequisite to an appeal, the local government may not deprive the taxpayer of the right to an appeal by refusing to hold a hearing and issue a final decision. *Asphalt Specialties, Co. v. City of Commerce City*, 218 P.3d 741 (Colo. App. 2009).

Appeals taken from locally imposed use or sales taxes are a matter of statewide concern, and therefore subject to the appellate procedures of this section rather than the appellate procedures of local rules. *Walgreen Co. v. Charnes*, 819 P.2d 1039 (Colo. 1991).

General assembly has determined the need for a statewide uniform process to avoid inconsistent treatment of taxpayers and confusing and conflicting remedies. *MDC Holdings, Inc. v. Town of Parker*, 223 P.3d 710 (Colo. 2010).

Section supersedes municipal code that requires an additional formal hearing. The section contains its own controlling prescription for "exhaustion of local remedies" that defines and controls the appellate process in local sales and use tax appeals. *MDC Holdings, Inc. v. Town of Parker*, 223 P.3d 710 (Colo. 2010).

In appeal involving challenge to sales and use tax provisions of municipal code, appropriate remedy on appeal is not to remand to district court for de novo review under this section since taxpayer pursued review under municipal code. *Arapahoe Roofing & Sheet Metal v. Denver*, 831 P.2d 451 (Colo. 1992).

Challenge of sufficiency of notice of assessment issued pursuant to this section is moot issue when taxpayer failed to timely file petition for hearing to challenge sufficiency. *Am. Drug Store v. Denver*, 831 P.2d 465 (Colo. 1992).

Taxpayer could appeal after 90-day wait period under section because the local government had no provisions for making a final decision following an informal hearing. *MDC Holdings, Inc. v. Town of Parker*, 223 P.3d 710 (Colo. 2010).

29-2-106.2. Location guides - precinct locators. (1) Each home rule city, town, and city and county collecting its own sales or use tax shall make available to any requesting vendor a map or other location guide showing the boundaries of the municipality. The requesting vendor may rely on the map or other location guide and any update thereof available to the vendor in determining whether to collect a sales or use tax, or both, of the

municipality. No penalty shall be imposed or action for deficiency maintained if the requesting vendor in good faith complies with the most recent map or other location guide available to it.

(2) (a) As used in this subsection (2), unless the context otherwise requires:

(I) "Local taxing entity" means a home rule or statutory municipality, county, city and county, or any other local governmental entity that imposes a sales or use tax.

(II) "Precinct locator" means the record regularly maintained by a county clerk and recorder and used to determine within which jurisdiction or jurisdictions an address is located for voting purposes and, for determining the location of commercial or industrial addresses, shall include the record regularly maintained by the county clerk and recorder and used to determine within which jurisdiction or jurisdictions an address is located for the purpose of properly remitting sales or use tax on motor vehicles.

(b) Any public utility may rely upon the precinct locator maintained by the county clerk and recorder for the county or counties in which a local taxing entity is located in determining whether to collect a sales or use tax, or both, of the local taxing entity.

(c) No penalty shall be imposed upon, interest charged to, or action for deficiency maintained against a public utility in connection with the collection of a sales or use tax, or both, by the public utility if, in determining whether to collect the tax, the public utility relied in good faith upon the most recently updated version of a precinct locator in existence at the time of the taxable transaction. The provisions of this paragraph (c) shall not apply to the extent that the local entity has informed the public utility in writing prior to a taxable transaction that the most recently updated version of the precinct locator is inaccurate and, in such writing, provides the public utility with a corrected copy of the precinct locator information.

Source: L. 85: Entire section added, p. 1032, § 3, effective January 1, 1986. L. 97: Entire section amended, p. 555, § 1, effective April 24.

29-2-107. Limitation on applicability. (1) Nothing in this article shall be construed to apply to, affect, or limit the powers of home rule municipalities organized under article XX of the state constitution to impose, administer, or enforce any local sales or use tax except those provisions which specifically refer to "home rule".

(2) No provision of this article shall be construed to require any incorporated town or city or any county to impose any sales tax or to increase any sales tax imposed prior to July 1, 1967.

(3) Nothing in this article shall be construed to invalidate any sales or use tax adopted by ordinance or resolution by any town, city, city and county, or county, whether home rule or statutory, prior to January 1, 1986. Except as provided in subsection (1) of this section, no sales or use tax of any such local government shall conflict with the provisions of this article after January 1, 1986.

Source: L. 67: p. 663, § 7. C.R.S. 1963: § 138-10-7. L. 85: Entire section added, p. 1036, § 4, effective January 1, 1986.

ANNOTATION

Municipal ordinance creating a lien for the collection of its sales taxes that is superior to a lien held by a bank was a proper exercise of the municipality's authority under § 6 of article XX of the state constitution and especially § 6(g). The priority of local liens for unpaid sales taxes, at least with respect to their superiority over private commercial liens, is a local and municipal concern for which the municipality may legislate, even if such legislation

were to conflict with a state statute. Given that the levy and collection of a local sales tax by a home-rule municipality is a local and municipal concern, it would be anomalous to conclude that, while the general assembly may grant priority to the sales tax liens of statutory cities and towns, a home rule municipality may not make its sales tax lien superior to the commercial lien of a private lender. *Town of Avon v. Weststar Bank*, 151 P.3d 601 (Colo. App. 2006).

29-2-108. Limitation on amount. (Repealed)

Source: **L. 67:** p. 663, § 8. **C.R.S. 1963:** § 138-10-8. **L. 73:** p. 1479, § 4. **L. 81:** Entire section amended, p. 1402, § 3, effective June 9. **L. 83:** Entire section amended, p. 1519, § 5, effective March 22; (3) added, p. 917, § 3, effective April 28; (2) amended, p. 2098, § 8, effective October 13. **L. 84:** (2) amended, p. 1141, § 2, effective June 7. **L. 86:** (2) repealed, p. 1220, § 28, effective May 30. **L. 87:** (3) amended, p. 1206, § 2, effective May 6; (3) amended, p. 1215, § 12, effective May 7; (3) amended, p. 987, § 13, effective July 1. **L. 90:** (4) added, p. 1441, § 2, effective May 4. **L. 91:** (3) amended, p. 1982, § 3, effective April 20. **L. 97:** (5) added, p. 1424, § 1, effective June 3. **L. 2000:** Entire section amended, p. 1430, § 1, effective May 31. **L. 2001:** (3) amended, p. 1275, § 40, effective June 5; (3) amended, p. 973, § 2, effective August 8. **L. 2002:** (6) and (7) added, p. 1944, § 2, effective August 7. **L. 2003:** (3) amended, p. 884, § 6, effective August 6; (3) amended, p. 2475, § 30, effective August 15. **L. 2004:** (3) amended, p. 1931, § 3, effective August 4. **L. 2005:** (3) amended, p. 1043, § 6, effective June 2. **L. 2007:** (5.5) added, p. 305, § 1, effective March 30; (3) amended, p. 430, § 3, effective April 9; (3) amended, p. 584, § 1, effective April 19; (3) amended, p. 1201, § 17, effective July 1; (3) amended, p. 1460, § 3, effective August 3. **L. 2008:** Entire section repealed, p. 988, § 1, effective August 5.

29-2-109. Contents of use tax ordinances and proposals. (1) The use tax ordinance, resolution, or proposal of any town, city, or county adopted pursuant to this article shall be imposed only for the privilege of using or consuming in the town, city, or county any construction and building materials purchased at retail or for the privilege of storing, using, or consuming in the town, city, or county any motor and other vehicles, purchased at retail on which registration is required, or both. For the purposes of this subsection (1), the term “construction and building materials” shall not include parts or materials utilized in the fabrication, construction, assembly, or installation of passenger tramways, as defined in section 25-5-702 (4), C.R.S., by any ski area operator, as defined in section 33-44-103 (7), C.R.S., or any person fabricating, constructing, assembling, or installing a passenger tramway for a ski area operator. The ordinance, resolution, or proposal may recite that the use tax shall not apply to the storage and use of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as exempted from the state use tax pursuant to section 39-26-723, C.R.S. The ordinance, resolution, or proposal may recite that the use tax shall not apply to the storage and use of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source, as exempted from the state use tax pursuant to section 39-26-724, C.R.S. The ordinance, resolution, or proposal shall recite that the use tax shall not apply:

(a) To the storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the town, city, or county;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the town, city, or county, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(c) To the storage, use, or consumption of tangible personal property brought into the town, city, or county by a nonresident thereof for his own storage, use, or consumption while temporarily within the town, city, or county; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state;

(d) To the storage, use, or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(e) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof;

(f) (I) With respect to the use tax of a town or city, to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule town, city, or city and county equal to or in excess of that imposed by this article. A credit shall be granted against the use tax imposed by this article with respect to a person's storage, use, or consumption in the town or city of tangible personal property purchased by him in a previous statutory or home rule town, city, or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this article.

(II) With respect to the use tax of a statutory or home rule county, to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by this article. A credit shall be granted against the use tax imposed by this article with respect to a person's storage, use, or consumption in the subsequent statutory or home rule county of tangible personal property purchased by him in a previous statutory or home rule county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this article.

(g) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the town, city, or county and brought into it by a nonresident acquiring residency;

(h) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the town, city, or county and he purchased the vehicle outside of the town, city, or county for use outside the town, city, or county and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of the town, city, or county;

(i) To the storage, use, or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of such use tax;

(j) To the storage, use, or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to the effective date of such use tax ordinance, resolution, or proposal.

(2) No use tax of any town shall be imposed with respect to the use or consumption of taxable tangible personal property within the town that occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

(3) Construction equipment which is located within the boundaries of a home rule city, town, or city and county for a period of thirty consecutive days or less shall be subjected to the use tax of such home rule city, town, or city and county in an amount which does not exceed the amount calculated as follows: The purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by the use tax rate of the home rule city, town, or city and county. Where the provisions of this subsection (3) are utilized, the credit provisions of subsection (6) of this section shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule cities, towns, and cities and counties on any such equipment equal the full use tax of the subsequent home rule city, town, or city and county.

(4) In order to avail himself of the provisions of subsection (3) of this section, the taxpayer shall comply with the following procedure:

(a) Prior to or on the date the equipment is located within the boundaries of a home rule city, town, or city and county, the taxpayer shall file with such home rule city, town, or city and county an equipment declaration on a form provided by such home rule city, town, or city and county. Such declaration shall state the dates on which the taxpayer anticipates the

equipment will be located within and removed from the boundaries of the home rule city, town, or city and county, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the home rule city, town, or city and county.

(b) The taxpayer shall file with the home rule city, town, or city and county an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the boundaries of such home rule city, town, or city and county or, for equipment which is brought into the boundaries of a home rule city, town, or city and county for a project of less than ninety days duration, no later than ten days after substantial completion of the project.

(c) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under two thousand five hundred dollars. If such equipment declaration is given, then as to any item of construction equipment for which the customary purchase price is under two thousand five hundred dollars which was brought into the boundaries of the home rule city, town, or city and county temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as that of such home rule city, town, or city and county where the construction takes place and that such sales or use tax was previously paid. In such case the burden of proof in any proceeding before such city, town, or city and county, the executive director of the department of revenue, or the district court, shall be on such home rule, city, town, or city and county where the construction takes place to prove such local sales or use tax was not paid.

(5) If the taxpayer fails to comply with the provisions of subsection (4) of this section, the taxpayer may not avail himself of the provisions of subsection (3) of this section. However, substantial compliance with the provisions of subsection (4) of this section shall allow the taxpayer to avail himself of the provisions of subsection (3) of this section.

(6) No use tax of any home rule city, town, or city and county shall apply to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule city, town, or city and county legally imposed on the purchaser or user equal to or in excess of that imposed by the subsequent home rule city, town, or city and county. A credit shall be granted against the use tax of the home rule city, town, or city and county with respect to the person's storage, use, or consumption in the home rule city, town, or city and county of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the subsequent home rule city, town, or city and county.

(7) The use tax of any town, city, city and county, or county, whether home rule or statutory, shall not apply to the storage of construction and building materials.

Source: L. 73: p. 1479, § 5. C.R.S. 1963: § 138-10-10. L. 75: Entire section R&RE, p. 963, § 6, effective July 14. L. 85: IP(1) and (1)(f) amended and (2), (3), and (4) added, p. 1036, § 5, effective January 1, 1986. L. 99: (2) amended, p. 1338, § 1, effective August 4. L. 2000: IP(1) amended, p. 1163, § 2, effective May 26. L. 2008: IP(1) amended, p. 1322, § 7, effective May 27; IP(1) amended, p. 1547, § 5, effective May 28. L. 2009: IP(1) amended, (HB 09-1126), ch. 254, p. 1149, § 5, effective May 15. L. 2012: IP(1) amended, (HB 12-1045), ch. 191, p. 766, § 3, effective May 21.

Editor's note: (1) Amendments to the introductory portion to subsection (1) by House Bill 08-1269 and House Bill 08-1368 were harmonized.

(2) Section 4 of chapter 191, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (1) applies to the sales, storage, and use on or after July 1, 2012, of wood from salvaged trees killed or infested in Colorado by spruce beetles.

Cross references: (1) For the legislative declaration contained in the 2000 act amending the introductory portion to subsection (1), see section 2 of chapter 260, Session Laws of Colorado 2000.

(2) For the legislative declaration contained in the 2008 act amending the introductory portion to subsection (1), see section 1 of chapter 332, Session Laws of Colorado 2008.

(3) For the legislative intent contained in the 2008 act amending the introductory portion to subsection (1), see section 9 of chapter 302, Session Laws of Colorado 2008.

(4) For the legislative declaration contained in the 2009 act amending the introductory portion to subsection (1), see section 1 of chapter 254, Session Laws of Colorado 2009.

ANNOTATION

County's interpretation of "construction and building materials" to include equipment used in connection with natural gas operations was unreasonably broad. The general assembly intended to impose a use tax on "construction and building materials" that constitute permanent improvements to real property, not on other systems used for industrial operations. Bd. of County Comm'rs of Rio Blanco v. ExxonMobil, 192 P.3d 582 (Colo. App. 2008), aff'd by operation of law, 222 P.3d 303 (Colo. 2009).

State statute prohibiting the imposition of local use taxes on tangible personal property

purchased more than three years prior to its use is inapplicable where it is in conflict with a home rule city use tax that deals with a matter of local concern such as an excise tax constituting a one time use fee imposed on a privilege at the time the privilege is exercised. Winslow Constr. Co. v. City and County of Denver, 960 P.2d 685 (Colo. 1998).

Applied in Rancho Colo., Inc. v. City of Broomfield, 196 Colo. 444, 586 P.2d 659 (1978); Associated Dry Goods Corp. v. City of Arvada, 197 Colo. 491, 593 P.2d 1375 (1979).

29-2-110. Filing with executive director - when deemed to have been made.

(1) Any report, claim, tax return, statement, or other document required or authorized under this article to be filed with or any payment made to the executive director of the department of revenue which:

(a) Is transmitted through the United States mails shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed;

(b) Is mailed but not received by the executive director, or is received and the cancellation mark is not legible or is erroneous or omitted, shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

Source: L. 77: Entire section added, p. 1403, § 1, effective July 1.

29-2-111. Pledging of sales and use tax for capital improvements. (1) A sales or use tax proposal made pursuant to this article by, or on behalf of, any county, city, or incorporated town may contain a provision for the creation of a special fund, to be known as a "sales and use tax capital improvement fund", for the deposit of all or any part of the revenue from the sales or use tax, or both, and to be used solely to provide capital improvements. A sales or use tax proposal of any county, city, or incorporated town which has been approved by the registered electors and which does not contain a provision for the

creation of such a special fund may be subsequently amended by ordinance or resolution of the governing body to provide for such a special fund. Any such amendment shall take effect only after approval by a majority of the registered electors of the county, city, or town voting at a regular or special election, but no election shall be required in order to create a capital improvement fund for the deposit of any portion of sales or use tax revenue allocated for capital improvement purposes in a sales or use tax proposal previously approved by the voters.

(2) A city or town by ordinance adopted by the governing body may pledge all or any part of the sales or use tax revenue, or both, it receives from the countywide sales or use tax for capital improvement purposes. Any such pledge shall take effect only after approval by a majority of the registered electors of the city or town voting at a regular or special election.

(3) When sales or use tax revenue, or both, is pledged solely for capital improvement purposes, it shall be deposited immediately upon being received or collected into the sales and use tax capital improvement fund. Upon deposit in this fund, such revenue is thereafter not available to be pledged or expended for any general municipal or county purpose.

(4) For purposes of this section and section 29-2-112, "capital improvement purposes" include:

- (a) Paying the costs of acquiring or constructing any capital improvement;
- (b) Acquiring land or equipment;
- (c) The costs of issuing bonds;
- (d) The costs of capitalized interest and reserves; and
- (e) The costs of operating and maintaining the capital improvements to be financed.

(5) Notwithstanding any other provision to the contrary, no sales or use tax revenues in the sales and use tax capital improvement fund may be expended in any year for the purposes specified in subsection (4) of this section unless said fund contains sufficient revenues to pay the anticipated annual debt service on any sales and use tax revenue bonds for which moneys in the fund have been pledged.

Source: L. 81: Entire section added, p. 1405, § 1, effective July 1. **L. 2001:** (4) and (5) added, p. 244, § 1, effective August 8.

ANNOTATION

Language of ballot question that specified financing of capital improvements would be accomplished by increasing sales and use taxes is not clearly misleading even though it did not

state that bonds could be issued and secured by a fund containing the increased taxes. *Leek v. City of Golden*, 870 P.2d 580 (Colo. App. 1993).

29-2-112. Sales and use tax revenue bonds. (1) Any county, city, or incorporated town which has pledged sales or use tax revenue, or both, solely for capital improvement purposes and has created a sales and use tax capital improvement fund may, in anticipation of collection of sales or use tax revenues, issue revenue bonds payable solely from the fund for the purpose of financing capital improvements.

(2) The revenue bonds may be authorized and issued by ordinance or resolution of the governing body of the county, city, or incorporated town, without further election.

(3) The revenue bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and such interest shall be evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the county, city, or incorporated town; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The resolution or ordinance authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued in one or more series, may bear such date, may mature at such time as determined by the governing body but in no event beyond thirty years from their respective dates, may be in such denomination, may be payable in such medium of payment, at such place within or without the state, including but not limited to the office of

the county treasurer, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by the governing body.

(4) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) The revenue bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) The revenue bonds may be sold at either public or private sale.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds under this section may:

(a) Provide for the initial issuance of one or more bonds, referred to in this subsection (5) as a "bond", aggregating the amount of the entire issue;

(b) Make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) Provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or interest or both and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond; and

(d) Make further provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest, or both.

(6) (a) The revenue bonds and any coupons bearing the facsimile or manual signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the county, city, or incorporated town, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the entity issuing the same.

(b) Any officer authorized or permitted to sign any bond or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt, as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon the bond or coupons appertaining thereto, or upon both the bond and such coupons.

(7) The clerk of the county, city, or incorporated town may cause the seal of such entity to be printed, engraved, stamped, or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(8) The revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(9) The revenue bonds shall not constitute an indebtedness of the county, city, or incorporated town within the meaning of any constitutional or statutory debt limitation or provision. Each bond issue under this section shall recite in substance that said bonds, including the interest thereon, are payable solely from a special fund and that said bonds do not constitute a debt within the meaning of any constitutional or statutory limitation.

(10) Any ordinance or resolution authorizing any bonds under this section may provide that each bond therein authorized shall recite that it is issued under authority of this section. Such recital shall conclusively impart full compliance with all of the provisions of this section, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

(11) A home rule municipality may elect to issue sales or use tax revenue bonds pursuant to this section unless a provision of the municipal charter prohibits the issuance of such bonds.

ANNOTATION

Language of ballot question that specified financing of capital improvements would be accomplished by increasing sales and use taxes is not clearly misleading even though it did not state that bonds could be issued and secured by a fund containing the increased taxes. *Leek v. City of Golden*, 870 P.2d 580 (Colo. App. 1993).

Suppression doctrine. City charter provision that gives city power to issue bonds is not inconsistent with § 29-2-112, so the suppression doctrine of article XX, § 6 of the Colorado Constitution does not apply. *Leek v. City of Golden*, 870 P.2d 580 (Colo. App. 1993).

29-2-113. Sales and use tax simplification task force - repeal of section. (Repealed)

Source: L. 85: Entire section added, p. 1038, § 6, effective July 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective January 1, 1986. (See L. 85, p. 1038.)

ARTICLE 3

**County and Municipality
Development Revenue Bond Act**

29-3-101.	Short title.	29-3-111.	Limited obligation.
29-3-102.	Legislative declaration.	29-3-112.	Rights upon default.
29-3-103.	Definitions.	29-3-113.	Determination of revenue.
29-3-104.	General powers.	29-3-114.	Financing of project.
29-3-105.	Bonds to be special obligations.	29-3-115.	Option to purchase.
29-3-106.	Form and terms of bonds - exemption from Colorado income tax.	29-3-116.	Refunding.
29-3-107.	Bond security.	29-3-117.	Application of proceeds.
29-3-108.	Terms of proceedings and instruments.	29-3-118.	No payment by county or municipality.
29-3-109.	Investments and bank deposits.	29-3-119.	No county or municipal operation.
29-3-110.	Acquisition of project.	29-3-120.	Payment in lieu of taxes.
		29-3-121.	Eminent domain not available.
		29-3-122.	Limitation of actions.
		29-3-123.	Sufficiency of article.

29-3-101. Short title. This article shall be known and may be cited as the “County and Municipality Development Revenue Bond Act”.

Source: L. 67: p. 671, § 1. C.R.S. 1963: § 36-24-1. L. 73: p. 475, § 1.

ANNOTATION

Law reviews. For article, “Financing Real Estate Developments”, see 11 Colo. Law. 2093 (1982).

This section does not contravene § 1 of art. XI, Colo. Const. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

Revenue bond financing, as authorized by this section, does not constitute the pledging of credit for a private corporation and does not subject the county to the debt, contract, and liability of a private corporation in contravention of § 1 of art. XI, Colo. Const. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

Nor § 6 of art. XI, Colo. Const. Revenue bond financing authorized by this statute does not unlawfully create county debt without the required election and for unauthorized purposes in contravention of § 6 of art. XI, Colo. Const. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

Since there is no pledge of the credit of the county for the payment of revenue bonds, no “debt” is thereby created, and, consequently, the issuance of such bonds has no effect whatsoever on the debt limitations prescribed in § 6 of art. XI, Colo. Const. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

The provisions of this section do not contain delegations of power in contravention of § 35 of art. V, Colo. Const., and § 8 of art. XIV, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Not violative of substantive due process. The revenue bond financing authorized by this section serves a bona fide public purpose and thereby does not deprive taxpayers of substantive due process of law in contravention of § 25 of art. II, Colo. Const., and of the fourteenth amendment to the United States Constitution. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The argument under the “due process” clauses of the state and federal constitutional provisions that the revenue bond financing authorized by this statute favors one private enterprise over another engaged, or wishing to engage, in the same business in the same locality (in short, that the financing is for the private benefit of a private enterprise); that there is no assurance a competitor would receive the same consideration; and consequently that the project is not for a public purpose is without merit. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Public project not necessarily municipal. The fact that project financed by revenue bonds is for a “public purpose” does not necessarily make its existence or its function municipal in nature. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

But its effect may fulfill public purpose. It is the effect of, or the benefits flowing from, the completed project and its operation by private enterprise that fulfills the “public purpose” requirement and not, “per se”, the county’s participation therein. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The mechanics of securing obligations are constitutionally immaterial. Since revenue bonds do not create a “debt” within the meaning of that term as used in § 6 of art. XI, Colo. Const., the mechanics of securing the obligations of those who advance the funds for the project are constitutionally immaterial. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Under Colorado law, public revenue bonds do not create debt, if there is no pledge of

public property. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

No monetary liability of county. A county is not authorized to, and could not under the law, use general county funds, nor is it in any manner responsible for any shortages or deficiencies which may occur as the result of the development or the operation of the project financed with revenue bonds. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Purchaser on notice as to no such liability. If a bond purchaser sees fit to purchase revenue bonds of a project for the sake of a federal tax advantage, he certainly will be on notice of the fact that there will never be any pecuniary liability against the city, and that he will be able to look only to the revenues of the project and the project property itself for payment of his bonds. With it expressed clearly in the law and on the face of each bond that neither the credit nor taxing power of the municipality is pledged, no bondholder will ever be heard to say he was deceived or that he thought otherwise. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The participation of a county as a “lessor” under this section does not constitute a “municipal function”. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Validity sustained by weight of authority. The employment of public revenue bonds to foster the promotion of local industry is not a new concept, and the weight of authority sustains the validity of laws such as this statute. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Law cognizant of supreme court decisions. This section was passed with full knowledge by the general assembly of the decisions of the supreme court approving revenue bond financing. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Supreme court would not determine the constitutionality of this section when requested by the governor, stating that the question should only be answered after thorough analysis and study, with full opportunity for those who may be affected to be heard. In re House Bill No. 1503 of the Forty-sixth General Assembly, 163 Colo. 45, 428 P.2d 75 (1967).

29-3-102. Legislative declaration. (1) It is the intent of the general assembly by the passage of this article to authorize counties and municipalities to finance, acquire, own, lease, improve, and dispose of properties to the end that such counties and municipalities may be able to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporations, federal governmental offices, hospitals, and agricultural, forestry, fisheries, mining, construction, manufacturing, transportation, communications, public utilities, wholesale and retail trade, finance, education, insurance, real estate, technology, and any related small business enterprises to locate, expand, or remain in this state, to mitigate the serious threat of extensive unemployment in parts of this state, to secure and maintain a balanced and stable economy in all parts of this state, or to further

the use of its agricultural products or natural resources.

(2) It is the further intent of the general assembly to authorize counties and municipalities to finance, refinance, acquire, own, lease, improve, and dispose of properties to the end that pollution may be ameliorated and controlled, more adequate hospital care may be provided, more adequate residential housing facilities for low- and middle-income families and persons may be provided, more adequate facilities for disposing of sewage and solid waste and furnishing water, energy, and gas may be provided, more adequate facilities for sports events and activities and recreation activities, conventions, and trade shows may be provided, more adequate airports, mass commuting facilities, parking facilities, or storage or training facilities may be provided, and more adequate research, product-testing, and administrative facilities may be provided, all of which promote the public health, welfare, safety, convenience, and prosperity.

(3) It is therefore the intention of the general assembly to vest such counties and municipalities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of this state for the promotion of their health, safety, welfare, convenience, and prosperity.

(4) It is not intended by this article to authorize any county or municipality to operate any manufacturing, industrial, commercial, or business enterprise, or any research, product-testing, or administrative facilities of such enterprise, nor to prohibit the operation of utility plants, residential housing facilities, hospitals, sewage or solid waste disposal facilities, facilities for the furnishing of water, energy, or gas, sports and recreation facilities, convention or trade show facilities, airports, mass commuting facilities, parking facilities, or storage or training facilities by any county or municipality.

(5) This article shall be liberally construed in conformity with this legislative declaration.

Source: L. 67: p. 671, § 3. C.R.S. 1963: § 36-24-3. L. 73: p. 476, § 3. L. 74: (1) amended, p. 408, § 24, effective April 11. L. 75: (1), (2), (3), and (4) amended, p. 966, § 1, effective July 14. L. 77: (1) and (2) amended, p. 1408, § 1, effective June 20. L. 2003: (1) amended, p. 726, § 1, effective July 1.

ANNOTATION

Valid public purpose. The general assembly's desire to afford a vehicle to aid in the relief of extensive unemployment, to maintain a balanced and stable economy, and to promote the use of the state's agricultural products represents a valid public purpose. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

Weight given legislative intent. Although the expressed intent of the general assembly

under this section has no magical quality which validates the invalid, it is entitled to reverent weight in determining whether this article promotes a public purpose. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

This section and § 29-3-119 prohibit county operation of the project. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bonds" or "revenue bonds" means bonds, notes, or other securities evidencing an obligation and issued under this article by a county or municipality.

(2) "County" means any county within this state.

(3) "Finance" or "financing" means the issuing of bonds by a county or municipality and the use of substantially all of the proceeds therefrom pursuant to a financing agreement with the user to pay (or to reimburse the user or its designee) for the costs of the acquisition or construction of a project, whether these costs are incurred by the county, the municipality, the user, or a designee of the user. Title to or in the project may at all times remain in the user, and, in such case, the bonds of the county or municipality may be secured by mortgage or other lien upon the project or upon any other property of the user, or both, granted by the owner or by a pledge of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the user, as the governing body deems advisable, but no county or municipality shall be authorized hereby to pledge any of its property or to otherwise secure

the payment of any bonds with its property; except that the county or municipality may pledge the property of the project or revenues therefrom.

(4) "Financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase, or any other agreement, or any combination thereof, entered into in connection with the financing or refinancing of a project pursuant to this article.

(5) "Mortgage" means a deed of trust or any other security device for both real and personal property.

(6) "Municipality" means any city, including without limitation any city or city and county operating under a home rule or special legislative charter, or town within this state.

(7) "Ordinance" means an ordinance of a city, town, or city and county.

(8) "Pollution" means any form of environmental pollution, including but not limited to water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation contamination, or noise pollution.

(9) "Pollution control facilities" means any land, building, or other improvement and all real or personal property, and any undivided or other interest in any of the foregoing, including without limitation structures, equipment, pipes, pumps, dams, reservoirs, improvements, or other facilities useful for the purpose of reducing, abating, preventing, controlling, or eliminating pollution caused or produced by the operation of any manufacturing, industrial, or commercial enterprise or any utility plant or useful for the purpose of removing or treating any substance in processed material, which material would cause pollution if used without such removal or treatment.

(10) "Project" means any land, building, or other improvement and all real or personal properties, and any undivided or other interest in any of the foregoing, except inventories and raw materials, whether or not in existence, suitable or used for or in connection with any of the following:

(a) Manufacturing, industrial, commercial, agricultural, or business enterprises (including, without limitation, enterprises engaged in storing, warehousing, distributing, selling, or transporting any products of agriculture, industry, commerce, manufacturing, or business), or any utility plant;

(b) Hospital, health-care, or nursing-home facilities (including, without limitation, clinics and out-patient facilities and facilities for the training of hospital, health-care, or nursing-home personnel);

(c) Pollution control facilities;

(d) Residential facilities for low- and middle-income families or persons intended for use as the sole place of residence by the owners or intended occupants. "Low- and middle-income persons and families" means persons and families determined by a county or municipality (which determination shall be conclusive) to lack the financial ability to pay prices or rentals sufficient to induce private enterprise in such county or municipality to build a sufficient supply of adequate, safe, and sanitary dwellings without the special assistance afforded by this article.

(e) Sewage or solid waste disposal facilities;

(f) Facilities for the furnishing and storage of water;

(g) Facilities for the furnishing of energy or gas;

(h) Sports and recreational facilities available for use by members of the general public either as participants or spectators and functionally related and subordinate residential housing facilities, including residential facilities, without regard to the limitations contained in paragraph (d) of this subsection (10), for employees of the persons or entities owning or operating such sports and recreational facilities and facilities located in proximity to and in connection with sports and recreational facilities providing treatment, therapy, or recreational opportunities for persons with mental and physical disabilities and families of such persons;

(i) Convention or trade show facilities;

(j) Airports, facilities for the loading or unloading of unprocessed agricultural products or raw materials, mass commuting facilities, railroad facilities, parking facilities, or storage or training facilities directly related to any of the foregoing;

(k) Research, product-testing, and administrative facilities;

(l) Facilities for private and not-for-profit institutions of higher education; and
(m) Capital improvements to existing single-family residential, multi-family residential, commercial, or industrial structures, to retrofit such structures for significant energy savings or installation of solar or other alternative electrical energy-producing improvements to serve that structure or other structures on contiguous property under common ownership.

(10.5) “Refinance” or “refinancing” means the issuing of bonds by a county or municipality and the use of all or substantially all of the proceeds therefrom pursuant to a financing agreement with the user to liquidate any obligations previously incurred to finance or aid in financing of a project specified in paragraphs (b) to (l) of subsection (10) of this section which would constitute such a project had it been originally undertaken and financed by a county or municipality pursuant to this article. Title to or in the project may remain at all times in the user, and in such case, the bonds of the county or municipality may be secured by mortgage or other lien upon the project granted by the owner or by a pledge of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the user, as the governing body deems advisable.

(11) “Resolution” means a resolution of a county.

(12) “State” means the state of Colorado.

(13) “User” means one or more persons who enter into a financing agreement with any county or municipality relating to a project; except that the user need not be the person actually occupying, operating, or maintaining the project.

(14) “Utility plant” means any facility used for or in connection with the generation, production, transmission, or distribution of electricity; the production, manufacture, storage, or distribution of gas; the transportation or conveyance of gas, oil, or other fluid substance by pipeline; or the diverting, developing, pumping, impounding, distributing, or furnishing of water.

Source: L. 67: p. 671, § 2. C.R.S. 1963: § 36-24-2. L. 73: p. 475, § 2. L. 74: (8) amended, p. 229, §1, effective February 7; (10) and (11) amended, p. 408, § 23, effective April 11. L. 75: (3), (10), and (13) amended, p. 967, §§ 2, 3, effective July 14. L. 77: (4), (10)(j), and (10)(k) amended and (10.5) added, p. 1409, §§ 2, 3, effective June 20. L. 81: (10)(h) amended, p. 1409, § 1, effective May 27. L. 93: (10)(h) amended, p. 1669, § 83, effective July 1. L. 2003: IP(10), (10)(f), and (10)(l) amended, p. 726, § 2, effective July 1. L. 2008: (10)(k) and (10)(l) amended and (10)(m) added, p. 1293, § 4, effective May 27. L. 2009: (10)(m) amended, (SB 09-051), ch. 157, p. 677, § 9, effective September 1.

Cross references: In 2009, subsection (10)(m) was amended by the “Renewable Energy Financing Act of 2009”. For the short title and the legislative declaration, see sections 1 and 2 of chapter 157, Session Laws of Colorado 2009.

29-3-104. General powers. (1) In addition to any other powers, each county and municipality has the following powers:

(a) To acquire, whether by construction, purchase, gift, devise, lease, or sublease; to improve and equip; and to finance, refinance, sell, lease, or otherwise dispose of one or more projects or part thereof. If a county issues revenue bonds as provided in this article to finance, refinance, or acquire projects, such projects shall be located within said county, or, if a municipality issues revenue bonds as provided in this article to finance, refinance, or acquire projects, such projects shall be located within the municipality or within eight miles from the nearest point of its corporate limits.

(b) To enter into financing agreements with others for the purpose of providing revenues to pay the bonds authorized by this article; to lease, sell, or otherwise dispose of any or all of its projects to others for such revenues and upon such terms and conditions as the governing body may deem advisable; and to grant options to renew any lease or other agreement with respect to the project and to grant options to buy any project at such price as the governing body deems desirable;

(c) To issue revenue bonds for the purpose of defraying the cost of financing, refinancing, acquiring, improving, and equipping any project, including the payment of principal

and interest on such bonds for not exceeding three years, funding any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds or the maintenance of the project, and all other incidental expenses incurred in issuing such bonds;

(d) To secure payment of such bonds as provided in this article.

(2) To further implement section 18 of article XIV of the state constitution and to supplement part 5 of article 25 of title 31, C.R.S., any county or municipality may delegate, by resolution or ordinance as the case may be, to any other county or municipality authority to act on its behalf in the financing, refinancing, acquisition, leasing, ownership, improvement, and disposal of projects. Any such delegation may be general or limited in scope and time and may be irrevocable for the term or terms of any financing agreement or bond issue, all as provided in said ordinance or resolution.

Source: L. 67: p. 672, § 4. C.R.S. 1963: § 36-24-4. L. 73: p. 477, § 4. L. 77: (1)(a) and (1)(c) amended and (2) R&RE, pp. 1409, 1410, §§ 4, 5, effective June 20.

29-3-105. Bonds to be special obligations. (1) All bonds issued by a county or municipality under the authority of this article shall be special, limited obligations of the county or municipality. Except as provided in section 29-3-116, the principal of and interest on such bonds shall be payable, subject to the mortgage provisions in this article, solely out of the revenues derived from the financing, refinancing, sale, or leasing of the project with respect to which the bonds are issued.

(2) The bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the county or municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter, and shall not constitute nor give rise to a pecuniary liability of the county or municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each bond.

Source: L. 67: p. 672, § 5. C.R.S. 1963: § 36-24-5. L. 73: p. 478, § 5. L. 77: (1) amended, p. 1410, § 6, effective June 20.

ANNOTATION

Applied in *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970); *Weed v. City of Pueblo*, 197 Colo. 52, 591 P.2d 80 (1979).

29-3-106. Form and terms of bonds - exemption from Colorado income tax.

(1) The bonds shall be authorized by resolution of the county commissioners or by ordinance of the municipality; shall be subject to such maximum net effective interest rate; and shall be in such denominations, bear such date, mature at such time not exceeding forty years from their respective dates, bear such interest at a rate, be in such form, carry such registration privileges, be executed in such manner, be payable at such place within or without the state, and be subject to such terms of redemption as the authorizing resolution or supplemental resolution of the county commissioners or the ordinance or supplemental resolution of the municipality may provide.

(2) The bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the county or municipality, in its discretion, shall determine; but the county or municipality shall not sell such bonds at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized. As an incidental expense of the project, the county or municipality, in its discretion, may employ financial and legal consultants in regard to the financing of the project.

(3) The county or municipality may exchange all or a part of its bonds for all or an equivalent part of the project for which the bonds are issued, the exchange to be preceded by determination of the fair value of the project or part of the project exchanged for the

bonds. Such determination shall be by ordinance of the municipality or by resolution of the governing body of the county and shall be conclusive.

(4) The bonds shall be fully negotiable under the terms of article 8 of title 4, C.R.S.

(5) Interest on bonds issued on or after July 1, 1979, pursuant to this article shall be exempt from Colorado income tax.

Source: L. 67: p. 672, § 6. C.R.S. 1963: § 36-24-6. L. 70: pp. 109, 140, §§ 2, 8. L. 73: p. 478, § 6. L. 79: (5) added, p. 1128, § 1, effective June 22.

Cross references: For the definition of “net effective interest rate”, as used in subsections (1) and (2), see § 30-26-301 (2)(d)(I).

29-3-107. Bond security. The principal of, the interest on, and any prior redemption premiums due in connection with the bonds shall be payable from, secured by a pledge of, and constitute a lien on the revenues out of which such bonds shall be made payable. In addition, they may be secured by a mortgage covering all or any part of the project or upon any other property of the user, or both, by a pledge of the revenues from or a financing agreement for such project, or both, as the governing body in its discretion may determine, but no county or municipality shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds with its property; except that the county or municipality may pledge the property of the project or revenues therefrom.

Source: L. 67: p. 673, § 7. C.R.S. 1963: § 36-24-7. L. 73: p. 478, § 7. L. 75: Entire section amended, p. 968, § 4, effective July 14.

ANNOTATION

It is solely to the bond security which bondholders may look for payment of interest and redemption of their investment. *Allardice v.*

Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-108. Terms of proceedings and instruments. (1) The proceedings under which the bonds are authorized to be issued and any mortgage or trust indenture given to secure the same may contain any provisions customarily contained in instruments securing bonds and constituting a covenant with the bondholders, including, but not limited to:

(a) Provisions respecting custody of the proceeds from the sale of the bonds, including their investment and reinvestment until used to defray the cost of the project;

(b) Provisions respecting the fixing and collection of revenues from the project;

(c) The terms to be incorporated in the financing agreement and any mortgage or trust indenture for the project, including without limitation provision for subleasing;

(d) The maintenance and insurance of the project;

(e) The creation of funds and accounts into which any bond proceeds, revenues, and income may be deposited or credited;

(f) Limitation on the purpose to which the proceeds of any bonds then or thereafter to be issued may be applied;

(g) Limitation on the issuance of additional bonds, the terms upon which additional bonds are issued and secured, the refunding of bonds, and the replacement of bonds;

(h) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated;

(i) Vesting in a trustee such properties, rights, powers, and duties in trust as the county or municipality determines and limiting the rights, duties, and powers of such trustees;

(j) The rights and remedies available in case of a default to the bondholders or to any trustee under the financing agreement, a mortgage, or a trust indenture for the project.

Source: L. 67: p. 673, § 8. C.R.S. 1963: § 36-24-8. L. 73: p. 478, § 8.

29-3-109. Investments and bank deposits. (1) The county or municipality may provide that proceeds from the sale of bonds and special funds from the revenues of the project shall be invested and reinvested in such securities and other investments, whether or not any such investment or reinvestment is authorized under any other law of this state, as may be provided in the proceedings under which the bonds are authorized to be issued, including but not limited to:

- (a) Bonds or other obligations of the United States;
 - (b) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
 - (c) Obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;
 - (d) Obligations issued or guaranteed by any state of the United States or any political subdivision of any such state;
 - (e) Prime commercial paper;
 - (f) Prime finance company paper;
 - (g) Bankers acceptances drawn on and accepted by commercial banks;
 - (h) Repurchase agreements fully secured by obligations issued or guaranteed as to principal and interest by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;
 - (i) Certificates of deposit issued by commercial banks.
- (2) The county or municipality may also provide that the proceeds, funds, or investments and the revenues payable under the financing agreement shall be received, held, and disbursed by one or more trust companies located within or without this state or in any depository authorized in section 24-75-603, C.R.S.

Source: L. 67: p. 674, § 9. C.R.S. 1963: § 36-24-9. L. 73: p. 479, § 9. L. 79: (2) amended, p. 1617, § 12, effective June 8.

29-3-110. Acquisition of project. (1) The county or municipality may also provide that:

- (a) The project and improvements to be constructed, if any, shall be constructed by the county or municipality, the user, the user's designee, or any one or more of them on real estate owned by the county or municipality, the user, or the user's designee, as the case may be;
 - (b) The bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order, or certificate of the user or the user's designee.
- (2) The project, if and to the extent constructed on real estate not owned by the county or municipality, may be conveyed or leased or an easement therein granted to the county or municipality at any time.

Source: L. 67: p. 674, § 10. C.R.S. 1963: § 36-24-10. L. 73: p. 479, § 10.

29-3-111. Limited obligation. In making such agreements or provisions, a county or municipality shall not obligate itself, except with respect to the project and the application of the revenues therefrom and bond proceeds therefor.

Source: L. 67: p. 674, § 11. C.R.S. 1963: § 36-24-11.

29-3-112. Rights upon default. (1) The proceedings authorizing any bonds, or any mortgage securing such bonds, may provide that if there is a default in the payment of the principal of, the interest on, or any prior redemption premiums due in connection with the bonds or in the performance of any agreement contained in such proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a

receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with the proceedings or the provisions of the mortgage.

(2) Any mortgage to secure bonds issued thereunder may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the mortgage it may be foreclosed and there may be a sale under proceedings in equity or in any other manner permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder and may apply toward the purchase price unpaid bonds at the face value thereof.

Source: L. 67: p. 674, § 12. C.R.S. 1963: § 36-24-12.

29-3-113. Determination of revenue. (1) Prior to entering into a financing agreement for the project and the issuance of bonds in connection therewith, the governing body must determine:

(a) The amount necessary in each year to pay the principal of and the interest on the first bonds proposed to be issued to finance such project;

(b) The amount necessary to be paid each year into any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project;

(c) The estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms under which the project is to be financed provide that the user shall maintain the project and carry all proper insurance with respect thereto.

(2) The determination and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued; but the foregoing amounts need not be expressed in dollars and cents in the financing agreement and proceedings under which the bonds are authorized to be issued.

Source: L. 67: p. 675, § 13. C.R.S. 1963: § 36-24-13. L. 73: p. 479, § 11.

29-3-114. Financing of project. Prior to the issuance of any bonds authorized by this article, the county or municipality shall enter into a financing agreement with respect to the project with a user providing for payment to the county or municipality of such revenues as, upon the basis of such determinations and findings, will be sufficient to pay the principal of and interest on the bonds issued to finance the project, to build up and maintain any reserves deemed advisable by the governing body in connection therewith, and to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the financing agreement obligates the user to pay for the maintenance of and insurance on the project.

Source: L. 67: p. 675, § 14. C.R.S. 1963: § 36-24-14. L. 73: p. 480, § 12.

ANNOTATION

Law reviews. For article, "Financing Real Estate Developments", see 11 Colo. Law. 2093 (1982).

29-3-115. Option to purchase. (1) A lease may grant the user of a project an option to purchase all or a part of the project at a stipulated purchase price or at a price to be determined upon appraisal as is provided in the lease.

(2) The option may be exercised at such time as the lease may provide.

(3) The county or municipality and the user may agree and provide in the lease that all or a part of the rentals paid by the user prior to and at the time of the exercise of such option shall be applied toward the purchase price and shall be in full or partial satisfaction thereof.

Source: L. 67: p. 675, § 15. C.R.S. 1963: § 36-24-15. L. 73: p. 480, § 13.

ANNOTATION

Section held constitutional under § 2 art. XI, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Authorization. This section authorizes the county to grant the lessee an option to purchase the project at a stipulated price, and it also authorizes the county, as lessor, and the lessee to agree that the rentals paid by the lessee prior to and at the time of the exercise of such an option

be applied toward the purchase price and that such rentals shall be in full or partial satisfaction thereof. Allardice v. Adams County, 173 Colo. 133, 476 P.2d-982 (1970).

The option to purchase a project financed with revenue bonds is an appropriate and integral part of the entire transaction between the county and the lessee. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-116. Refunding. (1) Any bonds issued pursuant to the provisions of this article and at any time outstanding may be refunded at any time and from time to time by a county or municipality by the issuance of its refunding bonds in such amount as the governing body may determine to refund the principal of the bonds to be so refunded, all accrued and unaccrued interest thereon to the normal maturity dates of such bonds or to the prior redemption dates selected by the county or municipality in accordance with the proceedings under which the bonds to be refunded were issued, including any mortgage or trust indenture given to secure the same, and any premiums and incidental expenses necessary to be paid in connection therewith. The principal amount of any such refunding bonds may be equal to, less than, or greater than the principal amount of the bonds to be so refunded. The net effective interest rate on any such refunding bonds may be equal to, less than, or greater than the net effective interest rate on the bonds to be so refunded.

(2) Any such refunding may be effected, whether the bonds to be refunded have matured or shall mature thereafter, either by sale of the refunding bonds and the application of the proceeds thereof, directly or indirectly, to the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable at normal maturity date or prior redemption date selected by the county or municipality in accordance with the proceedings under which the bonds to be refunded were issued, including any mortgage or trust indenture given to secure the same.

(3) The proceeds of the refunding bonds shall either be immediately applied to the retirement of the bonds to be so refunded or be placed in escrow in any state or national bank within or without this state which possesses and is exercising trust powers to be applied to the payment of the bonds being refunded or the refunding bonds or both upon their presentation therefor, to the extent, in such priority, and otherwise in the manner in which the county or municipality may determine. Except to the extent expressly inconsistent with the provisions of this article, the proceedings under which the bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the issuance of such refunding bonds, the establishment of any escrow in connection therewith, and the investment and reinvestment of any escrowed proceeds.

(4) All refunding bonds issued under authority of this article shall be payable solely from revenues out of which the bonds to be refunded thereby are payable or from revenues out of which bonds of the same character may be made payable under this article or any other law in effect at the time of the refunding or from the escrowed proceeds of such refunding bonds, including any proceeds realized from the investment and reinvestment of such escrowed proceeds.

Source: L. 67: p. 676, § 16. C.R.S. 1963: 36-24-16. L. 77: Entire section R&RE, p. 1410, § 7, June 20.

Cross references: For the definition of "net effective interest rate", as used in subsection (1), see § 30-26-301 (2)(d)(I); for the "Refunding Revenue Securities Law", see article 54 of title 11.

29-3-117. Application of proceeds. (1) The proceeds from the sale of any bonds shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds are not needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

(2) The cost of acquiring any project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of a project which may be constructed (including architects' and engineers' fees), the purchase price of any part of a project that may be acquired by purchase, and all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition.

Source: L. 67: p. 676, § 17. C.R.S. 1963: § 36-24-17.

29-3-118. No payment by county or municipality. (1) No county or municipality has the power to pay out of its general fund or otherwise contribute any part of the costs of acquiring a project and, unless specifically acquired for uses of the character described in this article or unless the land is determined by the governing body to be no longer necessary for other county or municipal purposes, shall not have the power to use land already owned by the county or municipality, or in which the county or municipality has an equity, for the construction thereon of a project or any part thereof.

(2) The entire cost of acquiring any project must be paid out of the proceeds from the sale of the bonds, but this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

Source: L. 67: p. 676, § 18. C.R.S. 1963: § 36-24-18.

ANNOTATION

Applied in *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-119. No county or municipal operation. (1) When all principal of, interest on, and any prior redemption premium due in connection with the bonds issued for a project leased to a user have been paid in full and in the event the option to purchase or option to renew the lease, if any, contained in the lease has not been exercised as to all of the property contained in the project, the lease shall terminate and the county or municipality shall sell such remaining property or devote the same to county or municipal purposes other than manufacturing, commercial, or industrial.

(2) Any such sale which is not made pursuant to the exercise of an option to purchase by the user of a project shall be conducted in the same manner as is then provided by law governing the issuer's sale of surplus property.

Source: L. 67: p. 677, § 19. C.R.S. 1963: § 36-24-19. L. 73: p. 480, § 14.

ANNOTATION

This section and § 29-3-102 prohibit county operation of the project. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-120. Payment in lieu of taxes. (1) Pursuant to section 4 of article X of the state constitution, all property owned by a county or municipality pursuant to this article shall be and remain exempt from taxation. Nevertheless, any county or municipality acquiring or extending any project as provided in this article shall annually pay, solely out of the revenues from the project and not from any other source, to the state of Colorado and to the city, town, school district, and any other political subdivision or public body corporate

wherein such project is located, authorized to levy taxes, a sum equal to the amount of tax which the taxing entity would annually receive if the property were owned by any private person or corporation, any other statute to the contrary notwithstanding. In addition to the requirements of sections 29-3-113 and 29-3-114, the governing body, before entering into a financing agreement pursuant to this article, shall make a prior determination of sufficiency of revenues for the purposes of this section, and each financing agreement shall provide for revenues sufficient to meet the payments required by this section.

(2) If and to the extent the proceedings under which the bonds so provide, the county or municipality may agree to cooperate with the user of a project in connection with any administrative or judicial proceedings for determining the validity or amount of any such payments and may agree to appoint or designate and reserve the right in and for such user to take all action which the county or municipality may lawfully take in respect of such payments and all matters relating thereto, but such user shall bear and pay all costs and expenses of the county or municipality thereby incurred at the request of such user or by reason of any such action taken by such user in behalf of the county or municipality.

(3) Any user of a project which has paid, as revenues additional to those required to be paid pursuant to section 29-3-114, the amounts required by subsection (1) of this section to be paid by the county or municipality shall not be required to pay taxes on such property to the state or to any county, city, town, school district, or other political subdivision, any other statute to the contrary notwithstanding. In the event the project is owned by a private person or corporation, the financing agreement shall require such private person or corporation to pay the taxes which such taxing entity or entities are entitled to receive from such private person or corporation with respect to the project.

Source: L. 67: p. 677, § 20. C.R.S. 1963: § 36-24-20. L. 73: pp. 480, 482, §§ 15, 18.

ANNOTATION

The property of a county is specifically exempted from tax. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

It is the interest of the lessee — the leasehold — upon which the charge in lieu of taxes is made under this section. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

This section makes it clear that it was designed to fully comply with §§ 3, 4, 8, 9, and 10 of art. X, Colo. Const. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

The obligation imposed by this section is constitutional. The obligation under this section to make annual payments “in lieu of”, but in the same amount as, taxes on the county-owned project does not violate §§ 3, 4, 8, 9, or 10 of art. X, Colo. Const. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

If rentals “in lieu of taxes”, can be considered taxes, there is no lack of uniformity under this section, which authorizes the taxing of all lessees of “projects” on the same basis, as the tax on other property and the rents on municipal property for industrial uses operate equally and uniformly on all persons and corporations in like circumstances. *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

This section is intended to apply only to ad valorem property taxes, not to any excise taxes. *City of Pueblo v. Weed*, 39 Colo. App. 415, 570 P.2d 15 (1977), rev’d on other grounds, 197 Colo. 52, 591 P.2d 80 (1979).

29-3-121. Eminent domain not available. No land acquired by a county or municipality by the exercise of condemnation through eminent domain can be used for the project to effectuate the purposes of this article.

Source: L. 67: p. 677, § 21. C.R.S. 1963: § 36-24-21.

ANNOTATION

Applied in *Allardice v. Adams County*, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-122. Limitation of actions. No action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding, or bonds executed in connection with any project or improvements authorized by this article on and after thirty days from the effective date of the resolution or ordinance authorizing the issuance of such bonds.

Source: L. 67: p. 678, § 22. C.R.S. 1963: § 36-24-22. L. 73: p. 481, § 16.

29-3-123. Sufficiency of article. (1) This article, without reference to other statutes of the state, constitutes full authority for the exercise of powers granted in this article, including but not limited to the authorization and issuance of bonds under this article.

(2) No other act or law with regard to the authorization or issuance of bonds that provides for an election requiring an approval or in any way impeding or restricting the carrying out of the acts authorized in this article to be done shall be construed as applying to any proceedings taken under this article or acts done pursuant to this article.

(3) The provisions of no other law, either general or local, shall apply to the things authorized to be done in this article, and no board, agency, bureau, commission, or official not designated in this article has any authority or jurisdiction over any of the acts authorized in this article to be done.

(4) No notice, consent, or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any bonds, the making of any contract or financing agreement, or the exercise of any other power under this article, except as provided in this article.

(5) The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law.

(6) No part of this article shall repeal or affect any other law or part thereof except to the extent that this article is inconsistent with any other law, it being intended that this article shall provide a separate method of accomplishing its objectives and not an exclusive one; and this article shall not be construed as repealing, amending, or changing any such other law except to the extent of such inconsistency.

Source: L. 67: p. 678, § 23. C.R.S. 1963: § 36-24-23. L. 73: p. 481, § 17. L. 77: (2) and (3) amended, p. 1411, § 8, effective June 20.

ARTICLE 3.5

State Grants to Local Governments

29-3.5-101. Definitions.

29-3.5-102. Selection criteria.

29-3.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Eligible applicant" means an applicant under a local government assistance program which meets all statutory requirements for eligibility and which complies with all applicable regulations, ordinances, and resolutions.

(2) "Local government assistance program" means any program under which a state agency furnishes a grant or loan of state money, or state property in lieu of money, to units of local government for the purpose of financing or otherwise assisting in any local or regional project.

(3) "State agency" means any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except state educational institutions administered pursuant to title 23, C.R.S. (except articles 8 and 9, parts 2 and 3 of article 21, and parts 2 to 4 of article 30).

(4) "Unit of local government" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: **L. 81:** Entire article added, p. 1410, § 1, effective June 2. **L. 83:** (3) amended, p. 962, § 8, effective July 1, 1984. **L. 2012:** (3) amended, (HB 12-1283), ch. 240, p. 1135, § 52, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending subsection (3), see section 1 of chapter 240, Session Laws of Colorado 2012.

29-3.5-102. Selection criteria. Every state agency which administers a local government assistance program shall approve or deny every application for competitively awarded programs filed after July 1, 1981, from an eligible applicant under such program solely on the basis of criteria established by statute and any regulations authorized by statute.

Source: **L. 81:** Entire article added, p. 1411, § 1, effective June 2.

HOUSING

ARTICLE 4

Housing

Cross references: For cooperation with the federal government regarding housing projects, see article 55 of title 24; for relocation assistance and land acquisition policies, see article 56 of title 24.

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PART 1

CITY HOUSING LAW - SLUM CLEARANCE

29-4-101. Short title. This part 1 shall be known and may be cited as the "City Housing Law".

Source: L. 35: p. 498, § 1. CSA: C. 82, § 4. CRS 53: § 69-2-1. C.R.S. 1963: § 69-2-1.

ANNOTATION

Law reviews. For article, "Municipal Powers and the Public Purpose Doctrine", see 21 Rocky Mt. L. Rev. 277 (1949).

Section is constitutional. This section does not violate article XX, Colo. Const., since it is of public concern within the police power of the state. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

And was enacted to make federal funds and credits available. To take advantage of the funds and credit provided by the United States Housing Act, 42 U.S.C.A. §§ 1401-1436, our general assembly enacted this article. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

29-4-102. Legislative declaration. (1) It is hereby declared:

(a) That unsanitary or unsafe dwelling accommodations exist in the various cities and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(b) That in all such cities persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in various cities there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and that consequently

persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(c) That these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values; that these conditions cannot be remedied by the ordinary operations of private enterprises;

(d) That the clearance, replanning, and reconstruction of areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations, at such rentals that persons who now live in unsafe or unsanitary dwelling accommodations or in overcrowded and congested dwelling accommodations can afford to live in safe or sanitary or uncongested dwelling accommodations, are public uses and purposes for which public money may be spent and private property acquired;

(e) That in order to remedy these conditions it is necessary that the powers provided in this part 1 be conferred upon each city; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency.

(2) The necessity in the public interest for the provisions enacted in this part 1 is hereby declared as a matter of legislative determination.

Source: L. 35: p. 498, § 2. CSA: C. 82, § 5. L. 37: p. 656, § 1. CRS 53: § 69-2-2. L. 61: p. 419, § 2. C.R.S. 1963: § 69-2-2.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

29-4-103. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Authority" or "housing authority" means an authority established in accordance with the provisions of part 2 of this article and any amendments or supplements thereto.

(2) "Bonds" means bonds, interim receipts, or other obligations of a city issued by its council pursuant to this part 1 or pursuant to any other law as supplemented by or in conjunction with this part 1.

(3) "City" means any city or incorporated town which is included within the boundaries of a housing authority.

(4) "Community facilities" means real and personal property, buildings and equipment for recreational or social assemblies, for educational, health, or welfare purposes, and necessary utilities, when designed primarily for the benefit and use of the occupants of dwelling accommodations.

(5) "Contract" means any agreement of a city with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(6) "Council" means the council, legislative body, board of commissioners, board of trustees, or other body, board, or commission charged with the governing of any city.

(7) "Federal government" means the United States, the federal emergency administration of public works, or any agency or instrumentality, corporate or otherwise, of the United States.

(8) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(9) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired, constructed, or to be acquired or constructed pursuant to a single plan or undertaking to demolish, clear, remove, alter, or repair unsafe, unsanitary, or substandard housing or to provide dwelling accommodations at rentals within the means of persons of low income. The term "housing project" also means the planning of the buildings and improvements, the

acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

(10) "Law" means any act or statute, general, special, or local, of the state, including, without being limited to, the charter of any city.

(11) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(12) "Obligee of the city" or "obligee" means any bondholder, trustee for any bondholders, any lessor demising property to the city used in connection with a housing project, or any assignee of such lessor's interest or any part thereof, and the United States, when it is a party to any contract with the city.

(13) "Real property" means lands, lands under water, structures, and any easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(14) "State" means the state of Colorado.

(15) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

Source: L. 35: p. 500, § 3. CSA: C. 82, § 6. L. 37: p. 658, § 2. CRS 53: § 69-2-3. L. 61: p. 420, § 3. C.R.S. 1963: § 69-2-3.

29-4-104. Powers of cities to undertake projects. (1) Every city has power and is authorized:

(a) To construct any housing project within the city;

(b) To contract debts for the construction of any housing project within the city, to borrow money, to issue its bonds to finance such construction, and to provide for the rights of obligees as provided in this part 1;

(c) To assess, levy, and collect unlimited ad valorem taxes on all property subject to taxation to pay the bonds and the interest thereon issued to finance any housing project of the city, and to pay the obligations incurred by the city in connection with any lease to it of a housing project or of real or personal property for the purposes of a housing project;

(d) To acquire by purchase, gift, or the exercise of the power of eminent domain and to hold and dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any housing project of the city, whether subject to mortgages, liens, charges, or other encumbrances;

(e) To enter on any lands, buildings, or property for the purpose of making surveys, soundings, and examinations in connection with the planning or construction of any housing project of the city;

(f) To insure or provide for the insurance of any housing project of the city against such risks as the city may deem advisable and to procure or agree to the procurement of insurance or guarantees from a government of the payment of any debts or parts thereof incurred by the city in connection with a housing project, including the power to pay premiums on any such insurance;

(g) (I) To borrow money and accept grants from the federal government for or in aid of the construction of a housing project of the city; to take over any land acquired by the federal government for the construction of a housing project; to take over or lease any housing project constructed or owned by the federal government in the city; and to such ends to enter into such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require including an agreement that the federal government has the right to supervise and approve the construction, maintenance, and operation of such housing project;

(II) All cities are authorized to take over any housing project constructed or owned by the federal government located within ten miles of the boundaries of said city, provided said project is not located within any other city, town, county, or city and county without the prior approval of the governing body of such other city, town, county, or city and county. The authority in this subparagraph (II) conferred to all such cities shall be in addition to all

of the authorities and powers in this part 1 granted to cities and shall include, without restrictions, the right to enter into leases for the land upon which said housing projects are located. Notwithstanding any of the provisions of this part 1, said cities may operate, maintain, rent, and terminate the housing projects taken over in such manner and upon such terms as their city councils or other governing bodies, by a majority vote thereof, may determine, subject only to the terms and conditions imposed by the federal government at the time the projects are taken over but without restriction as to the method and manner of operation provided in this part 1.

(h) To exercise, for the purpose of obtaining from the federal government a grant, loan, or other financial assistance or cooperation in the construction, maintenance, and operation of a housing project of the city, any power conferred by this part 1 independently or in conjunction with any other power conferred by this part 1 or conferred by any other law; and to do all things necessary in order to secure such aid, assistance, or cooperation from the federal government;

(i) To act as agent for the federal government in connection with the acquisition or construction of a federal housing project or any part thereof;

(j) To arrange with a government or an authority, upon such terms and for such consideration as it may determine, for the acquisition by such government or authority of property, options, or property rights, or for the furnishing of property or services, in connection with a housing project of the city;

(k) To do all acts and things necessary or convenient to carry out the powers expressly given in this part 1.

(2) Notwithstanding anything to the contrary contained in this part 1 or in any other law, a city may include in any contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the housing project.

Source: L. 35: p. 502, § 4. CSA: C. 82, § 7. L. 37: p. 661, § 3. L. 53, 1st Ex. Sess.: p. 21, § 1. CRS 53: § 69-2-4. C.R.S. 1963: § 69-2-4.

29-4-105. Eminent domain. (1) Every city has the right to acquire by eminent domain any property, real or personal, which it may deem necessary to carry out the purposes of this part 1 after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. Every city may exercise the power of eminent domain pursuant to the provisions of either sections 38-1-101 to 38-1-115, article 3 of title 38, and section 38-5-106 or article 6 of title 38, C.R.S.

(2) Property already devoted to a public use may be acquired, but no property belonging to any government may be acquired without its consent and no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission or other officer or tribunal having regulatory power over such corporation.

Source: L. 35: p. 504, § 5. CSA: C. 82, § 8. L. 37: p. 663, § 4. CRS 53: § 69-2-5. C.R.S. 1963: § 69-2-5.

29-4-106. Acquisition of land for government. A city may acquire by purchase or by the exercise of the power of eminent domain any property, real or personal, which it may deem necessary for any housing project being constructed or operated by a government or an authority. The city, upon such terms and conditions and for such consideration as it may determine, may convey title or deliver possession of such property so acquired or purchased to such government or authority for use in connection with such housing project.

Source: L. 35: p. 505, § 6. CSA: C. 82, § 9. CRS 53: § 69-2-6. C.R.S. 1963: § 69-2-6.

29-4-107. Management of housing projects. (1) The city shall deliver possession of any housing projects constructed, acquired, or leased by it to the authority within the boundaries of which the city is included, but the title to all property comprising such housing projects shall remain in the city. The authority shall operate and maintain all such housing projects of the city and shall fix, levy, and collect such rents, fees, or other charges for the use and occupancy of such housing projects as such authority determines; but if there are any agreements of the city with an obligee, the authority shall fix, levy, collect, and revise such rents, fees, and other charges in accordance with such agreements and subject thereto. All rents, fees, and other charges received by the authority from any such housing project shall not be commingled with any moneys of the authority and shall be deposited in a special account in any depository authorized in section 24-75-603, C.R.S.

(2) After the payment of the cost of operation and maintenance of such housing project, the net receipts of such project shall be paid by the authority to the city at monthly or longer intervals as the city may determine or at such intervals as shall be provided for in any agreement by the city with an obligee.

Source: L. 35: p. 505, § 7. CSA: C. 82, § 10. L. 37: p. 664, § 5. CRS 53: § 69-2-7. C.R.S. 1963: § 69-2-7. L. 79: (1) amended, p. 1617, § 13, effective June 8.

29-4-108. Moneys of city. All proceeds received from the sale of the bonds, all moneys received from the federal government, and all revenues received by any city from any housing project shall be paid to the financial officer of the city designated for such purposes, who shall not commingle any such money received with any other moneys but shall deposit same in a separate account in the name of the city in any depository authorized in section 24-75-603, C.R.S.

Source: L. 35: p. 506, § 8. CSA: C. 82, § 11. CRS 53: § 69-2-8. C.R.S. 1963: § 69-2-8. L. 79: Entire section amended, p. 1617, § 14, effective June 8.

29-4-109. Construction contracts and costs. (1) Any contract for the construction of a housing project or any part thereof may be awarded by the city upon any day at least five days, excluding Sundays, after at least one publication of notice requesting bids upon such contract in a newspaper circulating in the city, or if there is no such newspaper, after a posting of such notice in three public places in such city on a date at least five days previous to the award of such contract.

(2) In determining the cost of any housing project, the following items may be included as a part of the cost of such housing project and financed by the issuance of bonds:

- (a) Engineering, inspection, accounting, fiscal, and legal expenses;
- (b) The cost of issuance of the bonds, including engraving, printing, advertising, accounting, and other similar expenses;
- (c) Any interest costs on money borrowed or estimated to be borrowed during the period of construction of the housing project and for six months thereafter.

Source: L. 35: p. 507, § 10. CSA: C. 82, § 13. CRS 53: § 69-2-9. C.R.S. 1963: § 69-2-9.

29-4-110. Bonds secured by taxes - maturity. (1) The council shall submit to an election the question of the authorization of the issuance of bonds payable from taxes or additionally secured by taxes. Such bonds shall mature at such times, not exceeding fifteen years from their respective dates, as the council provides. Such election shall be called by the council which shall adopt a resolution, called the "election resolution" in this section, which shall state in substance:

- (a) The amount or maximum amount of bonds to be issued;
- (b) The housing project for the financing of which such bonds are to be issued;
- (c) The rate or maximum rate of interest which such bonds are to bear;

(d) A brief concise statement, which need not go into any detail other than the mere statement of the fact, showing whether such bonds will be payable from taxes, be additionally secured by a pledge of the revenues or a mortgage on any housing project, or be payable from taxes only in the event of a deficiency in the revenues or other sources of payment;

(e) The date on which such election will be held;

(f) The places where votes may be cast; and

(g) The hours between which such polling places will be open.

(2) Such election resolution shall be published in full at least once, not less than ten days nor more than thirty days prior to the date fixed for such election, in a newspaper published in the county and circulating in the city, or, if there is no such newspaper, such election resolution shall be printed in full and posted in three public places in such city not less than ten days nor more than thirty days prior to the date fixed for such election. At such election the ballot shall contain the words "for the bonds" and "against the bonds". Opposite each of said phrases shall be a hollow square, each side of which shall be not less than one-quarter inch nor more than one inch. The elector shall indicate his vote "for the bonds" or "against the bonds" by inserting a mark in the square opposite such phrase. It shall not be necessary to print any question or any other words or figures on any ballot, nor need the ballot be of any particular size, color, or quality, nor need sample ballots be printed, posted, or distributed. At or before the regular meeting of the council next succeeding the date of such election, such council shall canvass the returns and determine and declare the results of the election. Except as otherwise provided in this section, and as far as may be necessary or convenient, the manner of conducting such election, keeping the poll lists, counting and canvassing the votes, certifying the returns, declaring the results, and doing all acts relating to such election shall conform to the mode or method of procedure provided by the laws of the state of Colorado for the qualification of voters and the holding of general elections.

Source: L. 35: p. 508, § 11. CSA: C. 82, § 14. CRS 53: § 69-2-10. C.R.S. 1963: § 69-2-10.

Cross references: For the general election laws, see article 1 of title 1.

29-4-111. Bonds not secured by taxes authorized by resolution. (1) The council may authorize the issuance of bonds not payable from or additionally secured by taxes by a resolution which shall state in substance:

(a) The amount or maximum amount of bonds to be issued;

(b) The housing projects for the financing of which such bonds are to be issued;

(c) The rate or maximum rate of interest which such bonds are to bear;

(d) A brief concise statement, which need not go into any detail other than the mere statement of the fact, showing the source of payment and security for such bonds.

(2) Such bonds shall mature at such times, not to exceed sixty years from their respective dates, as the council may provide.

Source: L. 35: p. 509, § 12. CSA: C. 82, § 15. CRS 53: § 69-2-11. C.R.S. 1963: § 69-2-11.

29-4-112. Tax resolution - payment of bonds. (1) Before delivering any bonds payable from or additionally secured by taxes and authorized to be issued pursuant to this part 1, the council shall adopt a resolution, referred to in this part 1 as the "tax resolution", which shall recite in substance that adequate provision will be made for raising annually a tax upon all property subject to taxation by the city of a sum sufficient to pay the interest on and principal of such bonds as the same become due. A tax sufficient to pay, when due, such principal and such interest shall be levied annually and assessed, collected, and paid in like manner with the other taxes of such city and shall be in addition to and exclusive of

the maximum of all other taxes which such city is authorized or required by law to levy and assess upon the property subject to taxation.

(2) It is the duty of the tax collector of the county in which such city is located, upon the filing in the office of such county clerk of the county wherein such city is located of a duly certified copy of such tax resolution, to levy and assess a tax sufficient to pay the interest on and principal of such bonds as the same become due; but if the bonds are payable from taxes only in the event of a deficiency in revenues or are payable from taxes and additionally secured by a pledge of revenues and if the tax resolution so provides, then, in such events, the tax to be levied and assessed by such county clerk may be reduced by such amount and under such conditions as may be determined in such tax resolution. When for any reason all or any part of the principal of or interest on any bonds payable from or additionally secured by taxes and issued by any city pursuant to this part 1 is paid when due, there shall be levied and assessed by the county clerk and collected by the proper collecting officers a tax sufficient to pay the same.

Source: L. 35: p. 510, § 13. CSA: C. 82, § 16. CRS 53: § 69-2-12. C.R.S. 1963: § 69-2-12.

Cross references: For the power of boards of county commissioners to levy taxes, see § 39-1-111.

29-4-113. Form of bonds - rate of interest. (1) The bonds of the city shall be issued in one or more series and shall bear such dates, bear interest at such rates, be in such denominations which may be made interchangeable, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms and redemption, with or without premium, as the council by resolution or its trust indenture or mortgage may provide. The bonds authorized to be issued by this part 1 shall be sold at public sale held after notice of such sale published once at least ten days prior to such sale in a newspaper circulating in the city, if there is one, and in a financial newspaper published in the city of San Francisco, California, or in the city of Chicago, Illinois; except that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold in such blocks as the council may by resolution determine, but no bonds shall be sold at less than par. The bonds may be purchased by the city at a price not more than the principal amount thereof plus the accrued interest, and all bonds so purchased shall be cancelled. The bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., pertaining to investment securities.

(2) The validity of the authorization and issuance of the bonds authorized under this part 1 shall not be dependent on or affected in any way by proceedings taken, contracts made, acts performed, or things done in connection with the construction of any housing project. Bonds issued under this part 1 bearing the signature of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof any persons whose signatures appear thereon shall have ceased to be officers of the city issuing the same. Pending the authorization, preparation, execution, or delivery of the definitive bonds for the purpose of financing the construction of a housing project, interim certificates or other temporary obligations may be issued by the city to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form and contain such terms, conditions, and provisions as the council of the city issuing the same may determine.

Source: L. 35: p. 511, § 14. CSA: C. 82, § 17. CRS 53: § 69-2-13. C.R.S. 1963: § 69-2-13. L. 70: p. 111, § 6. L. 75: (1) amended, p. 218, § 58, effective July 16.

29-4-114. Provisions of bonds, mortgages, or trust indentures. (1) In connection with the issuance of bonds or the incurring of any obligations under a lease, and in order to secure the payment of such bonds or obligations, the city has power:

(a) To pledge by resolution, trust indenture, mortgage subject to the limitations imposed in this part 1, or other contract all or any part of the rents, fees, or revenues of its housing projects;

(b) To covenant against mortgaging all or any part of its housing projects, then owned or thereafter acquired, or against permitting or suffering any lien thereon;

(c) To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing projects or any part thereof, or with respect to limitations on its right to undertake additional housing projects;

(d) To covenant against pledging all or any part of the rents, fees, and revenues of housing projects to which its right then exists or the right to which may thereafter come into existence, or against permitting or suffering any lien thereon;

(e) To provide for the release of property, rents, fees, and revenues from any pledge or mortgage, and to reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(f) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument, as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

(g) To covenant as to what other or additional debt may be incurred by it to finance housing projects or otherwise;

(h) To provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(i) To provide for the replacement of lost, destroyed, or mutilated bonds;

(j) To covenant that it warrants the title to the premises;

(k) To covenant as to the fees and rentals to be charged, the amount, calculated as may be determined, to be raised each year or other period of time by fees, rentals, and other revenues, and as to the use and disposition to be made thereof;

(l) To covenant as to the use of any or all of its housing projects;

(m) To create or to authorize the creation of special funds in which there are segregated:

(I) All the proceeds of any loan or grant;

(II) All of the rents, fees, and revenues of any housing project or parts thereof;

(III) All of the taxes collected for the payment of such bonds;

(IV) Any moneys held for the payment of the costs of operation and maintenance of such housing project or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(V) Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payment; and

(VI) Any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds;

(n) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(o) To covenant against extending the time for the payment of bond interest, directly or indirectly, by any means or in any manner;

(p) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holder of which must consent thereto, and the manner in which such consent may be given;

(q) To covenant as to the maintenance of its housing projects, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(r) To vest in an obligee of the city the right, in the event of the failure of the city to observe or perform any covenant on its part, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the city with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the city with reference thereto;

(s) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(t) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(u) To covenant to surrender possession of all or any part of any housing project in the event of default, as defined in the trust indenture, mortgage, lease, or contract with reference thereto, and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such housing projects or any part thereof, and to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the city and the authority might do, and to dispose of the moneys collected in accordance with the agreement of the city with such obligee;

(v) To vest in a trustee the right to enforce any covenant made to secure, to pay, or, in relation to the bonds, to provide for the powers and duties of such trustee, to limit liabilities thereof, and to provide the terms and conditions upon which the trustee or the holders of bonds or any proportion of them may enforce any such covenant;

(w) To make covenants in addition to the covenants expressly authorized by this section, of like or different character;

(x) To execute all instruments necessary or convenient in the exercise of the powers granted in this section or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the city may reasonably require;

(y) To make such covenants and to do all such acts and things as are necessary, convenient, or desirable in order to secure its bonds, or in the absolute discretion of the city tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section. It is the intention of this section to give the city power to do all things in the issuance of bonds and in the provision for their security that are not inconsistent with the constitution of Colorado, and no consent or approval of any judge or court shall be required thereof; but the city has no power to mortgage all or any part of its property, real or personal, except as provided in section 29-4-115.

Source: L. 35: p. 512, § 15. CSA: C. 82, § 18. CRS 53: § 69-2-14. C.R.S. 1963: § 69-2-14.

29-4-115. Mortgage when financed by government. (1) In connection with any housing project financed in whole or in part by a government, every city also has power to mortgage all or any part of such housing project, the construction of which was financed with the proceeds of its bonds or with such proceeds supplemented by the proceeds of a grant from the federal government, and by such mortgage:

(a) To vest in a government the right, in the event of default as defined in such mortgage, to foreclose the mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings as long as the government is the holder of any of the bonds secured by such mortgage;

(b) To vest in a trustee the right, in the event of default as defined in such mortgage, to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the project;

(c) To vest in an obligee other than a government the right, but only with the consent of the government which aided in financing the project involved, to foreclose such mortgage by judicial proceedings;

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid to foreclose such mortgage as to all or such part of the property covered by such mortgage as such obligee, in its absolute discretion, elects; such institution, prosecution, and conclusion of any such proceedings or the sale of such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold.

Source: L. 35: p. 517, § 16. CSA: C. 82, § 19. CRS 53: § 69-2-15. C.R.S. 1963: § 69-2-15.

29-4-116. Remedies of an obligee of city. (1) Any obligee of the city has the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action, or proceeding in law or equity, all of which may be joined in one action, to compel the performance by the city and any officer, agent, or employee of the city of every term, provision, and covenant contained in any trust indenture, mortgage, lease, or other agreement relating to a housing project to which the city is a party, and to require the carrying out of any or all covenants and agreements and the fulfillment of all duties imposed upon the city by this part 1;

(b) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the city;

(c) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any mortgage, lease, or contract with the city.

Source: L. 35: p. 518, § 17. CSA: C. 82, § 20. CRS 53: § 69-2-16. C.R.S. 1963: § 69-2-16.

29-4-117. Additional remedies. (1) Any city has power by its trust indenture, mortgage, lease, or other contract relating to a housing project to confer upon any obligee holding or representing a specified amount in bonds, leases, or other obligations, the right, in the event of default, as defined in such instrument:

(a) By suit, action, or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the city or any part thereof. If such receiver is appointed, he may enter and take possession of such project or any part thereof, operate and maintain the same, collect and receive all fees, rents, revenues, or other charges arising therefrom in the same manner as the city or the authority might do, and shall keep all such moneys in a separate account and apply the same in accordance with the obligations of the city as the court directs.

(b) By suit, action, or proceeding in any court of competent jurisdiction to require the city and the officers thereof to account as if they were the trustees of an express trust.

Source: L. 35: p. 519, § 18. CSA: C. 82, § 21. CRS 53: § 69-2-17. C.R.S. 1963: § 69-2-17.

29-4-118. Remedies cumulative. All the rights and remedies conferred by this part 1 shall be cumulative and in addition to all other rights and remedies that are conferred upon such obligee of the city by law or by any agreement with the city.

Source: L. 35: p. 519, § 19. CSA: C. 82, § 22. CRS 53: § 69-2-18. C.R.S. 1963: § 69-2-18.

29-4-119. Limitations on remedies of obligee. No interest of the city in any housing project shall be subject to sale by the foreclosure of a mortgage thereon either through judicial proceedings or the exercise of a power of sale contained in such mortgage except in the case of mortgages not provided for in section 29-4-115. No judgment against a city shall be a charge upon the real or personal property of the city. The provisions of this section shall not apply to nor limit the rights of obligees to foreclose any of the mortgages of the city provided for in section 29-4-115, or to enforce any pledges or rights conferred by any contract, trust indenture, mortgage, lease, or other agreement of the city relating to a housing project by any appropriate suit, action, or proceeding.

Source: L. 35: p. 520, § 20. CSA: C. 82, § 23. CRS 53: § 69-2-19. C.R.S. 1963: § 69-2-19.

29-4-120. Foreclosure sale subject to government agreement. Notwithstanding anything in this part 1 to the contrary, any purchaser at a sale of real or personal property constituting part of a housing project of a city pursuant to any foreclosure of a mortgage of the city shall obtain title subject to any contract between the authority and the government relating to the supervision by the government of the operation and maintenance of the property and the construction of improvements thereon.

Source: L. 35: p. 520, § 21. CSA: C. 82, § 24. CRS 53: § 69-2-20. C.R.S. 1963: § 69-2-20.

29-4-121. Action by resolution. Except as otherwise provided in this part 1, all action required or authorized to be taken under this part 1 by the council of any city may be by resolution adopted by a majority of all the members of such council, which resolution may be adopted at the meeting of the council at which such resolution is introduced and shall take effect immediately upon such adoption. Except as otherwise provided in this part 1, no resolution under this part 1 need be published or posted, nor shall any such resolution be subject to veto by the chief executive officer of the city or presiding officer of a council.

Source: L. 35: p. 520, § 22. CSA: C. 82, § 25. CRS 53: § 69-2-21. C.R.S. 1963: § 69-2-21.

29-4-122. Tax exemptions. (1) In connection with any housing project, the city shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof, or to any officer or employee of the state or any subdivision thereof. The property of the city constituting a part of any housing project shall be exempt from all taxes. Bonds, notes, debentures, and other evidences of indebtedness of a city issued under this article are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

(2) A city is also exempt from the payment of any special assessments to the state or any subdivision thereof which it otherwise would be required to pay because of its ownership of a housing project. The property of a city used for housing purposes shall be exempt from all local and municipal special assessments. All property leased to the city for housing purposes shall likewise be exempt from special assessments.

Source: L. 35: p. 521, § 24. CSA: C. 82, § 27. L. 37: p. 665, § 6. CRS 53: § 69-2-22. C.R.S. 1963: § 69-2-22.

29-4-123. Supplemental nature of article. The powers conferred by this part 1 shall be in addition and supplemental to the powers conferred by any other law and not in substitution for the powers conferred by any other law. Bonds may be issued under this part 1 for any housing project notwithstanding that any other law may provide for the issuance of bonds by the city or an authority for like purposes and without regard to the requirements, restrictions, or procedural provisions contained in any other law. Bonds may be issued under this part 1 notwithstanding any debt or other limitation prescribed by any other law. Any proceedings taken prior to April 19, 1935, by any municipality relating to the subject matters of this part 1, whether or not commenced under any other law, may be continued under this part 1, or, at the option of the council, may be discontinued and new proceedings instituted under this part 1.

Source: L. 35: p. 521, § 25. CSA: C. 82, § 28. CRS 53: § 69-2-23. C.R.S. 1963: § 69-2-23.

PART 2

CREATING HOUSING AUTHORITIES

29-4-201. Short title. This part 2 shall be known and may be cited as the "Housing Authorities Law".

Source: L. 35: p. 523, § 1. CSA: C. 82, § 29. CRS 53: § 69-3-1. C.R.S. 1963: § 69-3-1.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For article, "Municipal Powers and the Public Purpose Doctrine", see 21 Rocky Mt. L. Rev. 277 (1949). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

Section is constitutional. This section does not violate article XX, Colo. Const., since it is of public concern within the police power of the state. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

And was enacted to make federal funds and credits available. To take advantage of the funds and credit provided by the United States Housing Act, 42 U.S.C.A. §§ 1401-1436, our general assembly enacted this article. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

Housing authority created pursuant to the Housing Authorities Law is a distinct, independent governmental entity from the city within which it operates. Roe v. Hous. Auth. of City of Boulder, 909 F. Supp. 814 (D. Colo. 1995).

29-4-202. Legislative declaration. (1) It is hereby declared:

(a) That unsanitary or unsafe dwelling accommodations exist in various cities and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(b) That in all such cities persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in various cities there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(c) That these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state, and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities, and that these conditions cannot be remedied by the ordinary operations of private enterprises;

(d) That the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations on such financial terms that enable persons who now live in unsafe or unsanitary dwelling accommodations or in overcrowded and congested dwelling accommodations to afford to live in safe and sanitary or uncongested dwelling accommodations, are public uses and purposes for which public money may be spent and private property acquired;

(e) That, in order to remedy these conditions, a housing authority with the boundaries, powers, and duties provided in this part 2 shall be established for each city and that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency.

(2) The necessity in the public interest for the provisions enacted in this part 2 is hereby declared as a matter of legislative determination.

Source: L. 35: p. 523, § 2. CSA: C. 82, § 30. L. 37: p. 667, § 1. CRS 53: § 69-3-2. L. 61: p. 420, § 4. C.R.S. 1963: § 69-3-2. L. 2000: (1)(d) amended, p. 880, § 1, effective August 2.

29-4-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Authority" or "housing authority" means a corporate body organized in accordance with the provisions of this part 2 for the purposes, with the powers, and subject to the restrictions set forth in this part 2.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this part 2.

(3) "City" means any city or incorporated town included in the territorial boundaries of the authority.

(4) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part 2.

(5) "Community facilities" means real and personal property, buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes, and necessary utilities when designed primarily for the benefit and use of the occupants of the dwelling accommodations.

(6) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(7) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(8) "Federal government" means the United States, the federal emergency administrator of public works, or any agency or instrumentality, corporate or otherwise, of the United States.

(9) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(11) "Obligee of the authority" or "obligee" means any bondholder, trustee for any bondholders, any lessor demising property to the authority used in connection with the project, or any assignee of such lessor's interest or any part thereof, and the United States when it is a party to any contract with the authority.

(12) "Project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, commercial facilities, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to demolish, clear, remove, alter, or repair unsanitary or unsafe housing or to provide dwelling accommodations on financial terms within the means of persons of low income. The term "project" also applies to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements and all other work in connection therewith. The term "project" also applies to the provision of dwelling accommodations to persons, without regard to income, as long as the project substantially benefits persons of low income as determined by an authority.

(13) "Real property" means lands, lands under water, structures, and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(14) "State" means the state of Colorado.

(15) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

Source: L. 35: p. 525, § 3. CSA: C. 82, § 31. CRS 53: § 69-3-3. L. 61: p. 421, § 5. C.R.S. 1963: § 69-3-3. L. 2000: (12) amended, p. 880, § 2, effective August 2. L. 2009: (5) and (6) amended, (SB 09-292), ch. 369, p. 1977, § 104, effective August 5.

29-4-204. Petition for creation of authority - notice - hearing. (1) Any twenty-five residents of the city may file a petition with the city clerk setting forth that there is a need for an authority to function in the city. Upon the filing of such a petition, the city clerk shall give notice of the time, place, and purposes of a public hearing at which the council will determine the need for such an authority in the city. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city, or, if there is no such

newspaper, by posting such a notice in at least three public places within the city at least ten days preceding the day on which the hearing is to be held.

(2) Upon the date fixed for said hearing, held upon notice as provided in this section, a full opportunity to be heard shall be granted to all residents and taxpayers of the city and to all other interested persons. After such a hearing, the council shall determine:

(a) Whether unsanitary or unsafe inhabited dwelling accommodations exist in the city; or

(b) Whether there is a lack of safe or sanitary dwelling accommodations in the city available for all the inhabitants thereof.

(3) In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire.

(4) If it determines that either of the conditions enumerated in subsection (2) of this section exist, the council shall adopt a resolution so finding and shall cause notice of such determination to be given to the mayor or such other appointing authority as is otherwise provided by charter or ordinance who shall thereupon appoint, as provided in section 29-4-205, no more than nine commissioners to act as an authority; except that, in any city and county having a population of more than three hundred thousand, the mayor or such other appointing authority as is otherwise provided by charter or ordinance shall appoint nine commissioners to act as an authority whose appointments shall be conditioned upon confirmation by the council. The number of commissioners shall be specified by the council in the resolution. A certificate signed by such commissioners shall then be filed with the division of local government in the department of local affairs and there remain of record, setting forth that a notice has been given and public hearing has been held, that the council made a determination after such hearing and that the mayor or such other appointing authority as is otherwise provided by charter or ordinance has appointed them as commissioners. Upon the filing of such certificates with said division, the commissioners and their successors shall constitute a housing authority, which shall be a body corporate and politic.

(5) The boundaries of such authority shall include the same geographical area as is then or thereafter included within the boundaries of the city which caused such authority to be created.

(6) If the council determines after a hearing that neither of the conditions enumerated in subsection (2) of this section exist, it shall adopt a resolution denying the petition. After three months have expired from the date of the denial of such petition, subsequent petitions may be filed and new hearings and determinations made thereon.

(7) In any suit, action, or proceeding involving the validity or enforcement of any bond, contract, mortgage, trust indenture, or other agreement of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part 2 upon proof of the filing of the aforesaid certificate. A copy of such certificate, duly certified by the division of local government, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

(8) If the council of any city denies any petition filed for the creation of a housing authority, in accordance with the provisions of subsection (6) of this section, and the residents of such city determine that there is in fact a shortage of decent, safe, and sanitary dwelling accommodations in the city, a petition may be filed with the council requesting that the question of the approval or disapproval of creating a housing authority be submitted to a vote of the registered electors of such city. If the petition, which may consist of one or more separate copies, contains the signatures and residence addresses of registered electors of such city equal in number to not less than five percent of the votes cast for governor or for president and vice-president of the United States at the last preceding general election held within such city, the council shall cause a special election to be held on the question of the creation of a housing authority. All registered electors within the city shall be eligible to vote at said election, which shall be conducted insofar as possible in accordance with the provisions of sections 29-4-604 to 29-4-607; except that the question to be voted on shall be the creation of a housing authority.

Source: L. 35: p. 527, § 4. **CSA:** C. 82, § 32. **CRS 53:** § 69-3-4. **L. 63:** p. 557, § 2. **C.R.S. 1963:** § 69-3-4. **L. 65:** p. 727, § 2. **L. 76:** (4) and (7) amended, p. 596, § 9, effective July 7. **L. 87:** (8) amended, p. 323, § 68, effective July 1. **L. 91:** (4) amended, p. 725, § 1, effective April 20. **L. 99:** (4) amended, p. 128, § 2, effective March 24. **L. 2000:** (4) amended, p. 881, § 3, effective August 2.

ANNOTATION

For the application of this section to the Denver housing authority, see People ex rel.

Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

29-4-205. Appointment of commissioners. (1) The authority shall consist of commissioners selected by the council in the manner provided in either subsection (2) or (3) of this section.

(2) The council may provide that all members of the governing body of the city shall ex officio be appointed the commissioners of the authority. The terms of office of such commissioners shall be coterminous with their terms of office on the governing body. For the purposes of this subsection (2), the term "governing body" means the mayor and council, board of trustees, board of commissioners, legislative body, or other body charged with governing the city. The mayor or, if the city has no mayor, the president of the council or such other presiding officer of the council shall ex officio be chairman of the commissioners. The commissioners shall select from among their members a vice-chairman.

(3) (a) The council may provide that an authority shall consist of no more than nine commissioners appointed by the mayor or such other appointing authority as is otherwise provided by charter or ordinance; except that the council of a city and county having a population of more than three hundred thousand may provide that such authority shall consist of nine commissioners appointed by the mayor or such other appointing authority as is otherwise provided by charter or ordinance. The council may also provide that the mayor or such other appointing authority as is otherwise provided by charter or ordinance shall designate the first chairman. Not more than one of such commissioners may be a city official. In the event that a city official is appointed as a commissioner of an authority, acceptance or retention of such appointment shall not be deemed a forfeiture of his or her office, or incompatible therewith, or affect his or her tenure or compensation in any way. The term of office of a commissioner of an authority who is a city official shall not be affected or curtailed by the expiration of the term of his or her city office.

(b) The commissioners who are appointed under the provisions of this subsection (3) shall be designated by the mayor or such other appointing authority as is otherwise provided by charter or ordinance to serve for terms that are staggered from the date of their appointment such that, to the extent possible, the terms of an equal number of commissioners end each year. Thereafter, the term of office shall be five years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies other than by reason of expiration of terms shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor or such other appointing authority as is otherwise provided by charter or ordinance shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The authority shall select from its members a vice-chairman and a chairman when the office of the first chairman becomes vacant.

(c) Until such time as the council takes action pursuant to subsection (6) of this section, all appointments of the commissioners appointed pursuant to this subsection (3) shall be conditioned upon confirmation by the council as required by section 29-4-204 (4). This paragraph (c) shall apply to original and successor appointments and to appointments to fill vacancies.

(3.5) Notwithstanding any other provision to the contrary, commencing on and after August 2, 2000, as new appointments are made to authorities pursuant to subsection (3) of this section, such appointments shall be made so that not less than one commissioner of each authority shall be an individual who is directly assisted by the authority and who may,

if provided in a plan of the authority, be elected by individuals directly assisted by the authority. This subsection (3.5) shall not apply to any authority with fewer than three hundred public housing units if the authority provides reasonable notice to the resident advisory board of the opportunity for not less than one individual to serve as a commissioner of the authority as provided in this subsection (3.5) and, within a reasonable time after receipt by such board of the notice, the authority is not notified of the intention of any such individual to serve as a commissioner.

(4) A commissioner shall receive no compensation for his services but shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties.

(5) An authority may employ a secretary who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it deems proper.

(6) (a) Any council may, by resolution, change the method of appointment of commissioners after a proper notice and hearing and set a date for the changed method to become effective.

(b) Subsequent to the appointment of nine commissioners by the mayor and their confirmation by the council pursuant to section 29-4-204 (4), any council of a city and county having a population of more than three hundred thousand may, by resolution, change the number of commissioners after a proper notice and hearing and set a date for the changed number to become effective.

(7) The terms of office of present commissioners of authorities created under this section shall expire July 1, 1973. Prior to such date, the council shall appoint new commissioners, as provided in either subsection (2) or (3) of this section, such appointments to be effective July 1, 1973.

Source: L. 35: p. 530, § 5. CSA: C. 82, § 33. CRS 53: § 69-3-5. C.R.S. 1963: § 69-3-5. L. 73: p. 799, § 1. L. 91: (3) and (6) amended, p. 725, § 2, effective April 20; (6)(b) amended, p. 1926, § 60, effective June 1. L. 93: Entire section amended, p. 1462, § 9, effective June 6. L. 99: (3) amended, p. 129, § 3, effective March 24. L. 2000: (3.5) added, p. 881, § 4, effective August 2.

29-4-206. Duty of the authority and commissioners. The authority and its commissioners are under a statutory duty to comply or to cause strict compliance with all provisions of this part 2 and the laws of the state of Colorado, and, in addition thereto, with each term, provision, and covenant in any contract, on the part of the authority to be kept or performed by the authority.

Source: L. 35: p. 531, § 6. CSA: C. 82, § 34. CRS 53: § 69-3-6. C.R.S. 1963: § 69-3-6.

29-4-207. Interested commissioners or employees. No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

Source: L. 35: p. 531, § 7. CSA: C. 82, § 35. CRS 53: § 69-3-7. C.R.S. 1963: § 69-3-7.

29-4-208. Removal of commissioners. (1) The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner has been given a copy of the charges, which may be made by the mayor against him and has had an opportunity to be heard in person or by counsel.

(2) Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges and an opportunity to be heard in person or by counsel and, within fifteen days after receipt of such charges, shall remove any commissioners of the authority who have been found to have acquiesced in any such willful violation.

(3) A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if he has not filed a written statement with the authority of his objections to such violation prior to the filing or making of such charges.

(4) In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and findings thereon.

Source: L. 35: p. 532, § 8. CSA: C. 82, § 36. CRS 53: § 69-3-8. C.R.S. 1963: § 69-3-8.

29-4-209. Powers of authority. (1) An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 2, including the following powers in addition to others granted in this section:

(a) To investigate living, dwelling, and housing conditions and the means and methods of improving such conditions;

(b) To determine where unsafe, unsanitary, or substandard dwelling or housing conditions exist;

(c) To study and make recommendations concerning the city plan in relation to the problem of clearing, replanning, and reconstruction of areas in which unsafe, unsanitary, or substandard dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city or regional planning agency;

(d) To prepare, carry out, and operate projects and to provide for the construction, reconstruction, improvement, alteration, or repair of any project or any part thereof;

(d.3) To grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof;

(d.5) To pledge or otherwise encumber any of its moneys in support of or in connection with a project;

(d.7) To establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project;

(e) To take over by purchase, lease, or otherwise any project undertaken by any government or by the city;

(f) To manage as agent of the city any project constructed or owned by the city;

(g) To act as agent for the federal government in connection with the acquisition, construction, operation, or management of a project or any part thereof;

(h) To arrange with the city or with a government for the furnishing, planning, replanning, opening, or closing of streets, roads, roadways, alleys, or other places or facilities for the acquisition by the city or a government of property, options, or property rights, or for the furnishing of property or services in connection with a project;

(i) To lease or rent any of the dwellings or other accommodations, or any of the lands, buildings, structures, or facilities embraced in any project, and to establish and revise the rents or charges therefor;

(j) To enter upon any buildings or property in order to conduct investigations or to make surveys or soundings;

(k) To purchase, lease, obtain options upon, or acquire by eminent domain, gift, grant, bequest, devise, or otherwise any property, real or personal, or any interest therein from any person, firm, corporation, the city, or a government;

(l) To sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person, firm, corporation, the city, or a government;

(m) To own, hold, clear, and improve property and to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(n) To procure assurance from a government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any project;

(o) To borrow money upon its bonds, notes, debentures, or other evidences of indebtedness, and to secure the same by pledges of its revenues and, subject to the limitations imposed by this part 2, by mortgages upon property held or to be held by it, or in any other manner;

(I) In connection with any loan, to agree to limitations upon its right to dispose of any project or part thereof, or to undertake additional projects;

(II) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this part 2;

(p) To invest any moneys held in reserve or sinking funds or any moneys not required for immediate disbursement in property or in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., or to deposit the same or any part thereof in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits as provided in this paragraph (p), the commissioners may appoint, by written resolution, one or more persons to act as custodians of the moneys of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the authority requires.

(q) To sue and be sued;

(r) To have a seal and to alter the same at pleasure;

(s) To have perpetual succession;

(t) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(u) To make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with this part 2, to carry into effect the powers and purposes of the authority;

(v) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(w) To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state, unable to attend before the authority, or excused from attendance;

(x) To make available to such agencies, boards, or commissions as are charged with the duty of abating nuisances or demolishing unsafe structures within its territorial limits its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare; and

(y) To do all things necessary or convenient to carry out the powers given in this part 2.

(2) Any of the investigations or examinations provided for in this part 2 may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination has the power to administer oaths, take affidavits, and issue subpoenas or commissions. An authority may exercise any of the powers conferred upon it by this section, either generally or with respect to any specific project through or by any agent which it may designate, including any corporation formed under the laws of this state, and, for such purposes, an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which is owned by the authority

or its nominee, to the extent permitted by law, may exercise any of the powers conferred upon the authority.

(3) In addition to all of the other powers conferred upon it by this section, an authority may do all things necessary and convenient to carry out the powers expressly given in this part 2. No provisions with respect to the acquisition, operation, or disposition of property by public bodies shall be applicable to an authority unless the legislature specifically so states.

Source: L. 35: 533, § 9. CSA: C. 82, § 37. CRS 53: § 69-3-9. C.R.S. 1963: § 69-3-9. L. 79: (1)(p) amended, p. 1617, § 15, effective June 8. L. 89: (1)(p) amended, p. 1113, § 20, effective July 1. L. 2000: (1)(d.3), (1)(d.5), and (1)(d.7) added, p. 882, § 6, effective August 2.

29-4-210. Rentals and tenant selection. (1) In the operation or management of housing projects, any housing authority at all times shall observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease dwelling accommodations therein only to persons of low income, being persons receiving incomes less than the incomes which, according to the determination of the authority, persons must receive to enable them to pay the rent necessary to secure safe and sanitary dwelling accommodations within the boundaries of the authority, except such dwelling accommodations as are provided by the authority or the city.

(a.5) Notwithstanding the limitations of paragraph (a) of this subsection (1), a housing authority may rent or lease dwelling accommodations therein to:

(I) Persons who, by virtue of age or disability, have special housing needs or requirements that cannot reasonably be met by existing housing available within the boundaries of the authority; and

(II) Other persons, without regard to income, in a manner consistent with the provisions of section 29-4-203 (12).

(b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of such persons of low income.

(c) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms, but no greater number than that which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding.

(d) It shall not accept any family as a tenant in dwelling accommodations that are provided for persons of low income if the family who would occupy the dwelling accommodations has a net annual income in excess of five times the annual rental of the dwelling accommodations to be furnished, after allowing all exemptions available to families occupying dwellings in low rent housing authorized under the act of Congress of the United States known as the "United States Housing Act of 1937", as amended. In computing such rental, for the purpose of selecting tenants, there shall be included in the rental the average annual cost to the occupant, as determined by the authority, of heat, water, electricity, gas, and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

(2) Nothing in this part 2 shall be construed as limiting the power of an authority:

(a) To vest in an obligee the right, in the event of default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this part 2 with respect to rentals, tenant selection, manner of operation, or otherwise;

(b) To vest in obligees, pursuant to section 29-4-217, the right, in the event of default by the authority, to acquire title to a housing project or the property mortgaged by the housing authority, free from all the restrictions imposed by this part 2 except those imposed by sections 29-4-217 and 29-4-222.

Source: L. 35: p. 536, § 10. CSA: C. 82, § 38. L. 37: p. 669, § 2. CRS 53: § 69-3-10. L. 59: p. 488, § 1. C.R.S. 1963: § 69-3-10. L. 89: (1)(a.5) added, p. 1263, § 1, effective March 21. L. 2000: (1)(a.5) and (1)(d) amended, p. 882, § 7, effective August 2.

29-4-211. Eminent domain. (1) The authority has the right to acquire by eminent domain any property, real or personal, which it may deem necessary to carry out the purposes of this part 2 after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either sections 38-1-101 to 38-1-115, article 3 of title 38, and section 38-5-106 or article 6 of title 38, C.R.S.

(2) Property already devoted to a public use may be acquired; but no property belonging to the city or to any government may be acquired without its consent, and no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal having regulatory power over such corporation.

Source: L. 35: p. 537, § 11. CSA: C. 82, § 39. CRS 53: § 69-3-11. C.R.S. 1963: § 69-3-11.

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

Authority restricted to property within city. The manifest intention of the general assembly, under the circumstances described

above, was to restrict the authority to condemn property to that which was located within the limits of the city. *Robison v. Hous. Auth.*, 165 Colo. 469, 439 P.2d 732 (1968).

29-4-212. Acquisition of land for government. The authority may acquire by purchase or by the exercise of its power of eminent domain any property, real or personal, which it may deem necessary for any project being constructed or operated by a government. The authority, upon such terms and conditions as it determines, may convey title or possession of such property so acquired or purchased to such government for use in connection with such project.

Source: L. 35: p. 537, § 12. CSA: C. 82, § 40. CRS 53: § 69-3-12. C.R.S. 1963: § 69-3-12.

29-4-213. Zoning and building laws. All projects of an authority are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated.

Source: L. 35: p. 538, § 13. CSA: C. 82, § 41. CRS 53: § 69-3-13. C.R.S. 1963: § 69-3-13.

Cross references: For construction requirements, see article 1 of title 9; for county planning and building codes, see article 28 of title 30; for municipal zoning restrictions, see part 3 of article 23 of title 31.

29-4-214. Types of bonds. (1) The authority has the power and is authorized from time to time in its discretion to issue for any of its corporate purposes:

(a) Bonds on which the principal and interest are payable:

(I) Exclusively from the income and revenues of the project financed with the proceeds of such bonds, or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof; or

(II) Exclusively from the income and revenues of certain designated projects, whether or not they were financed in whole or in part with the proceeds of such bonds. The full faith and credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only, and the bonds shall so state on their face, from the revenues of the designated project and the funds received from the sale or disposal thereof, and, if the authority so determines, by a trust indenture pledging such revenues, or, in certain instances

as provided in this part 2 by a mortgage of the property comprising such designated project and the revenues therefrom.

(b) Bonds for payment of the principal and interest to which the full faith and credit of the authority is pledged and for which the revenues of the authority or any part thereof may be pledged by a resolution or trust indenture of the authority; in certain instances as provided in this part 2, such bonds may be additionally secured by a mortgage on the property and revenues of the authority or any part thereof.

(2) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. The bonds and other obligations of the authority shall not be a debt of the state or the city and neither the state nor the city shall be liable thereon, nor in any event shall they be payable out of any funds other than those of the authority.

Source: L. 35: p. 538, § 14. CSA: C. 82, § 42. CRS 53: § 69-3-14. C.R.S. 1963: § 69-3-14.

29-4-215. Form of bonds. (1) The bonds of the authority shall be authorized by its resolution and issued in one or more series, and they shall bear such dates; mature at such times, not exceeding sixty years from their respective dates; bear interest at such rate, payable semiannually; be in such denominations, which may be made interchangeable; be in such form, either coupon or registered; carry such registration privileges; be executed in such manner; be payable in such medium of payment, at such places; and be subject to such terms of redemption, with or without premium, as such resolution or its trust indenture or mortgage may provide. The bonds may be sold at public or private sale, upon such terms and conditions as the authority shall determine. The bonds may be sold at such price as the authority shall determine.

(2) Pending the authorization, preparation, execution, or delivery of definite bonds, the authority may issue interim certificates or other temporary obligations to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form, contain such terms, conditions, and provisions, bear such dates, and evidence such agreements relating to their discharge or payment or the delivery of definite bonds as the authority may by resolution, trust indenture, or mortgage determine.

(3) In case any of the officers whose signatures appear on any bonds or coupons cease to be such officers before the delivery of such bonds, such signatures nevertheless shall be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

(4) The authority has power, out of any funds available therefor, to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest. All bonds so purchased shall be cancelled. This subsection (4) shall not apply to the redemption of bonds.

(5) Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., pertaining to investment securities.

Source: L. 35: p. 539, § 15. CSA: C. 82, § 43. CRS 53: § 69-3-15. C.R.S. 1963: § 69-3-15. L. 70: p. 111, § 7. L. 75: (5) amended, p. 218, § 59, effective July 16. L. 89: (1) amended, p. 1263, § 2, effective March 21.

29-4-216. Provisions of bond or mortgage. (1) In connection with the issuance of bonds or the incurring of any obligation under a lease, and in order to secure the payment of such bonds or obligations, the authority has the power:

(a) To pledge by resolution, trust indenture, mortgage subject to the limitations imposed in this section, or by other contract all or any part of its rents, fees, or revenues;

(b) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired or against permitting or suffering any lien thereon;

(c) To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any project or any part thereof or with respect to limitations on its right to undertake additional projects;

(d) To covenant against pledging all or any part of its rents, fees, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(e) To provide for the release of property, rents, fees, and revenues from any pledge or mortgage and to reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(f) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage, or other instrument and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof;

(g) To covenant as to what other or additional debt may be incurred by it;

(h) To provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(i) To provide for the replacement of lost, destroyed, or mutilated bonds;

(j) To covenant that the authority warrants the title to the premises;

(k) To covenant as to the fees and rentals to be charged, the amount, calculated as may be determined to be raised each year or other period of time by fees, rentals, and other revenues, and as to the use and disposition to be made thereof;

(l) To covenant as to the use of any or all of its property, real or personal;

(m) To create or to authorize the creation of special funds in which there shall be segregated:

(I) The proceeds of any loan or grant;

(II) All of the rents, fees, and revenues of any project or parts thereof;

(III) Any moneys held for the payment of the costs of operation and maintenance of such project or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(IV) Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and

(V) Any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds;

(n) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(o) To covenant against extending the time for the payment of bond interest, directly or indirectly, by any means or in any manner;

(p) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(q) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(r) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the authority with reference thereto;

(s) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(t) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(u) To covenant to surrender possession of all or any part of any project upon the happening of an event of default, as defined in the trust indenture, mortgage, lease, or contract with reference thereto and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such projects or

any part thereof, to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the authority itself might do, and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee;

(v) To vest in a trustee the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee, to limit liabilities thereof, and to provide the terms and conditions upon which the trustee or the holders of bonds or any proportion of them may enforce any such covenant;

(w) To make covenants other than and in addition to the covenants expressly authorized by this section, of like or different character;

(x) To execute all instruments necessary or convenient in the exercise of the powers granted in this section or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government or any purchaser of the bonds of the authority may reasonably require;

(y) To make such covenants and to do all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of the authority, tend to make the bonds more marketable; notwithstanding that such covenants, acts, or things may not be enumerated in this section. It is the intention of this section to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of Colorado, and no consent or approval of any judge or court shall be required thereof; except that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in section 29-4-217.

Source: L. 35: p. 541, § 16. CSA: C. 82, § 44. CRS 53: § 69-3-16. C.R.S. 1963: § 69-3-16.

29-4-217. Power to mortgage - when. (1) In connection with any project, the authority also has the power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(a) To vest in a government the right, upon the happening of an event of default as defined in such mortgage, to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government is the holder of any of the bonds secured by such mortgage;

(b) To vest in a trustee the right, upon the happening of an event of default as defined in such mortgage, to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government, if any, which aided in financing the project involved;

(c) To vest in other obligees the right, but only with the consent of such government, if any, which aided in financing the project involved, to foreclose such mortgage by judicial proceedings;

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid to foreclose such mortgage as to all or such part of the property covered thereby as such obligee, in its absolute discretion, shall elect; such institution, prosecution, and conclusion of any such foreclosure proceedings or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold.

Source: L. 35: p. 545, § 17. CSA: C. 82, § 45. CRS 53: § 69-3-17. C.R.S. 1963: § 69-3-17. L. 89: IP(1), (1)(b), and (1)(c) amended, p. 1264, § 3, effective March 21.

29-4-218. Remedies of an obligee of authority. (1) Any obligee of the authority has the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action, or proceeding in law or equity, all of which may be joined in one action, to compel the performance by the authority and the commissioners thereof, and any officer, agent, or employee of the authority of each and every term,

provision, and covenant contained in any trust indenture, mortgage, lease, or other agreement to which the authority is a party, and to require the carrying out of any or all covenants and agreements and the fulfillment of all duties imposed upon the authority by this part 2;

(b) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority;

(c) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any mortgage, lease, or contract of the authority.

Source: L. 35: p. 547, § 18. CSA: C. 82, § 46. CRS 53: § 69-3-18. C.R.S. 1963: § 69-3-18.

29-4-219. Additional remedies. (1) Any authority has the power, by its trust indenture, mortgage, lease, or other contract, to confer upon any obligee holding or representing a specified amount in bonds, lease, or other obligations the right, upon the happening of an event of default as defined in such instrument:

(a) By suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of any project of the authority or any part thereof. If such receiver is appointed, he may enter and take possession of such project or any part thereof and operate and maintain the same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do, and to keep such moneys in a separate account and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners thereof to account as if they were the trustees of an express trust.

Source: L. 35: p. 547, § 19. CSA: C. 82, § 47. CRS 53: § 69-3-19. C.R.S. 1963: § 69-3-19.

29-4-220. Remedies cumulative. All the rights and remedies conferred by this part 2 are cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any agreement with the authority.

Source: L. 35: p. 548, § 20. CSA: C. 82, § 48. CRS 53: § 69-3-20. C.R.S. 1963: § 69-3-20.

29-4-221. Limitations on remedies of obligee. No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in section 29-4-217. All property of the authority is exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the rights of obligees to foreclose any mortgage of the authority provided for in section 29-4-217, and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby which was issued on the full faith and credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

Source: L. 35: p. 548, § 21. CSA: C. 82, § 49. CRS 53: § 69-3-21. C.R.S. 1963: § 69-3-21.

29-4-222. Sale subject to government agreement. Notwithstanding anything in this part 2 to the contrary, any purchaser at a sale of real or personal property of the authority

pursuant to any foreclosure of a mortgage of the authority shall obtain title subject to any contract between the authority and the government relating to the supervision by the government of the operation and maintenance of such property and the construction of improvements thereon.

Source: L. 35: p. 549, § 22. CSA: C. 82, § 50. CRS 53: § 69-3-22. C.R.S. 1963: § 69-3-22.

29-4-223. Contracts with federal government. (1) In addition to the powers conferred upon the authority by other provisions of this part 2, the authority is empowered:

(a) To borrow money from the federal government to finance the construction of any project which such authority is authorized by this part 2 to undertake;

(b) To take over any land acquired by the federal government for the construction of a project; and

(c) To take over, lease, or manage any project so constructed or owned by the federal government and, to that end, to enter into any such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require in such connection.

(2) Such contracts, mortgages, trust indentures, leases, or other agreements may provide that the federal government has the right to supervise and approve the construction, maintenance, and operation of such project.

(3) It is the purpose and intent of this part 2 to authorize such authority to accept the cooperation of the federal government in the construction, maintenance, and operation and in the financing of the construction of any project which the authority is empowered by this part 2 to undertake. Such authority has full power to do all things necessary in order to secure such aid, assistance, and cooperation.

Source: L. 35: p. 549, § 23. CSA: C. 82, § 51. CRS 53: § 69-3-23. C.R.S. 1963: § 69-3-23.

29-4-224. Wage and labor conditions. Notwithstanding anything to the contrary contained in the housing authorities law or in any other provision of law, any housing authority is empowered to include in any construction contract let in connection with a housing project, as defined in said housing authorities law, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor and with any conditions or regulations which the federal government has imposed as a condition to its financial aid to said housing project.

Source: L. 37: p. 670, § 3. CSA: C. 82, § 55(1). CRS 53: § 69-3-24. C.R.S. 1963: § 69-3-24.

29-4-225. Insurance. A housing authority, in addition to its other powers, has the power to procure or agree to the procurement of insurance or guarantees from the federal government for the payment of any debts or parts thereof incurred by said authority, including the power to pay premiums on any such insurance.

Source: L. 37: p. 670, § 4. CSA: C. 82, § 55(2). CRS 53: § 69-3-25. C.R.S. 1963: § 69-3-25.

29-4-226. Exemption from special assessments. (1) The following shall be exempt from the payment of any special assessments to the state, any county, city and county, municipality, or other political subdivision of the state:

(a) A housing authority;

(b) The property of a housing authority;

(c) All property leased to a housing authority; and

(d) The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity:

- (I) That is wholly owned by an authority;
- (II) In which an authority has an ownership interest; or
- (III) In which an entity wholly owned by an authority has an ownership interest.

Source: L. 37: p. 671, § 5. CSA: C. 82, § 55(3). CRS 53: § 69-3-26. C.R.S. 1963: § 69-3-26. L. 2000: Entire section amended, p. 883, § 8, effective August 2.

29-4-227. Tax exemptions. The authority is exempt from the payment of any taxes or fees to the state or any subdivision thereof, or to any officer or employee of the state or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures, and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instruments, and, together with interest thereon, shall be exempt from taxes. All property leased to the authority for the purposes of a project shall likewise be exempt from taxation, as shall the income derived from the authority by the lessor under such lease. The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity that is wholly owned by an authority, an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority has an ownership interest shall likewise be exempt from taxation, and the income derived from the above entities by the lessor under a lease shall likewise be exempt from taxation.

Source: L. 35: p. 552, § 28. CSA: C. 82, § 56. CRS 53: § 69-3-27. C.R.S. 1963: § 69-3-27. L. 2000: Entire section amended, p. 883, § 9, effective August 2.

29-4-228. Reports. The authority shall, at least once a year, file with the mayor of the city a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part 2.

Source: L. 35: p. 552, § 29. CSA: C. 82, § 57. CRS 53: § 69-3-28. C.R.S. 1963: § 69-3-28.

29-4-229. Low rentals. It is the purpose and intent of this part 2 to authorize and impose a duty on the authority to provide safe and sanitary dwelling accommodations at such rentals that persons of low income can afford to live in such dwelling accommodations. To this end, the authority from time to time shall reduce its rents and other charges for such dwelling accommodations to the extent that it deems such action expedient; but the authority shall not reduce its rents or other charges if such action is in violation of any contract between the authority and an obligee or would result in an insufficiency of revenues from the project to meet the costs of the operation and maintenance thereof, to meet all obligations of the authority as same mature, and to create reasonable reserves for such contingencies as the authority determines.

Source: L. 35: p. 552, § 30. CSA: C. 82, § 58. CRS 53: § 69-3-29. C.R.S. 1963: § 69-3-29.

29-4-230. Previous housing authorities validated. The creation and organization of housing authorities pursuant to this part 2 together with all proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, with reference thereto are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 417, § 1. CSA: C. 82, § 59. CRS 53: § 69-3-30. C.R.S. 1963: § 69-3-30.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

29-4-231. Contracts and undertakings validated. All contracts, agreements, obligations, and undertakings of such housing authorities entered into prior to May 17, 1939, relating to financing or aiding in the development, construction, maintenance, or operation of any housing project, or to obtaining aid therefor from the United States housing authority including, without limiting the generality of the foregoing, loan and annual contributions contracts with the United States housing authority, agreements with municipalities or other public bodies, including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds relating to cooperation and contributions in aid of housing projects, payments, if any, in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and unsanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, with reference thereto, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 417, § 2. CSA: C. 82, § 60. CRS 53: § 69-3-31. C.R.S. 1963: § 69-3-31.

29-4-232. Notes and bonds validated. All proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, in or for the authorization, issuance, execution, and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project and all notes and bonds issued by housing authorities prior to May 17, 1939, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 418, § 3. CSA: C. 82, § 61. CRS 53: § 69-3-32. C.R.S. 1963: § 69-3-32.

PART 3

REHABILITATION ACT OF 1945

29-4-301. Short title. This part 3 shall be known and may be cited as the "Rehabilitation Act of 1945".

Source: L. 45: p. 617, § 2. CSA: C. 82, § 63. CRS 53: § 69-4-2. C.R.S. 1963: § 69-4-2.

29-4-302. Legislative declaration. It is determined and declared that there exist within the state of Colorado substandard and unsanitary areas, occasioned by inadequate planning, excessive land coverage, lack of proper light, air, and open space, defective design and arrangement of buildings, lack of proper sanitary facilities, and the existence of buildings, which, by reason of age, obsolescence, or physical deterioration, have become economic and social liabilities; that such conditions are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; and that such conditions impair

the economic value of wide areas, infecting them with economic blight which results in inability to pay reasonable taxes. It is hereby declared that the remedying of such conditions is in the public interest, and this part 3 is enacted to provide means whereby said areas may be redeveloped by private enterprise with such assistance from public funds as may be furnished in accordance with the provisions of this part 3.

Source: L. 45: p. 617, § 1. CSA: C. 82, § 62. CRS 53: § 69-4-1. C.R.S. 1963: § 69-4-1.

ANNOTATION

Law reviews. For article, "Condemnation and Redevelopment", see 28 Rocky Mt. L. Rev. 535 (1956).

29-4-303. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Area" means that portion of a municipality for which a plan of rehabilitation is adopted by the city council of a municipality as set out in this part 3.

(2) "Authority" means the agency created by ordinance of the city council of a municipality to carry out the development plan adopted for the area.

(3) "City attorney" means the official designated by the general laws of Colorado or by the charter of a municipality to be responsible for the handling of its legal affairs.

(4) "City auditor" means the official of a municipality who has charge of auditing the financial affairs of a municipality.

(5) "City council" means the city council of a city or the board of trustees of an incorporated town or the legislative body of a municipality, by whatever name said legislative body is designated by statute or by city charter.

(6) "City treasurer" means the official who is the custodian of the funds of a municipality.

(7) "Development plan" means the plan adopted by the city council of a municipality for the development of an area.

(8) "Mortgage" means any mortgage, deed of trust, pledge, or other instrument in writing by which any property, the proceeds thereof, or the income therefrom is made security for the repayment of any advance or loan of money as set out in this part 3.

(9) "Municipality" means any incorporated town or city of the state of Colorado whether organized under general laws or under special charter.

(10) "Planning commission" means the board or commission of the municipality whose duty it is under the statutes, charter, or ordinances to make plans for the growth and development of the municipality or to advise the executive officers of the municipality in the matter of planning.

(11) "Public grounds" of an area means those portions of the area set aside, as provided in this part 3, for streets, alleys, parks, playgrounds, and other public uses.

(12) "Reconstruction agency" means any corporation, copartnership, or person contracting to carry out in whole or in part the rebuilding under a development plan for an area.

Source: L. 45: p. 618, § 3. CSA: C. 82, § 64. CRS 53: § 69-4-3. C.R.S. 1963: § 69-4-3.

29-4-304. Preparation of development plan. (1) The planning commission of a municipality either on its own initiative or at the request of the city council of a municipality may prepare a suggested plan for the rehabilitation of any substandard or unsanitary area as defined in section 29-4-302.

(2) The preparation of the suggested plan shall include but shall not be limited to:

(a) Making a survey of the locality under consideration to determine its needs;

(b) Making a preliminary determination of the lands to be included in the proposed area;

- (c) Making a suggested plan for the development of the proposed area;
- (d) Preparing estimates of the cost of the acquisition of the land in the proposed area, of demolishing the structures thereon, and of doing the necessary improvement of the public grounds to be included therein;
- (e) Making the necessary plans for the financing of the proposed enterprise, including contacting and negotiating with agencies which might be interested in the financing thereof; and
- (f) The preparation of a report to the city council of the municipality on the proposed area.

Source: L. 45: p. 619, § 4. CSA: C. 82, § 65. CRS 53: § 69-4-4. C.R.S. 1963: § 69-4-4.

29-4-305. Assistance in preparation of plan. In the preparation of a suggested development plan for a proposed area, the planning commission is authorized to accept assistance from governmental and private agencies but has no power to provide for the repayment of such assistance unless expressly authorized to do so by ordinance of the city council of the municipality.

Source: L. 45: p. 619, § 5. CSA: C. 82, § 66. CRS 53: § 69-4-5. C.R.S. 1963: § 69-4-5.

29-4-306. Action on setting up of authority. (1) When the planning commission has completed its report on a suggested development plan for a proposed area and has presented the same to the city council of a municipality, such city council, if it deems the suggested plan desirable in whole or in part, by ordinance, may proceed to take the following steps, but the enumeration of such steps shall not be exclusive and shall not prevent the city council from taking the following steps:

- (a) Define the area by adopting in whole or in part or modifying the area outlined in the suggested plan;
- (b) Adopt the suggested plan, with such modifications as the city council determines, and make it the development plan for the area;
- (c) Set up an authority for the area and provide for the number of persons who shall constitute the authority and for the method of appointment and term thereof, including the filling of vacancies. The members of the authority may be either regular officials of the municipality or private persons; and in the case of private persons, the city council shall fix the compensation, if any, they are to receive.
- (d) Give the authority a name which shall include the words "rehabilitation authority" with some other word or words descriptive of the area (that is, each authority shall be designated the "..... Rehabilitation Authority"), filling in the blank space by the appropriate designation.

(2) Any such authority has the power, in the name of the municipality, to institute and defend all litigation affecting its powers and duties or in relation to the area and the property and rights connected therewith or incidental thereto and also has and may exercise the power of eminent domain on behalf of the municipality in the acquisition of real property in the area.

Source: L. 45: p. 619, § 6. CSA: C. 82, § 67. CRS 53: § 69-4-6. C.R.S. 1963: § 69-4-6.

29-4-307. Additional powers of authority. (1) In addition to the powers contained in section 29-4-306, the city council of a municipality may, by ordinance, give the authority of an area any or all of the additional powers set out in this section; and the enumeration of the following powers shall not be taken as a denial of the right of the city council to give the authority such other powers as the city council may determine to be expedient in order

to enable the authority to carry out the purposes set out in section 29-4-302 and outlined in the development plan for the area:

(a) The power to acquire, in the name of the municipality, the land in the area by purchase, gift, condemnation, or otherwise;

(b) The power to designate and set aside such part or parts of the area as may be necessary or desirable for public grounds;

(c) The power to vacate existing plats of the area or parts thereof and to replat the same and, with the aid of the proper municipal officials, to lay out, open, change, and establish streets, alleys, parks, playgrounds, or other public grounds;

(d) The power to remove or cause to be removed some or all of the existing structures in the area so as to permit reconstruction and the power to construct or arrange for the construction of public improvements on the public grounds of the area;

(e) The power to secure the necessary funds for the acquisition of the land in the area, the demolition of the existing structures, and the improvement of the public grounds; and for these purposes to borrow money, receive grants, and obtain financial assistance by such other means or methods as may be provided in the development plan for the area;

(f) The power to issue bonds or debentures in payment of moneys borrowed. Such bonds or debentures may be issued either with or without general municipal liability, but general liability bonds may only be issued after being authorized in the manner provided by the general laws of Colorado or by the charter of the municipality. A mortgage may be given on the property in an area, except the public grounds, and the proceeds thereof and the rents therefrom to secure the debentures.

(g) The power and the duty promptly to sell or give long-term leases on all or any part of the property in the area except the public grounds to a reconstruction agency, with the obligation upon the reconstruction agency to improve the property in accordance with the development plan of the area. All deeds or leases shall be executed in the name of the municipality, at the request of the authority, by the officers of the authority, unless some other method of execution is prescribed by the general laws of Colorado or by the charter of the municipality. The authorities shall not have power to construct improvements upon the said property other than public grounds and public buildings thereon, if any.

(h) The power to make such contracts, in the name of the municipality, as may be incidental to the execution of the other powers conferred upon the authority;

(i) The power to initiate and prosecute proceedings, under the general laws of Colorado or under the charter of the municipality, for the assessment of part of the cost of the land in the area to other property specially benefited by the rehabilitation of the area; and

(j) The power to deposit moneys of the authority not then needed in the conduct of its affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the authority may appoint, by written resolution, one or more persons to act as custodians of the moneys of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the authority requires.

Source: L. 45: p. 620, § 7. CSA: C. 82, 68. CRS 53: § 69-4-7. C.R.S. 1963: § 69-4-7. L. 79: (1)(j) added, p. 1618, § 16, effective June 8.

ANNOTATION

Law reviews. For article, "Urban Renewal for Urban Betterment", see 39 Dicta 291 — A Partnership of Public and Private Interests (1962).

29-4-308. Organization of authority. (1) The authority of an area shall proceed to organize for the performance of the duties for which it is created, and such organization shall include, but shall not be limited to, the following unless otherwise provided by the ordinance creating the authority:

(a) The adoption of bylaws which shall provide that a majority of the members of the authority constitutes a quorum for the transaction of business;

(b) The election from the members of the authority of a president and vice-president

and the appointment of a secretary and, if desirable, an assistant secretary. Neither of the latter need be members of the authority.

(c) The adoption of a seal for the authority.

(2) The city treasurer of the municipality shall be the treasurer of the authority. If the municipality has a city auditor, he shall be the auditor of the authority. Otherwise, the authority may appoint an auditor. The city attorney shall be the attorney for the authority. If the additional work cast upon the city treasurer, city auditor, or city attorney by reason of the affairs of the authority shall be so heavy as to require the employment of additional persons by any of said city officials, the expense of the employment of such additional persons shall be borne by the authority.

Source: L. 45: p. 622, § 8. CSA: C. 82, § 69. CRS 53: § 69-4-8. C.R.S. 1963: § 69-4-8.

29-4-309. Condemnation for a superior use. The purpose of condemnation for the rehabilitation of an area under this part 3 is declared to be for a superior public use, and property already devoted to one public use may be condemned for the purposes of this part 3.

Source: L. 45: p. 622, § 9. CSA: C. 82, § 70. CRS 53: § 69-4-9. C.R.S. 1963: § 69-4-9.

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

29-4-310. Area not wholly in one municipality. If a substandard or unsanitary area, as described in section 29-4-302, extends into two or more municipalities, such municipalities, by contract between the municipalities, may provide for the redevelopment of the area and for the part of the work to be done by each of the municipalities.

Source: L. 45: p. 622, § 10. CSA: C. 82, § 71. CRS 53: § 69-4-10. C.R.S. 1963: § 69-4-10.

29-4-311. Termination of an authority. The city council, by ordinance, may terminate an authority and provide for its remaining duties to be taken over by some other agency of the municipality.

Source: L. 45: p. 623, § 11. CSA: C. 82, § 72. CRS 53: § 69-4-11. C.R.S. 1963: § 69-4-11.

29-4-312. Appropriations by municipality. The rehabilitation of a substandard or unsanitary area, as defined in section 29-4-302, may be aided by appropriations to be made from time to time by the city council of a municipality from the general revenues of the municipality.

Source: L. 45: p. 623, § 12. CSA: C. 82, § 73. CRS 53: § 69-4-12. C.R.S. 1963: § 69-4-12.

29-4-313. Taxation. Every development plan for an area shall provide that the purchaser of any of the property of the area shall pay taxes thereon as upon any other property and shall also provide that the lessee of any part of the area shall pay taxes on the

improvements erected by the lessee on the leased land, and such development plan shall include a requirement that the lessee, in addition, shall pay to the county treasurer annually a sum equal to what would have been the taxes on the land in case of an outright purchase thereof.

Source: L. 45: p. 623, § 13. CSA: C. 82, § 74. CRS 53: § 69-4-13. C.R.S. 1963: § 69-4-13.

29-4-314. Supervision of reconstruction agency. It is the duty of the authority to keep informed as to the performance by any reconstruction agency of its obligations in the rehabilitation work, and the authority, in the name of and on behalf of the municipality, shall take any legal or other steps deemed by it advisable in case the reconstruction agency fails in the performance of its obligations.

Source: L. 45: p. 623, § 14. CSA: C. 82, § 75. CRS 53: § 69-4-14. C.R.S. 1963: § 69-4-14.

PART 4

VETERANS' HOUSING

29-4-401. Existing statutes no bar to creation of housing authority. Nothing in any existing statute of the state of Colorado shall prevent cities and towns, however organized, from creating veterans' housing authorities by ordinance.

Source: L. 47: p. 882, § 1. CSA: C. 82, § 76. CRS 53: § 69-5-1. C.R.S. 1963: § 69-5-1.

29-4-402. Cities and towns empowered to create housing authorities. All cities and towns, however organized, by ordinance may create veterans' housing authorities and provide their duties and powers and give preferences to veterans as to all housing constructed, purchased, or leased by or under the direction of such veterans' housing authorities.

Source: L. 47: p. 882, § 2. CSA: C. 82, § 77. CRS 53: § 69-5-2. C.R.S. 1963: § 69-5-2. L. 2003: Entire section amended, p. 914, § 20, effective August 6.

29-4-403. Veterans of world war II defined. (Repealed)

Source: L. 47: p. 882, § 3. CSA: C. 82, § 78. CRS 53: § 69-5-3. C.R.S. 1963: § 69-5-3. L. 2003: Entire section repealed, p. 914, § 21, effective August 6.

PART 5

COUNTY HOUSING AUTHORITY

29-4-501. Legislative declaration. (1) It is hereby declared:

(a) That there exists a housing shortage for agricultural workers, their families, and other families of low income in the state of Colorado with the result that many agricultural and other low income workers and their families are unable to find decent, safe, and sanitary housing;

(b) That such condition constitutes a menace to the health, safety, and welfare of the citizens of this state; and

(c) That it is in the public interest to authorize the organization of county housing authorities to provide housing facilities for agricultural and other low income workers and their families.

(2) The necessity in the public interest for the provisions enacted in this part 5 is declared a matter of legislative determination.

Source: L. 51: p. 444, § 1. CSA: C. 82, § 79. CRS 53: § 69-6-1. L. 61: p. 422, § 1. C.R.S. 1963: § 69-6-1.

29-4-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Authority" or "housing authority" means any of the county housing authorities created by this part 5.

(2) "Board" means the board of county commissioners of any county.

(3) "County" means any county within the state of Colorado.

(4) "Federal government" means the United States, the federal emergency administrator of public works, or any other agency or instrumentality, corporate or otherwise, of the United States.

(5) "Project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, commercial facilities, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking, to demolish, clear, remove, alter, or repair unsanitary or unsafe housing or to provide dwelling accommodations on financial terms within the means of persons of low income. The term "project" also applies to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith. The term "project" also applies to the provision of dwelling accommodations to persons, without regard to income, as long as the project substantially benefits persons of low income as determined by an authority.

(6) "State" means the state of Colorado.

Source: L. 51: p. 444, § 2. CSA: C. 82, § 80. CRS 53: § 69-6-2. L. 61: p. 422, § 2. C.R.S. 1963: § 69-6-2. L. 2002: (4) and (5) amended, p. 1937, § 2, effective June 7.

Editor's note: Section 4 of chapter 346, Session Laws of Colorado 2002, provides that the act amending subsections (4) and (5) applies only with respect to taxable years beginning after December 31, 2000.

29-4-503. Creation of housing authority. (1) Any twenty-five residents of the county may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such petition, the clerk of the board shall give notice of the time, place, and purpose of a public hearing at which the board will determine the need for such an authority in the county. Such notice shall be given at the county's expense by publishing a notice at least ten days preceding the day on which the hearing is to be held in a newspaper having a general circulation in the county or, if there is no newspaper, by posting such notice in at least three public places within the county at least ten days preceding the day on which the hearing is to be held.

(2) Upon the date fixed for said hearing, held upon notice as provided in this section, a full opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board shall determine whether there is a shortage of decent, safe, and sanitary dwelling accommodations in the county available to persons engaged in agricultural work, their families, and other low income families. If the board determines that such condition of shortage exists, the board shall adopt a resolution so finding and shall cause notice of such determination to be given to the chairman of the board, who shall thereupon appoint commissioners, as provided in either subsection (2) or (3) of section 29-4-504, to act as an authority. A certificate signed by such commissioners so appointed by the chairman of the board shall then be filed with the division of local government in the department of local affairs, and there remain of record, setting forth that a notice has been given and a public hearing has been held as aforesaid;

that the board made a determination of such shortage after such hearing; and that the chairman of the board has appointed them as commissioners to act as an authority. Upon the filing of such certificate with said division, the commissioners and their successors shall constitute a housing authority, which shall be a body corporate and politic.

(3) If the board, after a hearing, determines that there is not a shortage of decent, safe, and sanitary dwelling accommodations in the county available to persons engaged in agricultural work, to their families, and to other families of low income, it shall adopt a resolution denying the petition. After three months have expired from the denial of the petition, subsequent petitions may be filed and new hearings and determinations made thereon.

(4) In any suit, action, or proceeding involving the validity or enforcement of any contract, mortgage, trust indenture, or other agreement of the authority or involving any action taken by the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part 5 upon proof of the filing of the aforesaid certificate. A copy of such certificate, duly certified by the director of the division of local government, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and the contents thereof.

(5) If the board of county commissioners denies any petition filed for the creation of a housing authority in accordance with the provisions of subsection (3) of this section and the residents of such county determine that there is in fact a shortage of decent, safe, and sanitary dwelling accommodations in the county, a petition may be filed with the board requesting that the question of the approval or disapproval of creating a housing authority be submitted to a vote of the qualified electors of such county. If the petition, which may consist of one or more separate copies, contains the signatures and residence addresses of qualified electors of such county equal in number to not less than five percent of the votes cast for governor or for president and vice president of the United States at the last preceding general election held within such county, the board shall cause the question of the creation of a housing authority to be submitted at the next general election. All registered electors within the county shall be eligible to vote on the question, which shall be conducted, insofar as possible, in accordance with the provisions of sections 29-4-604 to 29-4-607; except that the question to be voted on shall be the creation of a housing authority, and the provisions of the "Uniform Election Code of 1992" shall apply.

Source: L. 51: p. 445, § 3. CSA: C. 82, § 81. CRS 53: § 69-6-3. L. 61: p. 423, § 3. C.R.S. 1963: § 69-6-3. L. 65: p. 728, § 3. L. 73: p. 800, § 2. L. 76: (2) and (4) amended, p. 597, § 10, effective July 1. L. 80: (5) amended, p. 410, § 16, effective January 1, 1981. L. 92: (5) amended, p. 873, § 100, effective January 1, 1993.

Cross references: For the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

ANNOTATION

Fact-finding under this section is legislative proceeding. The fact-finding function of the board of county commissioners' proceeding under the county housing authority act is the exercise of a legislative directive and not a quasi-judicial proceeding. *Smith v. Waymire*, 29 Colo. App. 544, 487 P.2d 599 (1971).

And not reviewable under rule 106, C.R.C.P. The fact-finding called for in this section is legislative and therefore not reviewable

under rule 106, C.R.C.P., and since the board finds the facts but passes no judgment thereon, it is given no judicial power. *Smith v. Waymire*, 29 Colo. App. 544, 487 P.2d 599 (1971).

For, when the people are given the right to accept or reject a police regulation, it is a legislative rather than a quasi-judicial or administrative power that it involved. *Smith v. Waymire*, 29 Colo. App. 544, 487 P.2d 599 (1971).

29-4-504. Appointment of commissioners. (1) The authority shall consist of commissioners appointed by the board in the manner provided in either subsection (2) or (3) of this section.

(2) The board may provide that the members of the board shall ex officio be appointed

the commissioners of the authority. The terms of office of such commissioners shall be coterminous with their terms of office on the board. The chairman of the board shall ex officio be chairman of the commissioners, and the commissioners shall select from their members a vice-chairman.

(3) (a) The board may provide that an authority shall consist of no more than eleven commissioners appointed by the chairman of the board, who shall designate the first chairman. Not more than one of such commissioners may be a county official. In the event that a county official is appointed as a commissioner of an authority, acceptance or retention of such appointment shall not be deemed a forfeiture of his or her office, or incompatible therewith, or affect his or her tenure or compensation in any way. The term of office of a commissioner of an authority who is a county official shall not be affected or curtailed by the expiration of the term of his or her county office.

(b) The commissioners who are appointed under the provisions of this subsection (3) shall be designated by the chairman of the board to serve for terms that are staggered from the date of their appointment such that, to the extent possible, the terms of an equal number of commissioners end each year. Thereafter, the term of office shall be five years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies other than by reason of expiration of terms shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The chairman of the board shall file with the county clerk and recorder a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The authority shall select from its members a vice-chairman and a chairman when the office of the first chairman becomes vacant.

(3.5) Notwithstanding any other provision to the contrary, commencing on and after August 2, 2000, as new appointments are made to authorities pursuant to subsection (3) of this section, such appointments shall be made so that not less than one commissioner of each authority shall be an individual who is directly assisted by the authority and who may, if provided in a plan of the authority, be elected by individuals directly assisted by the authority. This subsection (3.5) shall not apply to any authority with fewer than three hundred public housing units if the authority provides reasonable notice to the resident advisory board of the opportunity for not less than one individual to serve as a commissioner of the authority as provided in this subsection (3.5) and, within a reasonable time after receipt by such board of the notice, the authority is not notified of the intention of any such individual to serve as a commissioner.

(4) A commissioner shall receive no compensation for his services, but shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties.

(5) An authority may employ a secretary who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may call upon the corporation counsel or county attorney for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

(6) The board may, by resolution, change the method of appointment of commissioners after a proper notice and hearing, and set a date for the changed method to become effective.

(7) No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any project or in any property included or planned to be in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. Upon disclosure such commissioner or employee shall not be allowed to participate in any action by the authority for acquisition of such property or making such contract.

(8) For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the board, but only after a hearing and after he has been given a copy of the charges at least ten days prior to such hearing and an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings together with the charges and findings thereon shall be filed in the office of the clerk of the board.

(9) The terms of office of present commissioners of authorities created under this section shall expire July 1, 1973. Prior to such date, the board shall appoint new commissioners, as provided in subsections (2) and (3) of this section, such appointments to be effective July 1, 1973.

Source: L. 51: p. 447, § 4. CSA: C. 82, § 82. CRS 53: § 69-6-4. L. 61: p. 425, § 4. C.R.S. 1963: § 69-6-4. L. 73: p. 801, § 3. L. 95: (5) amended, p. 1105, § 44, effective May 31. L. 99: (3) amended, p. 130, § 4, effective March 24. L. 2000: (3.5) added, p. 881, § 5, effective August 2.

29-4-505. Powers of authority. (1) A housing authority shall constitute a public body, corporate and politic, exercise public and essential governmental functions, and have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this part 5 (but not the power to levy and collect taxes or special assessments), including the following powers:

- (a) To sue and be sued;
- (b) To have a seal and to alter the same at pleasure;
- (c) To have perpetual succession;
- (d) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;
- (e) To make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with this part 5 to carry into effect the powers and purposes of the authority;
- (f) To exercise any of the public powers granted to city housing authorities under part 2 of this article;
- (g) To do all acts and things necessary or convenient to carry out the powers given in this part 5 or the purposes hereof.

Source: L. 51: p. 448, § 5. CSA: C. 82, § 83. CRS 53: § 69-6-5. L. 61: p. 426, § 5. C.R.S. 1963: § 69-6-5.

29-4-506. Policy of authority. (1) It is declared to be the policy of this state that each authority shall manage and operate its projects in an efficient manner so as to enable it to fix the rentals or payments for dwelling accommodations at low rates consistent with providing adequate dwelling accommodations for persons of low income.

(2) To this end the authority shall fix the rentals or payments for dwellings in its projects at no higher rates than it finds to be necessary in order to produce revenues which, together with all other available moneys, revenues, income, and receipts of the authority from whatever sources derived including federal financial assistance necessary to maintain the low rent character of the projects, will be sufficient to cover:

- (a) Reasonable and proper costs of management, operation, maintenance, and improvement of the projects;
 - (b) Payments in lieu of taxes as it determines are consistent with the maintenance of the low rent character of projects;
 - (c) The establishment of reasonable and proper reserves; and
 - (d) The payment of currently maturing installments of principal and interest on any indebtedness incurred in connection with the project by the authority.
- (3) Rentals or payments for dwellings shall be established and the projects administered, insofar as possible, so as to assure that any federal financial assistance required shall

be strictly limited to amounts and periods necessary to maintain the low rent character of the projects. In the operation or management of a project, the authority may enter into any agreement with the federal government respecting tenant eligibility.

Source: L. 51: p. 449, § 6. CSA: C. 82, § 84. CRS 53: § 69-6-6. L. 61: p. 427, § 6. C.R.S. 1963: § 69-6-6.

29-4-507. Exemption from special assessments - tax exemptions. The authority and the property of the authority shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities in sections 29-4-226 and 29-4-227. In lieu of taxes on its property, the authority may agree to make such annual payments to the taxing bodies in which the projects are situated as it finds consistent with the maintenance of the low rent character of the projects or the achievement of the purposes of this part 5.

Source: L. 51: p. 449, § 7. CSA: C. 82, § 85. CRS 53: § 69-6-7. L. 61: p. 428, § 7. C.R.S. 1963: § 69-6-7. L. 2002: Entire section amended, p. 1938, § 3, effective June 7.

29-4-508. Boundaries of authority. The boundaries of such authority shall be the boundaries of the county, but in no event shall they include the whole or a part of any city unless the governing body of said city passes a resolution authorizing the inclusion of said city within the boundaries of such authority nor may it include any area within the county which at the time of the organization of such housing authority was included within the boundaries of a housing authority previously established under part 2 of this article; but nothing in this section shall be deemed to prevent the organization of a housing authority subsequently established by any such city embracing any area within the county exclusive of the area of any project owned or operated by an authority organized under this part 5.

Source: L. 51: p. 449, § 8. CSA: C. 82, § 86. CRS 53: § 69-6-8. L. 61: p. 428, § 8. C.R.S. 1963: § 69-6-8.

29-4-509. Conformity with building laws. All projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated.

Source: L. 51: p. 450, § 9. CSA: C. 82, § 87. CRS 53: § 69-6-9. L. 61: p. 429, § 9. C.R.S. 1963: § 69-6-9.

Cross references: For county planning and building codes, see article 28 of title 30; for municipal zoning restrictions, see part 3 of article 23 of title 31.

PART 6

PUBLIC HOUSING - ELECTION

29-4-601. Applicability of part 6. For the purposes of this part 6, there shall be excluded from the term "project" or "housing project" any such project where there is in existence on or after October 1, 1963, a contract for financial assistance between any city, city and county, authority, housing authority, or county housing authority, and the federal government in respect to such project. Notwithstanding any other provisions of this part 6, no vote of the registered electors shall be required in order to make expenditures for preliminary surveys and planning of projects or housing projects, or in order to authorize the reconstruction, replacement, restoration, or remodeling of any project or housing project, or part thereof, which has deteriorated or become damaged or destroyed, from any cause, nor shall such vote be required in order to authorize the acquisition of land for or the

construction or erection of such service building, structures, or facilities as may be necessary or convenient for the efficient and proper operation or management of any authorized project or housing project.

Source: L. 63: p. 553, § 1. C.R.S. 1963: § 69-8-1. L. 87: Entire section amended, p. 323, § 69, effective July 1.

29-4-602. Posting and publication of notice - petition. (1) A city, city and county, authority, housing authority, or county housing authority shall not, on or after October 1, 1963, commence the construction of or acquire by purchase, lease, or otherwise any project, housing project, or addition to an existing project or housing project, unless it first posts notice of such proposed action, specifying the exact nature of the project to be undertaken, in the office of the city clerk of any city or of the county clerk and recorder of any county within which such project is proposed to be located and publishes a copy of such notice once each week for three successive weeks in some daily or weekly newspaper having a general circulation within the area of the city, city and county, authority, housing authority, or county housing authority within which the project is proposed to be located. If, within thirty days after the posting and the completion of the publication of such notice, a petition, as described in subsection (2) of this section, is filed with the governing body of the city, city and county, authority, housing authority, or county housing authority proposing such action requesting that the question of the approval or disapproval of the project be first submitted to a vote of the registered electors, such city, city and county, authority, housing authority, or county housing authority shall not commence the construction of or acquire such project or housing project until a majority of the votes cast by the registered electors of such city, city and county, authority, housing authority, or county housing authority has been cast in favor of such act at an election called for such purpose pursuant to the provisions of this part 6. If no such petition is filed within said thirty-day period, the authority may proceed with such project.

(2) The petition, one or more copies of which may be submitted and treated as one petition, shall be addressed by name to the city, city and county, authority, housing authority, or county housing authority proposing such action and shall contain: The identification of the project or action proposed as specified in the notice provided in subsection (1) of this section; a request that the question of the approval or disapproval of such proposed project be submitted to the registered electors of the city, city and county, authority, housing authority, or county housing authority proposing such action; and the signatures and residence addresses of registered electors of such city, city and county, authority, housing authority, or county housing authority equal in number to not less than five percent of the votes cast for governor or for president of the United States at the last preceding general election held within such city, city and county, authority, housing authority, or county housing authority; except that, in cities, cities and counties, authorities, housing authorities, and county housing authorities having a population of more than three hundred thousand persons as determined by the last preceding federal census, only the signatures of registered electors equal in number to three percent of the votes cast at the last preceding general election for governor or president held within such city, city and county, authority, housing authority, or county housing authority shall be required on said petition in order to require an election as provided in this section.

Source: L. 63: p. 554, § 1. C.R.S. 1963: § 69-8-2. L. 65: p. 729, § 4. L. 87: Entire section amended, p. 324, § 70, effective July 1.

29-4-603. Cooperative agreement - costs of election. When, pursuant to the provisions of this part 6, an election is required in order to authorize an authority or housing authority to construct or acquire a project or housing project, the cooperation agreement between such authority or housing authority and the governing body of the city, city and county, or county from which such cooperation agreement must be obtained shall make provision for the payment of the costs of such election and all cities as defined in article 55

of title 24, C.R.S., and parts 1 and 2 of this article, and cities and counties and counties as defined in part 5 of this article shall have the power to assume and pay for the costs of such election or to lend or donate sufficient money to an authority or housing authority for such purpose.

Source: L. 63: p. 555, § 1. C.R.S. 1963: § 69-8-3.

29-4-604. Election - resolution. (1) When, pursuant to the provisions of this part 6, an election of the registered electors of a city, city and county, authority, housing authority, or county housing authority is required in order to authorize any proposed act, said election may be held either concurrently with any general election held under the laws of the state of Colorado throughout the area of the city, city and county, authority, housing authority, or county housing authority calling the election or at a special election called for such purpose. The council, board of commissioners, or other governing body of the city, city and county, authority, housing authority, or county housing authority shall call such election by resolution, which resolution shall:

(a) Specify the objects and purposes of the election, including specifically the particular act which is proposed and which requires the approval of the registered electors;

(b) Specify the day and hours of such election, which day and hours may be the same as those of any concurrent general election;

(c) Provide for the appointment and compensation of judges of election, and if the election is to be held concurrently with a general election, the resolution shall recite that the judges of the concurrent general election shall serve as the judges for the election held in accordance with this part 6 and provide for the additional compensation, if any, which such persons are to receive as judges of the election held in accordance with this part 6;

(d) Designate the precincts and polling places for such election. All precincts and polling places for a concurrent general election which are located within the boundaries of the city, city and county, authority, housing authority, or county housing authority calling the election under this part 6 shall likewise be designated as the precincts and polling places of the election under this part 6. In the event that a portion of any precinct for the concurrent general election extends beyond the boundaries of the city, city and county, authority, housing authority, or county housing authority calling the election under this part 6, and in the event that the polling place for such precinct is beyond such boundaries, such polling place may nevertheless be designated as a polling place for the election under this part 6. No judge of the concurrent general election, serving at a polling place so designated as a polling place for the election under this part 6, shall be disqualified from also serving as a judge of this election by reason of the fact that he or she resides in the portion of the precinct which is beyond the boundaries of the city, city and county, authority, housing authority, or county housing authority calling the election.

(e) Set forth the question to be submitted to the registered electors and the form of the ballot. The question to be submitted shall be worded in a clear and concise manner.

(f) Specify the estimated cost of the proposed construction or acquisition;

(g) Set forth the location of the proposed project, housing project, addition, or improvement.

Source: L. 63: p. 555, § 1. C.R.S. 1963: § 69-8-4. L. 87: IP(1), (1)(a), and (1)(e) amended, p. 325, § 71, effective July 1.

29-4-605. Notice of election. (1) Upon the adoption of such election resolution, notice of such election shall be given as follows:

(a) By publication of a full copy of the election resolution once each week for three successive weeks in some daily or weekly newspaper having a general circulation within the area of the city, city and county, authority, housing authority, or county housing authority calling such election, the first publication to be not less than forty-five days nor more than sixty days before the general election at which the question is to be submitted;

(b) By posting or causing to be posted a full copy of the election resolution in each polling place designated as a polling place for such election, which notice shall be posted at all times during the hours that such polls are open for the election;

(c) By having available, at the request of all interested persons, at the principal offices of the city, city and county, authority, housing authority, or county housing authority, and during regular business hours, full copies of such election resolution.

Source: L. 63: p. 556, § 1. C.R.S. 1963: § 69-8-5.

29-4-606. Conduct of election. Said election shall be conducted in all respects in accordance with the general election laws of this state insofar as the same are applicable and not inconsistent with the provisions of this part 6.

Source: L. 63: p. 557, § 1. C.R.S. 1963: § 69-8-6.

Cross references: For the general election laws, see article 1 of title 1.

29-4-607. Count of ballots - canvass - results of election. At the hour designated for closing in the election resolution, the ballot boxes or voting machines in the several polling places shall be closed, the ballots counted, and the returns thereof made to the council, board of commissioners, or other governing body calling the election. At or before the next regular meeting of the council, board of commissioners, or other governing body calling the election, next succeeding the date of such election, such council, board of commissioners, or governing body shall canvass the returns and determine and declare the results of the election, and if a majority of the votes cast at such election have been cast in favor of an act which has been so proposed, the city, city and county, authority, housing authority, or county housing authority shall be deemed to have proper authority to proceed with the same in accordance with the authority so granted, but not otherwise.

Source: L. 63: p. 557, § 1. C.R.S. 1963: § 69-8-7.

PART 7

HOUSING AND BUSINESS DEVELOPMENT AND FINANCING

29-4-701. Short title. This part 7 shall be known and may be cited as the "Colorado Housing and Finance Authority Act".

Source: L. 75: Entire section added, p. 970, § 1, effective April 19. L. 87: Entire section amended, p. 1190, § 1, effective May 20.

Editor's note: This section was enacted as § 29-4-700.1 in House Bill 75-1026 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-702. Legislative declaration. (1) The general assembly finds and declares that there is a shortage in Colorado of decent, safe, and sanitary housing which is within the financial capabilities of low- and moderate-income families. In order to alleviate the high cost of construction loans and home mortgage interest costs for such families, the general assembly believes that it is essential that additional public moneys be made available, through the issuance of revenue bonds, to assist both private enterprise and governmental entities in meeting critical housing needs. The general assembly also finds and declares that the compelling need within the state for such assistance can best be met by the establishment of a quasi-governmental and corporate entity vested with the powers and duties specified in this part 7.

(2) The general assembly further finds and declares that many housing facilities occupied by low- and moderate-income families use excessive and unnecessary amounts of

energy for heating and other home uses due to inadequate insulation or to the absence of other design features or materials which reduce total home energy requirements; that high costs impair the ability of such families to afford decent, safe, and sanitary housing facilities; that many such facilities do not conform to building, housing maintenance, fire, health, or other state, county, or municipal codes or standards applicable to housing; that many such facilities are located in, and by their condition contribute to, deteriorating neighborhoods; that many such facilities are inadequate for the number of persons occupying them; that many such facilities cannot be repaired or improved within the financial capabilities of the low- or moderate-income owners or occupants; and that existing private and public means of enterprise and investment cannot provide financing or assistance on terms and conditions within the means of many such low- or moderate-income families. These conditions are adverse to the safety, health, and welfare of the citizens of this state and are contrary to the public policies of promoting the conservation of scarce energy resources, of minimizing the impact of higher costs on the ability of low- and moderate-income families to afford decent, safe, and sanitary housing facilities, and of preventing and eliminating blight in urban and rural areas. The general assembly therefore further finds and declares that it is a valid public purpose to preserve and promote the safety, health, and welfare of the citizens of this state by the exercise of the powers specified in this part 7.

(3) The general assembly further finds and declares that there exists in this state a need to promote sound economic development, to maintain employment, and to encourage job opportunities in areas of unemployment and underemployment by assisting in the provision of facilities for business enterprises, including profit and nonprofit enterprises and particularly enterprises of small and moderate size, by assisting in the provision of capital to such business enterprises, and by otherwise supporting such business enterprises. The general assembly therefore finds and declares that it is a valid public purpose to preserve and promote the safety, health, and welfare of this state and its inhabitants by the exercise of the powers specified in this part 7 to finance the acquisition, construction, reconstruction, rehabilitation, improvement, and equipping of facilities for business enterprises, including profit and nonprofit enterprises and particularly enterprises of small and moderate size, by private persons and political subdivisions of this state, to finance loans to and to make equity investments in such business enterprises for capital purposes, and to otherwise support such business enterprises.

(4) The general assembly further finds and declares that the purpose of this part 7 is to create the Colorado strategic seed fund to meet the special needs of entrepreneurs and small business operators in Colorado who would not otherwise be able to obtain funding for the development of ideas into viable and marketable products and services which would enhance the economic growth and development of Colorado, that this fund will be used to establish operating seed funds for investment in small businesses, and that this investment will, in turn, lead to further growth, diversification, and improvement of the Colorado economy.

(5) The general assembly further finds and declares:

(a) That there exists a need to leverage private sector investment in new and innovative products, in entrepreneurial activity, and in economic development finance and that, therefore, state assistance for development finance should reflect a leveraging investment strategy; and

(b) That the lending and investment of moneys to develop and improve the economy of the state requires specialized and unique knowledge, skill, and experience.

(6) The general assembly further finds and declares that the investment strategy of the managers of the operating seed funds should be:

(a) To invest in companies in the earliest stages of their development;

(b) To invest in companies which have exceptional merit and which will be located within the state of Colorado;

(c) To invest in companies in which the founding entrepreneurs have made significant individual investments;

(d) To invest in companies whose success will result in the creation of jobs in Colorado;

(e) To invest in companies which will attract other sources of venture capital for long-term development;

- (f) To invest in attractive growth companies which are coupled with the state's business incubators;
- (g) To assist companies with direct and ongoing business consultation to establish a viable management structure and strategic plan;
- (h) To provide an opportunity for subsequent financing for follow-up operations of successful companies;
- (i) To limit the amount invested by a manager in investments outside of Colorado to not more than fifty percent of the capital of an operating seed fund.

Source: L. 73: p. 805, § 1. C.R.S. 1963: § 69-11-1. L. 76: Entire section amended, p. 688, § 1, effective April 19. L. 77: (2) amended, p. 1412, § 1, effective June 19. L. 82: (3) added, p. 461, § 1, effective April 23. L. 87: (3) amended, p. 1190, § 2, effective May 20. L. 88: (4) to (6) added, p. 1101, § 1, effective May 29.

Editor's note: This section was originally numbered as § 29-4-701 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-703. Definitions - rules. As used in this part 7, unless the context otherwise requires:

- (1) "Authority" means the Colorado housing and finance authority created by this part 7.
- (2) "Board" means the board of directors of the Colorado housing and finance authority.
- (3) "Bond" means any bond, note, or other obligation of the Colorado housing and finance authority authorized to be issued under this part 7.
- (3.1) "Capital" means funds that are provided for the research, development, refinement, or commercialization of a product or process, and funds that are provided for the operation of a business enterprise, including but not limited to the cost of personnel, rent, administrative services, utilities, insurance, equipment, raw materials, work in progress and stock in trade, or debt service on the financing thereof, or such other corporate purposes as may be approved by the board. "Capital" shall not include the cost of facilities that are financed by the authority as a project pursuant to this part 7.
- (3.5) "County" means any county within this state.
- (4) "Executive director" means the executive director of the Colorado housing and finance authority appointed by the board of directors of said authority.
- (4.5) (Deleted by amendment, L. 2007, p. 703, § 1, effective May 3, 2007.)
- (5) "Family" means two or more persons, whether or not related by blood, marriage, or adoption, who live or expect to live together as a single household in the same home, a single person who is either at least sixty-two years of age or has a disability, or such other single persons as the board may by rule determine to be eligible for assistance under this part 7.
- (5.1) "Federal government" means the United States and any agency or instrumentality, corporate or otherwise, of the United States.
- (5.2) "Financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase, loan agreement, participation agreement, loan purchase agreement, or any other agreement, or any combination thereof, entered into in connection with the financing of a project or housing facility or the provision of capital pursuant to this part 7.
- (5.3) "Governing body" means the board, council, officer, or group charged with exercising the legislative power of a government.
- (5.4) "Government" means the federal government, the state government, and any county, municipality, or state agency.
- (5.5) "Home improvement loan" means a loan of money for the alteration, repair, or improvement of an existing housing facility. The term does not include a loan for a pool, hot tub, or any other construction not directly improving the structural integrity, general appearance, or living conditions within the housing facility.

(6) "Housing facility" means any work or undertaking that is designed and financed pursuant to this part 7 for the primary purpose of providing decent, safe, and sanitary dwelling accommodations. Such dwelling accommodations may provide for separate, shared, or congregate facilities. "Housing facility" may include any buildings, land, equipment, facilities, or other real or personal property:

(a) Found necessary by the authority to insure required occupancy or balanced community development; or

(b) Found necessary or desirable by the authority for sound economic or commercial development of a community.

(7) "Housing facility loan" means a loan of money, including advances and temporary and permanent loans, for the construction, reconstruction, rehabilitation, or purchase of a housing facility.

(8) "Lender" means any state bank chartered by the state of Colorado or any national banking association located in Colorado, state or federal savings and loan association located in Colorado, FHA-approved mortgagee, insurance company, mortgage banking or other financial institution, or public or private entity providing economic development assistance approved by the board.

(9) "Loan to lender" means a loan of money to a lender.

(10) "Low-income family" and "low- or moderate-income family" mean a family whose income is insufficient to secure decent, safe, and sanitary housing provided by private industry without loans or other incentives made by the authority or federal subsidies and whose income is below respective income limits established by the board by rule, taking into consideration such factors as the following:

(a) The amount of the total income of such family available for housing needs;

(b) The size of the family;

(c) The cost and condition of housing facilities available;

(d) The ability of such family to compete successfully in the private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing; and

(e) Standards established by various programs of the federal government for determining eligibility based on income of such family.

(11) "Mortgage" means a mortgage, deed of trust, or other instrument constituting a first lien on real property in this state and improvements constructed or to be constructed thereon or on a leasehold under a lease having a remaining term, at the time such mortgage is acquired, of not less than the term for repayment of the obligation secured by such mortgage.

(12) "Mortgage loan" means a loan of money, including advances and temporary loans, for the construction, reconstruction, rehabilitation, purchase, or refinancing of a housing facility, which loan is evidenced by an obligation secured by a mortgage.

(12.1) "Municipality" means any city, including without limitation any city or county operating under a home rule or special legislative charter, or town within this state.

(12.4) "Project" means a work or improvement that is or will be located in this state, including but not limited to real property, buildings, equipment, furnishings, and any other real and personal property or any interest therein, financed, refinanced, acquired, owned, constructed, reconstructed, extended, rehabilitated, improved, or equipped, directly or indirectly, in whole or in part, by the authority and that is designed and intended for the purpose of providing facilities for manufacturing, warehousing, commercial, recreational, hotel, office, research and development, or other business or economic purposes, including but not limited to machinery and equipment deemed necessary for the operation thereof, excluding raw material, work in process, or stock in trade. "Project" includes more than one project or any portion of a project, but shall not include a housing facility or any portion thereof unless the authority elects to treat such housing facility or portion thereof as a project. "Project" shall not include the financing by the authority of any county or municipal public facilities beyond the boundaries of the project, except to the extent that such facilities are adjacent to the project and support the operation of the project.

(12.5) "Project costs" means the sum total of all costs incurred in the development of a project which are approved by the authority as reasonable and necessary. "Project costs" includes, but is not limited to:

- (a) The cost of acquiring real property and any buildings thereon, including but not limited to payments for options, deposits, or contracts to purchase properties;
- (b) The cost of site preparation, demolition, and development;
- (c) Any expenses relating to the issuance of bonds or notes;
- (d) Fees in connection with the planning, execution, and financing of the project, such as those of architects, engineers, attorneys, accountants, and the authority;
- (e) The cost of studies, surveys, plans and permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs incurred during construction;
- (f) The cost of construction, rehabilitation, reconstruction, and equipping of the project, not including the cost of raw materials, work in process, and stock in trade;
- (g) The cost of land improvements, such as landscaping and off-site improvements;
- (h) Expenses in connection with initial occupancy of the project;
- (i) A reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, the sponsor;
- (j) An allowance established by the authority for contingency reserves and reserves for any anticipated operating deficits after completion of the project; and
- (k) The cost of other items that the authority determines to be reasonable and necessary for the development of the project, including but not limited to relocation costs, utility connection fees, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the bonds and notes.

(12.6) "Project plan" means the plan for a project or projects and includes but is not limited to:

- (a) A map or any other appropriate representation of the area and the location of the project;
- (b) A statement of proposed land uses;
- (c) Any proposed amendments to, changes in, or variances from the master plan, official map, or zoning regulations or other land use regulations, codes, or ordinances of the county or municipality in which the project is to be located;
- (d) A proposal for the acquisition of real property;
- (e) A proposal for the demolition and removal of existing structures;
- (f) A description of the project;
- (g) A statement of the plan's relationship to any officially adopted objectives of the county or municipality as to land uses, density of population, traffic, public transportation, public utilities, recreational and community facilities, other public improvements, and the protection of the environment;
- (h) A statement of the provision being made for the temporary and permanent relocation of any persons who may be displaced by the construction of the project;
- (i) A proposed time schedule for the effectuation of the plan; and
- (j) Additional statements or documentation as the authority may deem appropriate.

(12.8) "Real property" means all lands and franchises and interests in land located within this state, including lands under water and riparian rights, space rights and air rights, and any and all other things usually included within said term. "Real property" includes any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable.

(12.9) "Small business" means a profit or nonprofit enterprise of small or moderate size, as determined by the board pursuant to regulation taking into consideration such factors as the following:

- (a) The net assets of the enterprise;
- (b) The number of employees involved or to be involved in the normal operation of the project;
- (c) The total number of employees involved or to be involved in the normal operation of the enterprise as a whole;
- (d) The type, size, and cost of the project; and

(e) Applicable standards and criteria periodically applied by the federal government in administering assistance programs for enterprises of small or moderate size.

(13) "Sponsor" means an individual, joint venture, partnership, limited partnership, trust, corporation, cooperative, condominium, association, public body, including the authority, or any other legal entity or combination thereof, which:

(a) The authority has approved as qualified to own, construct, acquire, rehabilitate, operate, lease, manage, or maintain part or all of a housing facility or a project; and

(b) Except for a county, municipality, or other public body, has agreed to subject itself to the regulatory powers of the authority.

(14) Repealed.

(15) "State agency" means any board, authority, agency, department, commission, public corporation, body politic, or instrumentality of this state other than a municipality or a county.

(16) Repealed.

Source: **L. 73:** p. 805, § 1. **C.R.S. 1963:** § 69-11-2. **L. 75:** (6) amended and (6.5), (7.5), (9), (10), and (11) added, p. 970, § 2, effective April 19. **L. 76:** (11) amended and (12) added, p. 689, § 2, effective April 19. **L. 77:** (5), (6), (8), and (9) amended, p. 1416, § 1, effective May 14; (5.5) added, (11) amended, and (12) repealed, pp. 1413, 1415, §§ 2, 6, effective June 19. **L. 82:** (6) R&RE, p. 471, § 1, effective April 15; (8) amended, (13) R&RE, and (3.5), (5.1), (5.2), (5.3), (5.4), (12.1), (12.4), (12.5), (12.6) (12.8), (12.9), (15), and (16) added, pp. 461, 462, § 2, 3, 4, effective April 23. **L. 84:** (4.5) added, p. 807, § 1, effective April 13. **L. 85:** IP(6) amended, p. 1040, § 1, effective July 1. **L. 87:** (1) to (3), (4), (5.2), (8), (12.4), and IP(13) amended, (3.1) added, and (16) repealed, pp. 1191, 1197, §§ 3, 21, effective May 20. **L. 93:** (5) amended, p. 1669, § 84, effective July 1. **L. 2007:** (3), (4.5), (5), (5.2), (5.5), (6), IP(10), (12), and (12.4) amended, p. 703, § 1, effective May 3.

Editor's note: This section was originally numbered as § 29-4-702 in C.R.S. 1973, but this section and the subsections within this section were renumbered on revision in the 1977 replacement volume for ease of location. The definition of "thermal performance improvement loan", added as subsection (12) in 1976 and subsequently repealed in 1977, was renumbered as subsection (14) in the 1977 replacement volume.

29-4-704. Colorado housing and finance authority. (1) There is hereby created the Colorado housing and finance authority, which shall be a body corporate and a political subdivision of the state, shall not be an agency of state government, and shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state.

(2) The powers of the authority shall be vested in the governing body of the authority, which shall be a board of directors consisting of:

(a) The state auditor;

(b) A member of the general assembly appointed jointly by the speaker of the house and the majority leader of the senate to serve for the legislative biennium. The legislative member shall be appointed in January at the beginning of the regular session held in odd-numbered years.

(c) Eight persons, who shall be appointed by the governor, with the consent of the senate, as follows:

(I) One member who shall be experienced in mortgage banking;

(II) One member who shall be experienced in real estate transactions;

(III) Six additional members to be appointed without regard to their occupations; except that, in making such appointments, the governor shall give strong consideration to the appointment of a member trained in architecture and a member trained in city or regional planning;

(d) An executive director of a principal department of the state government appointed by the governor who shall serve at the pleasure of the governor.

(3) (a) For appointments made prior to June 15, 1987, each member appointed by the governor shall be appointed for a term of seven years, but the original members shall be appointed for the following terms beginning July 1, 1973:

- (I) Three members shall be appointed for terms of two years;
- (II) Two members for terms of four years; and
- (III) Two members for terms of six years.

(b) Prior to June 15, 1987, their successors shall be appointed for terms of seven years each.

(c) Members of the authority serving on May 20, 1987, shall continue to serve in the manner provided in this subsection (3). The additional member of the authority appointed pursuant to subsection (2) of this section shall be appointed for a term of four years beginning July 1, 1987.

(d) Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. For appointments made thereafter, each member appointed by the governor shall be appointed for a term of four years.

(4) Each member shall hold office for his term and until his successor is appointed and qualified. Any member shall be eligible for reappointment, but members shall not be eligible to serve more than two consecutive full terms. Members of the board shall receive no compensation for such services but shall be reimbursed for their necessary expenses while serving as a member of the board. Any vacancy shall be filled in the same manner as the original appointments for the unexpired term.

(5) Any appointed member of the board may be removed by the governor, and the legislative representative by the speaker of the house and the majority leader of the senate, for malfeasance in office, failure to regularly attend meetings, or for any cause which renders said member incapable of or unfit to discharge the duties of his office.

(6) No part of the revenues or assets of the authority shall inure to the benefit of, or be distributed to, its members or officers or any other private persons or entities.

(7) The authority and its corporate existence shall continue until terminated by law; except that no such law shall take effect so long as the authority has bonds, notes, or other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

Source: L. 73: p. 806, § 1. C.R.S. 1963: § 69-11-3. L. 75: Entire section R&RE, p. 971, § 3, effective April 9. L. 77: (6) and (7) added, p. 1417, § 2, effective May 14. L. 87: (1) amended, (2)(c) R&RE, and (2)(d) and (3)(c) added, p. 1192, §§ 4, 5, 6, 7, effective May 20; IP(3)(a) and (3)(b) amended and (3)(d) added, p. 912, § 25, effective June 15; (3)(c) amended, p. 1589, § 67, effective July 10.

Editor's note: This section was originally numbered as § 29-4-703 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For the provisions that designate the Colorado housing and finance authority as a "special purpose authority" for the purposes of section 20 of article X of the Colorado constitution, see § 24-77-102 (15); for limitation on issuance of private activity bonds, see part 17 of article 32 of title 24.

29-4-704.5. Reference in contracts and documents. Whenever the Colorado housing finance authority is referred to or designated by any contract or document in connection with the duties and functions set forth in this part 7, such reference or designation shall be deemed to apply to the Colorado housing and finance authority.

Source: L. 87: Entire section added, p. 1192, § 8, effective May 20.

29-4-705. Records of board. All resolutions and orders shall be recorded and authenticated by the signature of the secretary or any assistant secretary of the board. Every legislative act of the board of a general or permanent nature shall be by resolution. The book

of resolutions, corporate acts, and orders shall be a public record. A public record shall also be made of all other proceedings of the board, minutes of the meetings, annual reports, certificates, contracts, and bonds given by officers, employees, and any other agents of the authority. The account of all moneys received by and disbursed on behalf of the authority shall also be a public record. All public records of the authority shall be subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. All records shall be subject to the uniform budget and audit laws and shall be subject to regular audit as provided therein.

Source: L. 73: p. 807, § 1. C.R.S. 1963: § 69-11-4. L. 77: Entire section amended, p. 1417, § 3, effective May 14. L. 2007: Entire section amended, p. 705, § 2, effective May 3. L. 2009: Entire section amended, (SB 09-292), ch. 369, p. 1977, § 105, effective August 5.

Editor's note: This section was originally numbered as § 29-4-704 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For the uniform budget and audit laws, see parts 1 and 6 of article 1 of this title.

29-4-706. Meetings of board. (1) All meetings of the board shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present. Any action of the board shall require the affirmative vote of a majority of the members present at such meeting.

(2) One or more members of the board may participate in any meeting and may vote through the use of telecommunications devices, including, but not limited to, a conference telephone or similar communications equipment. Such participation through telecommunications devices shall constitute presence in person at such meeting. Such use of telecommunications shall not supersede any requirements for public hearing otherwise provided by law.

Source: L. 73: p. 807, § 1. C.R.S. 1963: § 69-11-5. L. 2007: Entire section amended, p. 705, § 3, effective May 3.

Editor's note: This section was originally numbered as § 29-4-705 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-707. Disclosure of interests required. Any board member, employee, or other agent or adviser of the authority, who has a direct or indirect interest in any contract or transaction with the authority, shall disclose this interest to the authority. This interest shall be set forth in the minutes of the authority, and no board member, employee, or other agent or adviser having such interest shall participate on behalf of the authority in the authorization of any such contract or transaction.

Source: L. 73: p. 807, § 1. C.R.S. 1963: § 69-11-6.

Editor's note: This section was originally numbered as § 29-4-706 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-708. General powers of the authority. (1) In addition to any other powers granted to the authority in this part 7, the authority shall have the following powers:

- (a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;
- (b) To have perpetual existence and succession;
- (c) To adopt, have, and use a seal and to alter the same at its pleasure;
- (d) To sue and be sued;

- (e) To enter into any contract or agreement not inconsistent with this part 7 or the laws of this state;
- (f) To borrow money and to issue bonds evidencing the same;
- (g) To purchase, lease, trade, exchange, or otherwise acquire, maintain, hold, improve, mortgage, lease, and dispose of real property and personal property, whether tangible or intangible, and any interest therein;
- (h) To acquire office space, equipment, services, supplies, and insurance necessary to carry out the purposes of this part 7;
- (i) To deposit any moneys of the authority in any banking institution within or without the state or in any depository authorized in section 24-75-603, C.R.S., and to appoint, for the purpose of making such deposits, one or more persons to act as custodians of the moneys of the authority, who shall give surety bonds in such amounts and form and for such purposes as the board requires;
- (j) To disburse any moneys in the revolving fund established pursuant to section 29-4-728 in accordance therewith;
- (k) To contract for and to accept any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply, subject to the provisions of this part 7, with the terms and conditions thereof;
- (l) To act as agent for federal, state, or local government or for qualified organizations or corporations in connection with the acquisition, construction, reconstruction, rehabilitation, leasing, operation, or management of a housing facility or project or any part thereof or the furnishing of capital to business enterprises;
- (m) To authorize the executive director to enter into contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this part 7 and to secure the payment of bonds;
- (n) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 7, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 7;
- (o) To fix the time and place or places at which its regular and special meetings are to be held. Meetings shall be held on the call of the chairman, but no less than eight meetings shall be held annually.
- (p) To adopt and from time to time amend or repeal bylaws and rules and regulations consistent with the provisions of this part 7;
- (q) To elect one director as chairman of the board and another director as chairman pro tem of the board and to appoint one or more persons as secretary and treasurer of the board and such other officers as the board may determine and provide for their duties and terms of office;
- (r) To appoint an executive director and such other agents, employees, and professional and business advisers as may from time to time be necessary in its judgment to accomplish the purposes of this part 7, and to fix the compensation of such employees, agents, and advisers, and to establish the powers and duties of all such officers, agents, and employees and other persons contracting with the authority;
- (s) To provide a method for sponsors to let contracts on a fair and equitable basis for the construction of housing facilities or projects or the performance or furnishing of labor, materials, or supplies as required in this part 7;
- (t) To the extent permitted under its contract with the holders of bonds, to enter into contracts containing provisions permitting the reduction of the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by any department, agency, or instrumentality of the United States or this state, such reduction can be made without jeopardizing the economic stability of the housing facility being financed;
- (u) To protect the interest of the authority in housing facilities, projects, and loans to and equity investments in business enterprises for capital made under this part 7 by such action as is in the best interests of the authority, including, without limitation, taking assignment of leases, rentals, and other revenues and assets and proceeding with foreclo-

sure, repossession, purchase, sale, or other means of acquisition of such facilities or projects or other security and, in the case of equity investments, taking any action permitted by law or pursuant to any subscription, partnership, or other instrument, certificate, or document related to such investment;

(v) To act as a coinsurer with any department or agency of the federal government with respect to a loan to finance housing facilities for low- or moderate-income families;

(w) To waive, by such means as the authority deems appropriate, the exemption from federal income taxation of interest on the authority's bonds, notes, or other obligations provided by the "Internal Revenue Code of 1986", as amended, or any other federal statute providing a similar exemption;

(x) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this part 7, including but not limited to contracts with any person, firm, corporation, municipality, state agency, county, or other entity. All municipalities, counties, and state agencies are hereby authorized to enter into and do all things necessary to perform any such arrangement or contract with the authority.

(y) To arrange for guaranties or insurance of its bonds, notes, or other obligations by the federal government or by any private insurer, and to pay any premiums therefor;

(z) To enter into agreements to pay annual sums in lieu of taxes to any county, municipality, or other taxing entity with respect to any real property which is owned by the authority and is located in such county, municipality, or other taxing entity;

(aa) To provide financial advice and counseling with respect to business enterprises and to provide for guaranties, insurance, coinsurance, or reinsurance against risks of loss on loans to business enterprises to finance projects or provide capital.

Source: **L. 73:** p. 807, § 1. **C.R.S. 1963:** § 69-11-7. **L. 75:** IP(1) and (1)(j), (1)(l), (1)(p), (1)(q), and (1)(s) amended and (1)(f) and (1)(u) added, p. 972, § 4, effective April 9. **L. 77:** (1)(v) and (1)(w) added, p. 1417, § 4, May 14. **L. 79:** (1)(j) amended, p. 1618, § 17, effective June 8. **L. 82:** (1)(j) amended and (1)(w) R&RE, pp. 71, 472, § 2, 3, effective April 15; (1)(g), (1)(l), (1)(s), and (1)(u) amended and (1)(k) R&RE, p. 465, § 5, 6, effective April 23. **L. 84:** (1)(aa) added, p. 807, § 2, effective April 13. **L. 87:** (1)(l), (1)(u), (1)(w), and (1)(aa) amended, p. 1193, § 9, effective May 20. **L. 2007:** (1)(aa) amended, p. 705, § 4, effective May 3.

Editor's note: This section was originally numbered as § 29-4-707 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

ANNOTATION

City housing authority was a public entity within the plain and ordinary meaning of the Governmental Immunity Act. *Allen v. City of*

Boulder Hous. Authority, 852 P.2d 1335 (Colo. App. 1993).

29-4-709. Power of board - housing facility plans. (1) The board shall establish criteria for the financial feasibility of any plan for the development of housing facilities to be undertaken with the proceeds of housing facility loans.

(2) If the authority determines that such plan meets the board's criteria, that private financing is not available on reasonably equivalent terms and conditions, and that the necessary means of financing such plan are available to the authority, the authority may accept such plan.

Source: **L. 73:** p. 809, § 1. **C.R.S. 1963:** § 69-11-8. **L. 75:** Entire section amended, p. 973, § 5, effective April 9. **L. 2007:** Entire section amended, p. 705, § 5, effective May 3.

Editor's note: This section was originally numbered as § 29-4-708 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-710. Powers of the board - executive director - housing facility loans - assistance in housing facility development. (1) Upon acceptance of a housing facility plan pursuant to section 29-4-709 and upon or prior to the issuance of bonds or other financial arrangement for the development of such facility, the board shall have adopted rules and regulations applicable to such plan. In addition to the other powers granted in this part 7, the authority shall have the power to, and, upon the adoption of a plan as provided in section 29-4-709, the board shall authorize the executive director to:

(a) (I) Make, purchase, or participate in making or purchasing housing facility loans or commitments therefor to sponsors, which are approved pursuant to section 29-4-716 and are subject to the limitations prescribed by section 29-4-717, and to low- or moderate-income families and, in connection with any such loan:

(A) To agree to limitations upon the right to dispose of any housing facility or part thereof or to undertake additional housing facility programs;

(B) To a governmental entity, to agree to limitations upon the exercise of any powers conferred upon the authority by this part 7.

(II) Except as provided in this section, housing facility loans to sponsors or to low- or moderate-income families shall be secured by a mortgage or such other security interest as the authority shall determine adequate to secure repayment of the housing facility loan.

(b) Make or participate in the making of housing facility loans secured by second deeds of trust or mortgages to sponsors or low- or moderate-income families if the total amount of such second deeds of trust or mortgages does not exceed fifteen percent of the total amount of loans secured by first deeds of trust or mortgages issued by the authority;

(c) Collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of loans;

(d) Sell at public or private sale, including the sale to the federal national mortgage association or the government national mortgage association, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this part 7;

(e) Purchase, in order to meet the requirements of the sale of its mortgages to the federal national mortgage association, stock of the association;

(f) Consent to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the authority is a party;

(g) Include in any loan such amounts necessary to pay financing charges, consultant, advisory, and legal fees, and such other expenses, including interest charges, as are necessary or incidental to such loan;

(h) Make and execute agreements, contracts, and other instruments necessary or convenient in accordance with the provisions of this part 7, including contracts with any person, firm, corporation, governmental agency, or other entity;

(i) Receive, administer, and comply with the conditions and requirements respecting any appropriation or any gift, grant, or donation of any property or money;

(j) Assist in the preparation and operation of housing facility programs and planning for the construction of any such housing facility or any part thereof;

(k) Set construction standards for housing facilities financed under this part 7;

(l) Insure or require the insuring of the property or operations of the housing facilities against such risks as the board deems advisable;

(m) Procure insurance of any secured debts or parts thereof made or held by the board on any property included in any housing facility.

(n) Repealed.

Source: L. 73: p. 809, § 1. C.R.S. 1963: § 69-11-10. L. 75: Entire section R&RE, p. 973, § 6, effective April 9. L. 77: IP(1)(a)(I) amended, p. 1418, § 5, effective May 14. L. 79: (1)(n) added, p. 1618, § 18, effective June 8. L. 82: (1)(n) repealed, p. 473, § 9, effective April 15. L. 2007: IP(1), (1)(a)(II), and (1)(b) amended, p. 706, § 6, effective May 3.

Editor's note: This section was originally numbered as § 29-4-709 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-710.5. Powers of the board - lease, sale, or financing of projects. (1) Except as otherwise provided in an intergovernmental agreement entered into pursuant to article 46.5 of title 24, C.R.S., the authority may not undertake or finance a project until the board or the executive director pursuant to rules and regulations adopted by the board first determines that:

(a) Providing the project will assist in promoting sound economic development or in maintaining employment in the area in which the project is or is to be located, or in an area reasonably accessible thereto, or in the reduction of unemployment or underemployment in such area;

(b) The financing agreement relating thereto provides for payment to the authority of such revenues that, together with any government subsidies relating to the project and other moneys available or expected to be available, will be sufficient to pay the principal of and interest on all notes and bonds issued to finance the project, to build up and maintain any reserves deemed advisable by the authority in connection therewith, and to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the financing agreement obligates the sponsor to pay for the maintenance of and insurance on the project; and

(c) The sponsor of the project is not a state agency, county, municipality, or other public body except the authority and the land on which the project is to be located has not been acquired by exercise of the power of eminent domain during the two years preceding the submission of the project plan to the authority.

(2) Upon making the determinations specified in subsection (1) of this section and in case of projects involving the acquisition, construction, or rehabilitation of a building, upon approval by the board of a project plan, the authority, in addition to the other powers granted by this part 7, shall have the following powers:

(a) To commit to enter and to enter into a financing agreement to sell, make, or participate in a loan to finance or lease for a term not exceeding ninety-nine years, with or without an option to purchase, any project, without public bidding or public sale, and upon such terms and conditions as the authority may deem appropriate. The authority may enter into such a financing agreement prior to, at the date of, or subsequent to the completion of the project. Where such a financing agreement is entered into, the authority may pay the project costs of the project and complete the construction and development of the project prior to any actual conveyance, loan, or lease.

(b) To commit to enter and to enter into a financing agreement to purchase or participate in the purchase, from a lender, of loans to sponsors to finance project costs, upon such terms and conditions as the authority may deem appropriate. The authority may enter into such a financing agreement prior to, at the date of, or subsequent to the completion of the project.

(c) To commit to enter and to enter into a financing agreement to make a loan to a lender, upon the condition that the lender invest the proceeds of such loan in loans to sponsors to finance project costs on such terms and conditions as the authority may deem appropriate;

(d) To acquire, construct, reconstruct, rehabilitate, improve, alter, equip, and repair or to provide for the acquisition, construction, reconstruction, rehabilitation, improvement, alteration, equipping, and repairing of any project; to maintain, operate, and manage or to provide for the maintenance, operation, and management of any project; to mortgage or otherwise encumber any project; and to sell or lease any project;

(e) To prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the acquisition, construction, reconstruction, rehabilitation, improvement, alteration, equipment, maintenance, or repairing of any project and to periodically modify such plans, specifications, designs, and estimates.

(3) All projects shall be subject to any applicable master plan, official map, zoning regulations, building code, and other regulations governing land use or planning of the county or municipality in which the project is or is to be located. However, nothing in this

subsection (3) shall be construed to prohibit or otherwise affect the right of the authority, a sponsor, or any other person to apply for and obtain, by any lawful means and to the extent otherwise permitted by law, an amendment to, a change in, or a variance from any such master plan, official map, zoning regulation, building code, or other regulation governing land use or planning with respect to any project.

(4) Each county and municipality in which a project is located, in connection with such project, shall provide police, fire, sanitation, health protection, and other governmental services of the same character and to the same extent as those provided for other residents of such county and municipality.

(5) The authority shall be empowered to enter into contractual agreements with any county or municipality with respect to the furnishing of any additional community, municipal, or public facilities or services necessary or desirable for any project.

(6) Notwithstanding the provisions of any other law, the state, any state agency, any county, and any municipality in which a project is or is to be located, and any board, authority, agency, department, commission, public corporation, or instrumentality of such county or municipality, shall have the power to lend or grant money or any other form of property, real, personal, or mixed, to the authority and to enter into contracts to make such loans and grants, all upon such terms and conditions as the authority and the state, state agency, county, or municipality, as the case may be, may agree upon.

(7) Except as otherwise provided in an intergovernmental agreement entered into pursuant to article 46.5 of title 24, C.R.S., the authority shall exercise its powers in connection with the financing of projects primarily for the benefit of small businesses, and the authority shall prepare as part of its annual report a summary of the nature and extent of its assistance rendered to small business projects.

Source: **L. 82:** Entire section added, p. 466, § 8, effective April 23. **L. 87:** IP(1), (1)(c), and IP(2) amended, p. 1193, § 10, effective May 20. **L. 91, 1st Ex. Sess.:** IP(1) and (7) amended, p. 13, § 2, effective July 5.

Cross references: For county planning and building codes, see article 28 of title 30; for municipal zoning restrictions, see part 3 of article 23 of title 31.

29-4-710.6. Powers of the board - loans for capital. (1) The authority may not assist the capital needs of any profit or nonprofit enterprise or undertaking until the board or the executive director pursuant to rules and regulations adopted by the board first determines that:

(a) Repealed.

(b) The amount of a loan to provide capital to an enterprise does not exceed the amount by which the total capital needs of such enterprise during a specified period exceeds the sum of the revenues of the operation reasonably expected to be available to the enterprise during such period to meet capital needs and the amount of any reserves for anticipated operating deficits and available to the enterprise during such period; and

(c) The financing agreement relating thereto provides for the payment to the authority of such revenues as will be, together with any government subsidies relating to the enterprise and other moneys available or expected to be available, sufficient to pay the principal of and interest on all notes and bonds issued to finance the loan and to build up and maintain any reserves deemed advisable by the authority in connection therewith.

(2) Upon making the determinations specified in subsection (1) of this section, the authority, in addition to the other powers granted by this part 7, shall have the following powers:

(a) To commit to enter and to enter into a financing agreement to purchase or participate in the purchase from a lender of loans to provide capital to business enterprises upon such terms and conditions as the authority may deem appropriate;

(b) To commit to enter and to enter into a financing agreement to make a loan to a lender upon the condition that the lender invest the proceeds of such loan in loans to provide capital to business enterprises upon such terms and conditions as the authority may deem appropriate;

(c) In connection with the preservation of its rights with respect to any loan, to provide capital to a business enterprise, to provide for the acquisition, operation, management, or maintenance of a business enterprise, and to sell or otherwise dispose of any business enterprise.

Source: **L. 82:** Entire section added, p. 468, § 8, effective April 23. **L. 87:** IP(1), (1)(b), and (2)(a) to (2)(c) amended and (1)(a) repealed, pp. 1194, 1197, §§ 11, 21, effective May 20.

29-4-710.7. Powers of the board - issuance of bonds to maintain balances in the unemployment compensation fund. (1) Upon receiving the certifications specified in subsection (2) of this section, the authority, in addition to the other powers granted by this part 7, has the following powers:

(a) To issue from time to time its bonds and notes as provided in this part 7 to provide sufficient funds to maintain adequate balances in the unemployment compensation fund; to repay amounts advanced to the state pursuant to 42 U.S.C. sec. 1321; to pay the principal of, and interest and premium, if any, on, the bonds and notes, the costs of bond issuance and administration, and any other related fees and costs of the authority or the division of unemployment insurance; to establish reserves for and make deposits into the unemployment compensation fund and otherwise apply the proceeds of the bonds and notes for any of the purposes set forth in this paragraph (a);

(b) To levy certain bond assessments as follows:

(I) (A) All bonds and notes issued pursuant to this section are limited obligations of the authority, payable solely from revenues generated through the levy by the authority of a bond assessment against each employer, as defined in section 8-70-113, C.R.S., subject to experience rating under articles 70 to 82 of title 8, C.R.S., in an aggregate amount sufficient to satisfy subparagraph (II) of this paragraph (b) or from revenues generated through the levy by the division of unemployment insurance of a bond assessment under section 8-71-103 (2) (d), C.R.S., from payments from the division of unemployment insurance to the authority or moneys applied by the division under section 8-77-101 (1), C.R.S., from proceeds derived from the sale of bonds and notes issued under this section and from the earnings on those proceeds, and all money and securities in all special accounts created by and under the control of the authority under this section. The division of unemployment insurance shall collect and administer the bond assessment in substantially the same manner as other employer premiums and surcharges required under articles 70 to 82 of title 8, C.R.S. Subject to articles 70 to 82 of title 8, C.R.S., the assessment does not apply to the covered employers of state and local government, to those nonprofit organizations that are reimbursable employers, or to political subdivisions electing the special rate.

(B) The division of unemployment insurance may deposit all or any portion of moneys collected from assessments for principal-related bond repayment costs into the unemployment compensation fund. The portion of these revenues deposited into the unemployment compensation fund constitutes part of each employer's unemployment insurance contributions, and the division of unemployment insurance shall pay amounts from these revenues to the authority for the repayment of the principal of bonds issued under this section or section 8-71-103 (2) (d), C.R.S.

(II) The levy must be at a rate or rates that, when applied against the taxable wages of those employers subject to the bond assessment, will produce an amount sufficient to pay all costs associated with or otherwise relating to bonds and notes issued pursuant to subsection (1) of this section, including the principal of, and interest and premium, if any, on, the bonds and notes, the costs of bond issuance and administration, other related fees and costs of the authority or the division of unemployment insurance, and reserves therefor.

(III) Employers shall submit bond assessments described in this paragraph (b) associated with nonprincipal-related bond repayment costs in the same manner as the employer's normal premiums and surcharges paid under articles 70 to 82 of title 8, C.R.S., and the assessments are a lien upon the real and personal property of an employer in the manner and to the extent set forth in section 8-79-103, C.R.S. The division of unemployment insurance shall deposit these assessments into the unemployment bond repayment account created in

section 8-77-103.5, C.R.S., and shall, after offsetting the division's costs for collecting and administering the bond assessments, use these funds only for payment from time to time to one or more special accounts created by and under the control of the issuer of the bonds. The issuer of the bonds shall use all moneys accruing in a special account only to pay nonprincipal-related bond repayment costs described in subparagraph (II) of this paragraph (b), and the issuer of the bonds shall pay any moneys remaining in such an account and not be required to pay nonprincipal-related bond repayment costs to the division of unemployment insurance for deposit in the unemployment compensation fund.

(IV) Employers shall submit bond assessments described in this paragraph (b) associated with principal-related bond repayment costs in the same manner as the employer's normal premiums and surcharges paid under articles 70 to 82 of title 8, C.R.S., and the assessments are a lien upon the real and personal property of an employer in the manner and to the extent set forth in section 8-79-103, C.R.S. The division of unemployment insurance may deposit all or any portion of the assessments into the unemployment compensation fund. The portion of the assessments deposited into the unemployment compensation fund constitute part of each employer's unemployment insurance contributions. Bond assessments described in this paragraph (b) associated with principal-related bond repayment costs are available for payment from time to time to one or more special accounts created by and under the control of the issuer of the bonds. All moneys accruing in a special account for principal-related bond repayment costs can be used by the issuer of the bonds only to pay the principal costs of the bonds.

(2) The authority shall not issue its bonds and notes pursuant to subsection (1) of this section until the monthly balance in the unemployment compensation fund is equal to or less than nine-tenths of one percent of the total wages reported by ratable employers for the calendar year, or the most recent available four consecutive quarters prior to the last computation date and the governor, the state treasurer, and the executive director of the department of labor and employment have each certified in writing to the authority:

(a) That other funding alternatives to the issuance of bonds and notes by the authority pursuant to subsection (1) of this section have been considered and that the issuance of such bonds and notes is the most cost-effective means for the division of unemployment insurance to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321;

(b) The amount of money required to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321, or both;

(c) The amount of bonds and notes required for the purposes described in subsection (1) of this section; and

(d) The bond assessment rate or rates, or a formula or other procedure for determining such rate or rates, that will produce an amount sufficient, together with any other moneys available or expected to be available, to pay all costs associated with or otherwise relating to bonds and notes issued pursuant to subsection (1) of this section, including the principal of, and interest and premium, if any, on, the bonds and notes, the costs of bond issuance and administration, and any other related fees and costs of the authority or the division of unemployment insurance, and reserves therefor.

Source: **L. 91:** Entire section added, p. 715, § 1, effective July 1. **L. 2001:** (1)(a) amended, p. 312, § 3, effective April 12. **L. 2009:** (1)(b)(I) and (1)(b)(III) amended, (HB 09-1363), ch. 363, p. 1910, § 36, effective July 1. **L. 2012:** IP(1), (1)(a), (1)(b)(I), (1)(b)(II), (1)(b)(III), IP(2), (2)(a), and (2)(d) amended, (HB 12-1120), ch. 27, p. 110, § 29, effective June 1. **L. 2012, 1st Ex. Sess.:** (1)(b)(I) and (1)(b)(III) amended and (1)(b)(IV) added, (HB 12S-1002), ch. 2, p. 2430, § 15, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2430, Session Laws of Colorado 2012.)

Cross references: For the legislative declaration in the 2012 act amending subsections (1)(b)(I) and (1)(b)(III) and adding subsection (1)(b)(IV), see section 1 of chapter 2, First Extraordinary Session, Session Laws of Colorado 2012.

29-4-711. Power of board - housing facility plans - mortgage purchase - loans to lenders. Upon a finding by the board that investment in, or purchase or participation in the purchase of, mortgage loans or interests therein or that making loans to lenders is necessary to provide housing facilities within the means of low- or moderate-income families, it may cause the executive director to formulate and from time to time modify a plan for the development of housing facilities by the authority investing in, purchasing, or participating in the purchase of mortgage loans or interests therein from lenders or making loans to lenders. If the board ascertains that the necessary means of financing such a plan are available to the authority, the board may signify its approval of such a plan.

Source: L. 75: Entire section added, p. 975, § 7, effective April 9.

Editor's note: This section was enacted as § 29-4-710.4 in House Bill 75-1026 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-712. Powers of the board - executive director - mortgage purchase - loans to lenders - assistance in providing housing facilities. (1) Upon the approval by the board of a plan pursuant to section 29-4-711 and upon or prior to the authorization of bonds or other financial arrangement to implement the plan, the board shall authorize the executive director to:

(a) Invest in, purchase, participate in the purchase, make commitments for the purchase or participation in the purchase, and take assignments from lenders of mortgage loans;

(b) Make loans and commitments therefor to lenders.

(2) No mortgage loan or interest therein purchased from a lender shall be eligible for purchase or commitment to purchase by the authority under this section unless, at or before the time of transfer thereof to the authority, such lender certifies that in its judgment the mortgage loan would in all respects be a prudent investment at the purchase price paid.

(3) The authority shall require, as a condition of a loan to a lender, that the lender invest the proceeds of such loan in mortgage loans to families or sponsors upon such terms and conditions as the authority may require.

(3.5) The authority shall require, as a condition of purchase or commitment to purchase mortgage loans or interests therein, the following:

(a) That such mortgage loans shall have been made upon such terms and conditions as the authority may require; or

(b) That the proceeds of such purchase, or their equivalent, shall be invested in mortgage loans upon such terms and conditions as the authority may require.

(4) (a) Mortgage loans made by lenders to families with the proceeds of a loan as provided for in subsection (3) of this section, pursuant to a commitment to purchase as provided for in paragraph (a) of subsection (3.5) of this section, or with the proceeds of the purchase of a mortgage loan as provided for in paragraph (b) of subsection (3.5) of this section, shall be to families who qualify as low-income or low- or moderate-income families.

(b) Mortgage loans made by lenders to sponsors with the proceeds of a loan under subsection (3) of this section shall be made on such terms and conditions as the board may determine periodically.

(5) In conjunction with the purchase of such mortgage loans or interests therein from lenders, the authority may require the lender to furnish collateral security in such amounts as the authority shall determine to be necessary to assure the payment of such mortgage loans and the interest thereon as the same become due. Such collateral security shall consist of any obligations or mortgages satisfactory to the authority.

(6) (a) Each loan to a lender shall be a general obligation of the lender and shall be additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security in such amounts and of such types as the board, by regulation, determines to be necessary to assure the payment of such loans and the interest thereon as the same become due and payable.

(b) The authority may require in the case of any or all lenders that any required collateral be lodged with a bank or trust company, located either within or outside the state,

designated by the authority as custodian therefor. In the absence of such requirement, each lender shall enter into an agreement with the authority referring to this subsection (6); containing such provisions as the authority deems necessary to identify, maintain, and service such collateral; and providing that the lender shall hold such collateral as trustee for the benefit of the authority and shall be held accountable as the trustee of an express trust for the application and disposition of such collateral, including the income and proceeds therefrom, solely for the uses and purposes as provided in the agreement. A copy of each such agreement and any revisions or supplements thereto, which revisions or supplements may, among other things, add to, delete from, or substitute items of collateral pledged by such agreement, shall be filed with the secretary of state to perfect the security interest of the authority in the collateral. No filing, recording, possession, or other action under article 9 of title 4, C.R.S., or any other law of this state shall be required to perfect the security interest of the authority in such collateral. The security interest of the authority in such collateral shall be deemed perfected, and the trust for the benefit of the authority so created shall be binding on and after the time of such filing with the secretary of state against all parties having prior unperfected or subsequent security interests or claims of any kind in tort, in contract, or otherwise against such lender. The authority may also establish such additional requirements as it deems necessary with respect to the pledging, assigning, setting aside, or holding of such collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom.

(7) Subject to any agreement with holders of bonds, the authority may collect, enforce the collection of, and foreclose on any collateral required by subsections (5) and (6) of this section and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interest of the authority therein.

(8) In addition to the other powers granted by this part 7, the authority shall have the power, with respect to mortgage purchases and loans to lenders as provided under this section and section 29-4-711, to collect and pay reasonable fees and charges, to exercise the powers enumerated in section 29-4-710 (1) (c) to (1) (m), and to establish the terms and conditions of such mortgage purchases and loans to lenders by rules and regulations, including, without limitation, rules and regulations as to:

(a) Reinvestment and commitments to reinvest by lenders of the proceeds of mortgage purchases or loans;

(b) Requirements as to the location, number of units, and other characteristics of the housing facilities to be financed through such reinvestment by lenders;

(c) The type, term, interest rate, purchase price, and condition of mortgages to be acquired by the authority and of mortgage loans to be made by lenders;

(d) The warranties, representations, and services of lenders;

(e) Restrictions as to the interest rates on housing facility loans or the return realized therefrom in order to protect against the realization by lenders of excessive financial returns or benefits as determined by prevailing market conditions;

(f) Such other matters related to such mortgage purchases and loans to lenders as shall be deemed necessary by the authority to accomplish the purposes of this part 7.

(9) Repealed.

Source: **L. 75:** Entire section added, p. 975, § 7, effective April 9. **L. 77:** (3) and (6)(b) R&RE and (3.5) added, pp. 1418, 1419, §§ 6, 7, effective May 14. **L. 79:** (9) repealed, p. 1129, § 1, effective May 1. **L. 82:** (3) amended and (4) R&RE, p. 472, §§ 4, 5, effective April 15. **L. 2007:** (4)(a) amended, p. 706, § 7, effective May 3.

Editor's note: This section was enacted as § 29-4-710.5 in House Bill 75-1026 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-713. Power of the board - home improvement loans. (1) The board may cause the executive director to formulate and from time to time modify a plan for the provision of home improvement loans upon a finding by the board that the provision of such loans is necessary for any one or more of the following purposes:

(a) To bring housing facilities for low- or moderate-income families into compliance with state, county, or municipal building, housing maintenance, fire, health, or similar codes and standards applicable to housing, including standards adopted by the authority under section 29-4-714;

(b) To reduce the total energy requirements of such housing facilities;

(c) To improve such housing facilities to a more livable and maintainable condition as part of a program or plan to arrest deterioration by means of neighborhood conservation and upgrading.

(2) If the board ascertains that private financing for home improvement loans is not available on reasonably equivalent terms and conditions and that the necessary means of financing such plan are available to the authority, the board may approve such plan.

Source: **L. 76:** Entire section added, p. 689, § 3, effective April 19. **L. 77:** IP(1), (1)(a), and (1)(c) added and (2) amended, p. 1413, § 3, effective June 19.

Editor's note: This section was enacted as § 29-4-710.6 in House Bill 76-1231 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-714. Powers of the board - home improvement loans - purchase of such loans - loans to lenders. (1) Upon the approval by the board of a plan pursuant to section 29-4-713 and upon or prior to the authorization of bonds or other financial arrangement to implement the plan, the board shall authorize the executive director to:

(a) Make home improvement loans and commitments therefor to sponsors;

(b) Invest in, purchase, participate in the purchase of, make commitments for the purchase or participation in the purchase of, and take assignments from lenders of home improvement loans;

(c) Make loans and commitments therefor to lenders for the purpose of making funds available for home improvement loans.

(2) Home improvement loans may be insured or uninsured and may be made with such security, or may be unsecured, as the board deems advisable.

(3) Notwithstanding anything in the provisions of sections 29-4-711 and 29-4-712, the authority shall require, as a condition of a loan to a lender under this section, that the lender invest the proceeds of such loan in home improvement loans or in short-term obligations pending the making of such home improvement loans.

(4) Loans to lenders under this section shall be subject to the provisions of section 29-4-712 (6) and (7).

(5) Home improvement loans made or acquired by the authority under this section or made by a lender with the proceeds of a loan under this section shall be to families who qualify as low-income or low- or moderate-income families.

(6) In addition to the other powers granted by this part 7, the authority shall have the power, with respect to home improvement loans, the purchase of such loans, and loans to lenders under this section and section 29-4-713, to collect and pay reasonable fees and charges, to exercise the powers enumerated in section 29-4-710 (1) (c) to (1) (m), and to establish the terms and conditions of such loans, loan purchases, and loans to lenders by rules and regulations, including but not limited to rules and regulations as to:

(a) The alterations, repairs, and improvements which may be financed with home improvement loans;

(b) The term, interest rate, and principal amount of home improvement loans made by the authority or by lenders and the purchase price of such loans purchased by the authority;

(c) Requirements as to the type, age, location, condition, and other characteristics of housing facilities as to which home improvement loans may be made;

(d) Requirements as to the application and use by lenders of the proceeds of home improvement loan purchases or loans to lenders;

(e) The warranties, representations, compensation, and services of lenders;

(f) Such other matters related to home improvement loans, to the purchase thereof, or to loans to lenders under this section as shall be deemed necessary by the authority.

Source: **L. 76:** Entire section added, p. 689, § 3, effective April 19. **L. 77:** (1)(a), (1)(b), (1)(c), (2), (3), (5), IP(6), (6)(a), (6)(b), (6)(c), (6)(d), and (6)(f) amended, p. 1413, § 4, effective June 19. **L. 82:** (5) R&RE, p. 472, § 6, effective April 15. **L. 2007:** (5) amended, p. 707, § 8, effective May 3.

Editor's note: This section was enacted as § 29-4-710.7 in House Bill 76-1231 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-715. Sponsor - limitations on distributions. (Repealed)

Source: **L. 73:** p. 811, § 1. **C.R.S. 1963:** § 69-11-11. **L. 75:** (1)(a), (1)(b), and (2) amended, p. 977, § 8, effective April 9. **L. 82:** (1)(b) and (1)(c) amended, p. 468, § 9, effective April 23. **L. 2007:** Entire section repealed, p. 707, § 9, effective May 3.

Editor's note: This section was originally numbered as § 29-4-711 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-716. Standards for approval of organizations. (1) No sponsor shall be considered eligible to develop housing facilities or provide services in connection therewith pursuant to this part 7 unless it shows to the authority's satisfaction that the organization is incorporated, authorized to do business, or otherwise organized as required by the laws of this state.

(2) The sponsor, as provided in subsection (1) of this section, shall submit full details of its organizational documents, articles, and bylaws to the authority and shall provide and pay for an independent annual audit as may be required by the authority.

Source: **L. 73:** p. 811, § 1. **C.R.S. 1963:** § 69-11-12. **L. 75:** Entire section R&RE, p. 977, § 9, effective April 9.

Editor's note: This section was originally numbered as § 29-4-712 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-717. Findings - percentage of low-income families required. (1) Prior to the authority's making or committing to make a housing facility loan for a housing facility with more than five dwelling units under this part 7, the board shall find:

(a) That low-income families can afford, on the basis of the use of not more than thirty percent of annual income as determined in accordance with rules and regulations of the authority, the adjusted rentals set for no less than twenty percent of the dwelling units in such proposed housing facility;

(b) That the number of units intended for occupancy by low- and moderate-income families shall approximate seventy-five percent of the total number of units available;

(c) That such housing facility will not create or contribute to an undue concentration of low-income families in any one neighborhood.

(2) Prior to the authority's making or committing to make any housing facility loan, the authority shall find:

(a) That, with respect to such housing facility, no restrictions are imposed as to sex, sexual orientation, race, creed, color, religion, ancestry, or national origin of occupants;

(b) That such housing facility is designed to house families of varied economic means and will not create or contribute to an undue concentration of low-income families in any one neighborhood.

Source: **L. 73:** p. 812, § 1. **C.R.S. 1963:** § 69-11-13. **L. 75:** Entire section R&RE, p. 978, § 10, effective April 9. **L. 82:** (1)(a) amended, p. 473, § 7, April 15. **L. 2007:** (1)(c) and (2) amended, p. 708, § 10, effective May 3. **L. 2008:** (2)(a) amended, p. 1603, § 33, effective May 29.

Editor's note: This section was originally numbered as § 29-4-713 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (2)(a), see section 1 of chapter 341, Session Laws of Colorado 2008.

29-4-718. Bonds and notes. (1) (a) The authority has the power and is authorized to issue from time to time its notes and bonds in such principal amounts as the authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the authority, the establishment of reserves to secure such notes and bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(b) (I) The authority has the power, from time to time, to issue:

(A) Notes to renew notes;

(B) Bonds to pay notes, including the interest thereon, and, whenever it deems refunding expedient, to refund any bonds or obligations of other public entities, whether the bonds or such other obligations to be refunded have or have not matured; and

(C) Bonds partly to refund bonds or obligations of other public entities then outstanding and partly for any of its corporate purposes.

(II) Refunding bonds issued pursuant to this paragraph (b) may be exchanged for the bonds or obligations of other public entities to be refunded or sold and the proceeds applied to the purchase, redemption, or payment of such bonds or obligations.

(c) The authority has the power to provide for the replacement of lost, destroyed, or mutilated bonds or notes.

(d) Except as may otherwise be expressly provided by the authority, every issue of its notes and bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(2) The notes and bonds shall be authorized by a resolution adopted by the board.

(3) Any resolution authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) Pledging all or any part of the revenues of the authority to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(b) Pledging all or any part of the assets of the authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist, such assets to include:

(I) Any grant or contribution from the federal government or any corporation, association, institution, or person; or

(II) Financing agreements, mortgages or home improvement loans, and obligations securing the same;

(c) The use and disposition of the gross income from financing agreements and mortgages owned by the authority and payment of principal of financing agreements and mortgages owned by the authority;

(d) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(e) Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(f) Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds;

(g) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) Limitations on the amount of moneys to be expended by the authority for operating expenses of the authority;

(i) Vesting in a trustee such property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to this part 7, and limiting or abrogating the right of the bondholders to appoint a trustee under this part 7 or limiting the rights, powers, and duties of such trustee;

(j) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; except that such rights and remedies shall not be inconsistent with the general laws of this state and the other provisions of this part 7;

(k) Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(4) The bonds or notes of each issue may, in the discretion of the authority, be made redeemable before maturity at such prices and under such terms and conditions as may be determined by the authority. Notes shall mature at such time as may be determined by the authority, and bonds shall mature at such time or times, not exceeding forty-five years from their date of issue, as may be determined by the authority. The notes and bonds shall bear interest at such fixed or variable rate or rates determined by or in accordance with methods approved by the authority without regard to any interest rate limitation appearing in any other law of this state, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such place, and be subject to such terms of redemption as the authority may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price as the board shall determine.

(5) In case any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached thereto ceases to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The board may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

(6) Prior to the preparation of definitive bonds or notes, the authority may, under like restrictions, issue interim receipts or temporary bonds or notes until such definitive bonds or notes have been executed and are available for delivery.

(7) The authority, subject to such agreements with noteholders or bondholders as may then exist, has the power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon, at the election of the authority, be canceled.

(8) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without this state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all moneys. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, except as may be otherwise provided in such trust indenture.

(9) Repealed.

(10) The authority has the power and is authorized to issue from time to time notes, bonds, and other securities which may be collateralized or otherwise secured in whole or in part by loans or participations or other interests in such loans or which may evidence loans or participations or other interests in such loans to provide net funds that are to be dedicated in whole or in part by resolution of the authority to the carrying out of one or more of the purposes of the authority. The interest on or from such notes, bonds, and other securities may be subject to or exempt from federal income taxation.

Source: **L. 73:** p. 812, § 1. **C.R.S. 1963:** § 69-11-14. **L. 75:** Entire section R&RE, p. 978, § 11, effective April 9. **L. 76:** (9) amended, p. 692, § 1, effective April 16. **L. 77:** (3)(b)(III) amended, p. 1414, § 5, effective June 19. **L. 78:** (9) amended, p. 441, § 1, effective February 15. **L. 79:** (9) amended, p. 1130, § 1, effective May 1. **L. 81:** (9) amended, p. 1412, § 1, effective May 21. **L. 82:** (3)(b)(II), (3)(c), and (9) amended, p. 468, § 10, effective April 3. **L. 85:** (9) amended, p. 1040, § 2, effective July 1. **L. 87:** (9) amended and (10) added, p. 1198, § 1, effective May 8. **L. 91:** (9) amended, p. 717, § 2, effective July 1. **L. 2001:** (9) repealed, p. 311, § 1, effective April 12. **L. 2007:** (1)(b)(I)(B), (1)(b)(I)(C), (1)(b)(II), (2), (4), (7), and (8) amended, p. 708, § 11, effective May 3.

Editor's note: This section was originally numbered as § 29-4-714 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For the "Uniform Facsimile Signature of Public Officials Act", see §§ 11-55-101 to 11-55-106.

29-4-719. Special funds - repeal. (Repealed)

Source: **L. 75:** Entire section added, p. 984, § 1, effective May 22. **L. 82:** (4)(a) amended and (4)(b) repealed, p. 473, §§ 8, 9, effective April 15. **L. 2001:** IP(1) amended and (9) and (10) added, p. 311, § 2, effective April 12.

Editor's note: (1) This section was enacted as § 29-4-714.2 in House Bill 75-1343 but was renumbered on revision in the 1977 replacement volume for ease of location.

(2) This section was repealed, effective March 8, 2010, upon receipt by the revisor of statutes of notice that all outstanding bonds of the Colorado Housing Finance Authority, with respect to which capital reserve funds were established pursuant to this section, were paid in full.

29-4-719.1. Economic development fund - repeal. (1) There is hereby created in the authority the economic development fund. The authority shall deposit into such economic development fund:

(a) Any moneys appropriated and made available by the state for purposes of such economic development fund;

(b) Any proceeds from the sale of bonds to the extent provided in the resolutions of the authority authorizing the issuance thereof; and

(c) Any moneys which may be made available by or to the authority from any other sources for the purposes of such economic development fund.

(2) Moneys held in the economic development fund shall be expended by the authority for the following purposes:

(a) To pay the principal of, premium, if any, and interest on bonds issued by the authority pursuant to this part 7 to finance the authority's economic development program;

(b) To finance projects or provide capital as provided in this part 7;

(c) To provide guaranties, insurance, coinsurance, or reinsurance as provided in this part 7 and to establish reserves therefor by separate accounts or in such other manner as may be determined by the board in its sole discretion;

(d) Notwithstanding the provisions of section 29-4-730, to make equity investments in business enterprises, including but not limited to direct investments in such business enterprises, investments in a legal entity which makes investments in such enterprises, and investments in an investment fund which makes investments in such enterprises, on such terms and conditions and as evidenced by such certificates, instruments, or documents, all as may be determined by the board in its sole discretion; except that properties, or revenues of the authority, other than the amount of such investments, shall not be placed at risk on account of such investments, and neither the authority nor the members of the board or employees of the authority shall be personally liable for the debts or obligations of the business enterprises in which such investments are made; and

(e) Notwithstanding the provisions of sections 29-4-710.5 and 29-4-710.6, and upon a finding by the board that investment in, or purchase or participation in the purchase of, loans or interests therein is necessary or useful to the financing of projects or the provision of capital to business enterprises, to invest in, purchase, or participate in the purchase from lenders of loans to finance projects or provide capital to business enterprises if such loans shall be insured or guaranteed, in whole or in part, by the federal government or by an agency or instrumentality thereof.

(f) Repealed.

(3) Moneys held in the economic development fund may be transferred to any of the other funds created by the authority pursuant to this part 7.

(4) (a) There is hereby created within the economic development fund the Colorado strategic seed fund, which fund shall be administered by the authority in consultation with the Colorado strategic seed fund council created in section 29-4-735. The Colorado strategic seed fund is established for the purpose of providing seed capital to small businesses. For the purposes of this subsection (4), "seed capital" means moneys which are provided for: The preparation of a business plan, the performance of an initial market analysis, the assembling of a management team, the initial legal and accounting work, the development of a working prototype of a product or process, the development of follow-up financing, and such similar purposes as may be determined by the board.

(b) The general assembly may make appropriations to the department of local affairs for the Colorado strategic seed fund. Any moneys not used to make loans shall remain in said fund and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. Any interest earned on the investment or deposit of moneys in the Colorado strategic seed fund shall remain in the fund and shall not be credited to the general fund of the state.

(c) The authority shall utilize moneys in the Colorado strategic seed fund to make loans to operating seed funds. Such loans shall be made only if the board determines that:

(I) The businesses to be assisted are small businesses with no prior sales or small businesses with existing sales, which small businesses are undergoing substantial changes in their businesses or product lines;

(II) No professional or institutional investor has made any prior investment in any business to be assisted prior to the investment by the operating seed fund;

(III) The businesses to be assisted have the potential to be rapidly growing businesses or value-added businesses which have the potential of having a long-term presence in Colorado's economy and the amount invested by any operating seed fund in businesses outside of Colorado do not exceed more than fifty percent of the capital of the operating seed fund;

(IV) Private sector financial support equal to the amount of any loan will be obtained by an operating seed fund. The authority may make a preliminary commitment of funds to an operating seed fund before the private sector financial support is obtained, but the authority shall not close the loan until at least one-third of the private sector financial support has been contributed, with the remainder to be paid not later than two years after the date of closing.

(d) The authority shall establish criteria for making loans to operating seed funds, and such criteria shall include qualifications for the managers of such funds. The authority shall consult with the Colorado strategic seed fund council as to the criteria for determining which operating seed funds shall be eligible to receive loans from the fund, and no more than one operating seed fund, which fund shall be the rural economic development seed fund created in paragraph (g) of this subsection (4), shall be assisted pursuant to this subsection (4).

(e) Loans made by the authority to operating seed funds shall be in the form of nonrecourse, noncompounding loans bearing interest, which shall be accrued at a rate determined by the board. The principal and accrued interest on any such loan shall be due not later than the initially scheduled termination date of the operating seed fund or ten years from the date of closing of the loan, whichever date is earlier.

(f) The authority may require that an operating seed fund receiving a loan under this subsection (4) submit a quarterly financial statement, an audited annual financial statement,

and such other reports regarding its finances and operations as the board determines to be necessary or appropriate.

(g) Of the seed funds established pursuant to paragraph (d) of this subsection (4), one shall be a rural economic development seed fund, which shall be established for the purpose of assisting economic development in rural areas of Colorado. The moneys in the rural economic development seed fund shall be used to assist value-added businesses, and all of the provisions of this subsection (4) relating to loans made by the authority to operating seed funds shall also apply to the rural economic development seed fund. The salary of the fund manager shall be paid out of moneys appropriated to the fund by the general assembly and not from matching private sector funds.

Source: **L. 87:** Entire section added, p. 1194, § 12, effective May 20. **L. 88:** (4) added, p. 1102, § 2, effective May 29. **L. 89:** (4)(b) amended, p. 1265, § 1, effective May 26. **L. 93:** (2)(f) added, p. 2136, § 11, effective June 12. **L. 95:** IP(2)(f)(II) amended, p. 1111, § 66, effective May 31; (2)(f)(I)(E) and (2)(f)(II) to (2)(f)(V) amended, p. 1115, § 5, effective May 31. **L. 96:** (2)(f)(I)(G) amended, p. 814, § 3, effective May 23. **L. 98:** (2)(f)(IV) and (2)(f)(V) amended, p. 1067, § 6, effective June 1. **L. 2001:** (2)(f)(II) repealed, p. 1178, § 11, effective August 8.

Editor's note: (1) The introductory portion to subsection (2)(f)(II) was amended in House Bill 95-1212. Those amendments were superseded by the amendment to subsection (2)(f)(II) in House Bill 95-1238.

(2) Subsection (2)(f)(V) provided for the repeal of subsection (2)(f), effective July 1, 2008. (See L. 98, p. 1067.)

29-4-720. Validity of any pledge. Any pledge made by the authority shall be valid and binding from the time when the pledge is made, and any assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded. Nothing in this section shall be construed to prohibit the board from selling any assets subject to any such pledge, except to the extent that any such sale may be restricted by a trust agreement or resolution providing for the issuance of such bonds.

Source: **L. 73:** p. 813, § 1. **C.R.S. 1963:** § 69-11-15. **L. 75:** Entire section amended, p. 981, § 12, effective April 9.

Editor's note: This section was originally numbered as § 29-4-715 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-721. Remedies. Any holder of bonds issued under the provisions of this part 7, or any coupons appertaining thereto and the trustee under any trust agreement or resolution authorizing the issuance of such bonds, except to the extent the rights under this part 7 may be restricted by such trust agreement or resolution, may, either at law or in equity by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted under this part 7 or under such agreement or resolution, or under any other contract executed by the authority pursuant to this part 7, and may enforce and compel the performance of all duties required by this part 7 or by such trust agreement or resolution to be performed by the authority or by an officer thereof.

Source: **L. 73:** p. 813, § 1. **C.R.S. 1963:** § 69-11-16.

Editor's note: This section was originally numbered as § 29-4-716 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-722. Negotiable instruments. Notwithstanding any of the foregoing provisions of this part 7 or any recitals in any bonds issued under the provisions of this part 7, all such bonds and interest coupons appertaining thereto shall be negotiable instruments under the laws of this state, subject only to any applicable provisions for registration.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-17.

Editor's note: This section was originally numbered as § 29-4-717 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-723. Bonds eligible for investment. Bonds issued under the provisions of this part 7 are hereby made securities in which all insurance companies, trust companies, banking associations, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds, notes, or obligations of the state is authorized by law.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-18. L. 89: Entire section amended, p. 1130, § 69, effective July 1.

Editor's note: This section was originally numbered as § 29-4-718 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-724. Refunding bonds. (1) The board may provide for the issuance of refunding obligations of the authority for the purpose of refunding any obligations then outstanding that have been issued under this part 7 or issued by other public entities, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations, and for any corporate purpose of the authority.

(2) Refunding obligations issued as provided in subsection (1) of this section may be sold or exchanged for outstanding obligations being refunded, and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, the accrued interest, and any redemption premium on the obligations being refunded and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in securities meeting the investment requirements established by the authority, which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-19. L. 75: Entire section R&RE, p. 981, § 13, effective April 9. L. 89: (2) amended, p. 1113, § 21, effective July 1. L. 2007: Entire section amended, p. 710, § 12, effective May 3.

Editor's note: This section was originally numbered as § 29-4-719 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-725. Nonliability of state for bonds. The state of Colorado shall not be liable for bonds of the authority, and such bonds shall not constitute a debt of the state. The bonds shall contain on the face thereof a statement to such effect.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-20.

Editor's note: This section was originally numbered as § 29-4-720 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-726. Members of authority not personally liable on bonds. Neither the members of the board nor any authorized person executing bonds issued pursuant to this part 7 shall be personally liable for such bonds by reason of the execution or issuance thereof.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-21.

Editor's note: This section was originally numbered as § 29-4-721 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-727. Property taxation - exemption of bonds from taxation. (1) In any instance where a proposed housing facility or project, whether owned by the authority or by another sponsor, would qualify for a property tax exemption under the laws of Colorado, the board may require that, as a condition for a loan or other assistance under this part 7, any such property shall be subject to an agreement between the taxing authorities and the authority or the sponsor for payments in lieu of taxes; except that, in the case of a housing facility, such payments shall not exceed ten percent of the rentals of such housing facility.

(2) Any bonds issued by the authority under the provisions of this part 7, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation by the state or any political subdivision or other instrumentality of the state.

(3) Except where an agreement for payments in lieu of taxes has been entered into as provided in subsection (1) of this section, where property of the authority would qualify for a property tax exemption under the laws of this state and unless property of the sponsor would qualify for a property tax exemption under the laws of this state, the authority shall annually pay, solely from the revenues from the project and not from any other source, to this state and to the city, town, school district, and any other political subdivision or public body authorized to levy taxes in the jurisdiction in which the project is located, a sum equal to the amount of tax which the taxing entity would annually receive if title to the property were held directly by the sponsor, any other law to the contrary notwithstanding. In addition to the requirements of section 29-4-710.5, the authority, before entering into a financing agreement for a project pursuant to this part 7, shall make a prior determination of the sufficiency of revenues for the purposes of subsection (1) of this section or this subsection (3), and each financing agreement shall provide for revenues sufficient to meet the payments required by this subsection (3).

(4) If and to the extent the proceedings under which the notes or bonds issued to finance the project so provide, the authority may agree to cooperate with the sponsor of a project in connection with any administrative or judicial proceedings for determining the validity or amount of any such payments and may agree to appoint or designate and reserve the right in and for such sponsor to take all action which the authority may lawfully take in respect of such payments and all matters relating thereto, but such sponsor shall bear and pay all costs and expenses of the authority thereby incurred at the request of such sponsor or by reason of any such action taken by such sponsor in behalf of the authority.

(5) Any sponsor which has made payments in lieu of taxes in accordance with subsection (1) of this section or paid the amounts required by subsection (3) of this section to be paid by the authority shall not be required to pay taxes on such property to the state or to any county, city, town, school district, or other political subdivision, any other law to the contrary notwithstanding. In the event title to the project is held directly by a private person or corporation, the financing agreement shall require such private person or corporation to pay the taxes which such taxing entity or entities are entitled to receive from such private person or corporation with respect to the project.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-22. L. 82: (1) R&RE, p. 469, §§ 11, 12, effective April 23. L. 2007: (1) amended, p. 710, § 13, effective May 3. '

Editor's note: This section was originally numbered as § 29-4-722 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-728. Revolving fund established. (1) The board shall establish a revolving fund and shall pay into such revolving fund any moneys made available by the federal, state, or local government for the purpose of assisting in the provision of housing facilities for low- and moderate-income families. The board shall also deposit in such fund any other moneys which may be available to the authority for its general purposes from any source or sources other than proceeds from the issuance and sale of bonds by the authority.

(2) All moneys held in the revolving fund, including but not limited to income or interest earned by, or any other increment to, such fund shall be used by the board for its general purposes, and to the extent authorized by the board any such moneys in excess of the amount required to make and keep the authority self-supporting shall be deposited to a surplus fund. Any such surplus moneys may from time to time, at the board's discretion, be forwarded to the state treasurer for deposit in the state general fund.

Source: L. 73: p. 814, § 1. C.R.S. 1963: § 69-11-23.

Editor's note: This section was originally numbered as § 29-4-723 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-729. Reporting. (1) The authority shall submit to the governor and the health, environment, welfare, and institutions committees of the house of representatives and the senate within six months after the end of the fiscal year a report that shall set forth a complete and detailed operating and financial statement of the authority during such year. Also included in the report shall be any recommendations with reference to additional legislation or other action that may be necessary to carry out the purposes of the authority.

(2) On or before December 31, 2001, the authority, acting through the program, created and administered by the authority, commonly known as E-Star Colorado, or the successor to such program, shall submit to the governor and general assembly an assessment of existing energy conservation and efficiency programs and standards established by the state, local governmental entities, or private entities. The assessment shall include a comparison of such programs and standards to similar programs and standards adopted in other states, as well as an evaluation of the effectiveness of voluntary performance programs and other financial incentives. The authority, on behalf of E-Star Colorado, may accept and expend moneys from gifts, grants, and donations to help defray the expenses of providing the assessment required under this subsection (2).

Source: L. 73: p. 815, § 1. C.R.S. 1963: § 69-11-24. L. 2001: Entire section amended, p. 1178, § 12, effective August 8; entire section amended, p. 1093, § 3, effective August 8. L. 2003: (1) amended, p. 2013, § 106, effective May 22.

Editor's note: (1) This section was originally numbered as § 29-4-724 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

(2) Amendments to this section by Senate Bill 01-208 and House Bill 01-1381 were harmonized.

29-4-730. Powers of the authority - investments. (1) The authority has the power:

(a) To invest any funds held in reserve, sinking funds, capital reserve funds, or any funds not required for immediate disbursement in property or in securities in which the state treasurer may legally invest funds subject to his control; and to sell from time to time such securities thus purchased and held; and to deposit any securities in any trust bank within or without the state. Any funds deposited in a banking institution or in any depository authorized in section 24-75-603, C.R.S., shall be secured in such manner and subject to such

terms and conditions as the board may determine, with or without payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any commercial bank incorporated under the laws of this state which may act as depository of any funds of the authority may issue indemnifying bonds or may pledge such securities as may be required by the board.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the authority and of any moneys held in trust or otherwise for the payment of notes or bonds and to carry out such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

(c) To authorize a corporate trustee which holds funds of the authority pursuant to a bond or note resolution or a trust indenture between such trustee and the authority to invest or reinvest such funds in any investments, other than those specified in paragraph (a) of this subsection (1), if the board determines by resolution, including but not limited to a bond or note resolution, that, as of the date of such resolution:

(I) Such investments meet the standard for investments established in section 15-1-304, C.R.S.;

(II) The income on such investments is at least comparable to income then available on the investments permitted in paragraph (a) of this subsection (1); and

(III) Such investments assist the authority in carrying out its public purposes as described in this part 7.

Source: L. 75: Entire section added, p. 982, § 14, effective April 23. L. 79: (1)(a) amended, p. 1618, § 19, effective June 8. L. 85: (1) amended and (1)(c) added, p. 1040, § 3, effective July 1. L. 87: (1)(c)(III) amended, p. 1195, § 13, effective May 20.

Editor's note: This section was enacted as § 29-4-725 in House Bill 75-1026 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-731. Agreement of this state. This state does hereby pledge to and agree with the holders of any notes or bonds issued under this part 7 that this state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged. The authority is authorized to include this pledge and agreement of this state in any agreement with the holders of such notes or bonds.

Source: L. 75: Entire section added, p. 982, § 14, effective April 9.

Editor's note: This section was enacted as § 29-4-726 in House Bill 75-1026 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-732. This part 7 not a limitation of powers. Nothing in this part 7 shall be construed as a restriction or limitation upon any other powers which the authority might otherwise have under any other law of this state, and this part 7 is cumulative to any such powers. This part 7 does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes, and other obligations and refunding bonds under the provisions of this part 7 need not comply with the requirements of any other state law applicable to the issuance of

bonds, notes, and other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds, notes, or other obligations or any instrument as security therefor, except as is provided in this part 7.

Source: L. 75: Entire section added, p. 983, § 14, effective April 9.

Editor's note: This section was enacted as § 29-4-727 in House Bill 75-1026 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-4-733. Termination of powers. (Repealed)

Source: L. 82: Entire section added, p. 470, § 13, effective April 23. **L. 87:** Entire section repealed, p. 1197, § 21, effective May 20.

29-4-734. Termination of powers. On and after June 30, 1992, the authority may not make equity investments pursuant to the powers granted to the authority by section 29-4-719.1 (2) (d). The authority may continue to discharge all present and future obligations regarding equity investments made prior to June 30, 1992.

Source: L. 87: Entire section added, p. 1196, § 14, effective May 20.

29-4-735. Colorado strategic seed fund council - creation. (1) There is hereby created the Colorado strategic seed fund council. Said council shall be composed of nine members, as follows: Four venture capitalists, one management consultant, and two institutional investors, all of whom shall be appointed by the governor, and one member appointed by the president of the senate and one member appointed by the speaker of the house of representatives. The members of the council shall be confirmed by the senate and shall serve for terms of four years; except that, of the members first appointed, three shall be appointed for terms of two years, three shall be appointed for terms of three years, and three shall be appointed for terms of four years.

(2) At the request of the board, the Colorado strategic seed fund council shall provide advice to the authority from time to time as to the criteria to be used in making loans, and the council shall make recommendations to the board with respect to the board's determinations regarding such loans from the Colorado strategic seed fund to operating seed funds. Said council shall receive reports from the authority regarding the operations and investments of the operating seed funds and shall make an annual report on the operating seed funds to the health and human services committees of the house of representatives and the senate, or any successor committees.

Source: L. 88: Entire section added, p. 1103, § 3, effective May 29. **L. 2001:** (2) amended, p. 1178, § 13, effective August 8. **L. 2003:** (2) amended, p. 2013, § 107, effective May 22. **L. 2007:** (2) amended, p. 2045, § 82, effective June 1.

PART 8

ALLOCATION OF QUALIFIED MORTGAGE BONDS

29-4-801 to 29-4-811. (Repealed)

Source: L. 87: Entire part repealed, p. 997, § 2, effective May 20.

Editor's note: This part 8 was added in 1982. For amendments to this part 8 prior to its repeal in 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 9

COLORADO RENTAL ASSISTANCE DEMONSTRATION PROGRAM

29-4-901 to 29-4-909. (Repealed)

Editor's note: (1) This part 9 was added in 1991. For amendments to this part 9 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 29-4-909 provided for the repeal of this part 9, effective July 1, 1995. (See L. 91, p. 741.)

MISCELLANEOUS

ARTICLE 5

Peace Officers and Firefighters

29-5-101.	Peace officers must be residents - exception.	29-5-106.	temporary duty. Temporary assignment to labor dispute area.
29-5-102.	Impersonating an officer - penalty. (Repealed)	29-5-107.	Request for temporary assignment of firefighters.
29-5-103.	Assignment of police officers or deputy sheriffs for temporary duty.	29-5-108.	Liability of requesting jurisdiction.
29-5-104.	Request for temporary assignment of police officers or deputy sheriffs - authority.	29-5-109.	Workers' compensation coverage.
29-5-105.	Assignment of firefighters for	29-5-110.	Pension fund payments.
		29-5-111.	Liability of peace officers.

29-5-101. Peace officers must be residents - exception. No sheriff, mayor of a city, or other person authorized by law to appoint special deputy sheriffs, marshals, policemen, or other peace officers in the state to preserve the public peace and prevent or quell public disturbances shall hereafter appoint as such special deputy sheriff, marshal, policeman, or other peace officer any person who is not at the time of the appointment a bona fide resident of the state of Colorado, and no person shall assume or exercise the functions, powers, duties, or privileges incident and belonging to the office of special deputy sheriff, marshal, policeman, or other peace officer without having first received his appointment in writing from the lawfully constituted authorities of the state. Notwithstanding the residency requirement stated in this section, a person may be deputized or otherwise assigned to law enforcement duty pursuant to section 29-5-104 (2) although such person is not a bona fide resident of this state.

Source: L. 1891: p. 20, § 1. R.S. 08: § 4675. C.L. § 7954. CSA: C. 116, § 1. CRS 53: § 99-2-1. L. 64: p. 296, § 243. C.R.S. 1963: § 99-2-1. L. 93: Entire section amended, p. 245, § 2, effective March 31.

Cross references: For the description of peace officer in the criminal code, see § 16-2.5-101.

29-5-102. Impersonating an officer - penalty. (Repealed)

Source: L. 1891: p. 21, § 3. R.S. 08: § 4677. C.L. § 7956. L. 29: p. 306, § 1. CSA: C. 116, § 3. CRS 53: § 99-2-3. L. 63: p. 339, § 55. C.R.S. 1963: § 99-2-3. L. 64: p. 297, § 245. L. 2004: Entire section repealed, p. 1081, § 3, effective July 1.

29-5-103. Assignment of police officers or deputy sheriffs for temporary duty. The chief of police or person performing the functions thereof of any town, city, or city and

county or of any state institution of higher education employing peace officers in accordance with article 7.5 of title 24, C.R.S., or the sheriff of any county may in his or her discretion, upon request of the chief of police or person exercising the functions thereof in any other town, city, or city and county or any other state institution of higher education employing a peace officer in accordance with article 7.5 of title 24, C.R.S., or the sheriff of any other county, assign police officers or deputies under his or her control, together with any equipment he or she deems proper, to perform temporary duty within the jurisdiction of the requesting chief of police or sheriff and under the direction and command of the requesting chief of police or sheriff; but the chief of police or sheriff assigning the officers or deputies may provide that the officers or deputies shall be under the immediate command of a superior officer designated by the assigning chief of police or sheriff, which superior officer shall be under the direct supervision and command of the requesting chief of police or sheriff. Nothing contained in this section or sections 29-5-104 to 29-5-110 shall be construed to limit the power of any town, city, city and county, or state institution of higher education employing peace officers in accordance with article 7.5 of title 24, C.R.S., to prohibit or limit by ordinance the exercise by a chief of police or sheriff of the discretion granted in sections 29-5-103 to 29-5-110.

Source: L. 63: p. 729, § 1. C.R.S. 1963: § 99-2-4. L. 2008: Entire section amended, p. 89, § 13, effective March 18. L. 2009: Entire section amended, (SB 09-097), ch. 110, p. 457, § 6, effective August 5.

ANNOTATION

When death of off-duty policeman within workmen's compensation coverage. The death of an off-duty city police officer killed outside the city limits while directing traffic in an emer-

gency situation is compensable under the workmen's compensation act. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

29-5-104. Request for temporary assignment of police officers or deputy sheriffs - authority. (1) The chief of police, or person performing the functions thereof, of any town, city, or city and county or of a state institution of higher education employing a peace officer in accordance with article 7.5 of title 24, C.R.S., and the sheriff of any county may, when in his or her opinion the same is required to quell disturbances or riots or in any other situation wherein he or she deems that an emergency exists within his or her jurisdiction, request the chief of police or person performing the function thereof of any other city, town, or city and county or at another state institution of higher education employing peace officers in accordance with article 7.5 of title 24, C.R.S., or the sheriff of any other county to assign officers or deputy sheriffs under their respective commands to perform temporary duty within the jurisdiction of the requesting chief of police or sheriff and under the direction and control of the requesting chief of police or sheriff under the terms and conditions as shall be agreed upon between the requesting and assigning chiefs of police or sheriffs. The officers or deputy sheriffs shall, while so assigned and performing duties subject to the direction and control of the requesting chief of police or sheriff, have the same power within the jurisdiction of the requesting chief of police or sheriff as do regular officers or deputies, as the case may be, of the requesting chief of police or sheriff.

(2) Where, under the provisions of section 29-1-206 (1), a county, municipality, or state institution of higher education, in this state enters into an intergovernmental agreement for reciprocal law enforcement with a bordering county or with a municipality within a bordering county that is located in another state, the law enforcement agency head of either county or municipality or of the state institution of higher education may, pursuant to the provisions of the intergovernmental agreement, request the law enforcement agency head of the other county or municipality or state institution of higher education to assign deputy sheriffs or other peace officers to perform law enforcement duties within the jurisdiction of the requesting law enforcement agency head and under the terms and conditions as are stated in the intergovernmental agreement. Prior to an assignment, the deputy sheriffs or other peace officers shall obtain recognition as peace officers in this state as provided for in

section 29-1-206 (1). The deputy sheriffs or other peace officers shall, while so assigned and performing duties subject to the direction and control of the requesting law enforcement agency head, have the same power within the jurisdiction of the requesting law enforcement agency head as do regular deputies or other peace officers of the requesting law enforcement agency head.

(3) Repealed.

Source: L. 63: p. 730, § 2. C.R.S. 1963: § 99-2-5. L. 93: Entire section amended, p. 246, § 3, effective March 31. L. 96: (2) amended, p. 1574, § 8, effective June 3. L. 2000: (2) amended, p. 44, § 5, effective March 10. L. 2008: Entire section amended, p. 90, § 14, effective March 18; (2) amended and (3) added, p. 699, § 2, effective May 1. L. 2009: (1) amended, (SB 09-097), ch. 110, p. 457, § 7, effective August 5.

Editor's note: (1) Amendments to subsection (2) by House Bill 08-1106 and House Bill 08-1347 were harmonized.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective September 15, 2008. (See L. 2008, p. 699.)

ANNOTATION

When death of off-duty policeman within workmen's compensation coverage. The death of an off-duty city police officer killed outside the city limits while directing traffic in an emer-

gency situation is compensable under the workmen's compensation act. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

29-5-105. Assignment of firefighters for temporary duty. The chief of the fire department of any town, city, city and county, or fire protection district may, in his or her discretion and upon request therefor by the chief of any fire department of any other town, city, city and county, or fire protection district, assign members of his or her department or companies thereof, together with such equipment as the fire chief determines to be proper, to perform temporary fire fighting or other duties under the direction and control of the requesting fire chief; except that the assigning fire chief may require that such firefighters, fire companies, and equipment shall be under the immediate direction and control of a superior officer of the assigning fire department, which superior officer shall be, during such temporary assignment, under the direction and control of the requesting fire chief. Nothing contained in sections 29-5-103 to 29-5-110 shall be construed to limit the power of any town, city, or city and county or fire protection district to prohibit or limit by ordinance or regulation the exercise by a fire chief of the discretion granted in sections 29-5-103 to 29-5-110.

Source: L. 63: p. 730, § 3. C.R.S. 1963: § 99-2-6. L. 97: Entire section amended, p. 1025, § 50, effective August 6.

29-5-106. Temporary assignment to labor dispute area. Police or sheriffs' officers may be assigned to any duties provided for in sections 29-5-103 and 29-5-104 in an area where there is a labor dispute so long as the situation or incident for which such temporary assignment has been requested is not directly the result of a labor dispute and does not involve those individuals participating in the labor dispute. In a case where the temporary assignment of police or sheriffs' officers is deemed necessary as the direct result of a labor dispute, such temporary assignment may be made only after authorization by the governor or his designee.

Source: L. 63: p. 730, § 4. C.R.S. 1963: § 99-2-7. L. 89: Entire section R&RE, p. 1267, § 1, effective April 23.

29-5-107. Request for temporary assignment of firefighters. The chief of the fire department of any town, city, city and county, or fire protection district may, when in his or

her opinion the same is required by any conflagration, fire, or other such emergency, request the chief of the fire department of any other town, city, city and county, or fire protection district to assign to him or her firefighters, fire companies, and equipment of such other fire department to perform temporary duty within the boundaries of such requesting town, city, city and county, or fire protection district, under the direction and control of such requesting fire chief and under such terms and conditions as shall be agreed upon between the requesting and assigning fire chiefs. Such firefighters shall, while so assigned and performing duties subject to the direction and control of the requesting fire chief, have the same power as regular firefighters and fire companies of the requesting town, city, city and county, or fire protection district.

Source: L. 63: p. 730, § 5. C.R.S. 1963: § 99-2-8. L. 97: Entire section amended, p. 1025, § 51, effective August 6.

29-5-108. Liability of requesting jurisdiction. During the time that a police officer, deputy sheriff, or firefighter of a town, city, city and county, county, or fire protection district or of a state institution of higher education employing a peace officer in accordance with article 7.5 of title 24, C.R.S., is assigned to temporary duty within the jurisdiction of another town, city, city and county, county, or fire protection district, or of another state institution of higher education employing a peace officer in accordance with article 7.5 of title 24, C.R.S., as provided in sections 29-5-103 to 29-5-107, any liability that accrues under the provisions of article 10 of title 24, C.R.S., on account of the negligent or otherwise tortious act of the police officer, deputy sheriff, or firefighter while performing the duty shall be imposed upon the requesting town, city, city and county, county, fire protection district, or state institution of higher education, and not upon the assigning jurisdiction.

Source: L. 63: p. 731, § 6. C.R.S. 1963: § 99-2-9. L. 71: p. 1215, § 11. L. 97: Entire section amended, p. 1025, § 52, effective August 6. L. 2008: Entire section amended, p. 91, § 15, effective March 18. L. 2009: Entire section amended, (SB 09-097), ch. 110, p. 458, § 8, effective August 5.

29-5-109. Workers' compensation coverage. The coverage of any police officer, deputy sheriff, or firefighter of any town, city, city and county, county, or fire protection district or of any state institution of higher education employing peace officers in accordance with article 7.5 of title 24, C.R.S., under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., shall not be affected by reason of the performance of temporary duties in a requesting town, city, city and county, county, fire protection district, or state institution of higher education under the provisions of sections 29-5-103 to 29-5-107, and the police officers, deputy sheriffs, and firefighters shall remain covered by the workers' compensation insurance while performing the temporary duty as fully as if they were performing their regular duties within the assigning jurisdiction.

Source: L. 63: p. 731, § 7. C.R.S. 1963: § 99-2-10. L. 90: Entire section amended, p. 571, § 61, effective July 1. L. 97: Entire section amended, p. 1026, § 53, effective August 6. L. 2008: Entire section amended, p. 91, § 16, effective March 18. L. 2009: Entire section amended, (SB 09-097), ch. 110, p. 458, § 9, effective August 5.

Cross references: For the "Workers' Compensation Act of Colorado", see articles 40 to 47 of title 8.

ANNOTATION

When death of off-duty policeman within workmen's compensation coverage. The death of an off-duty city police officer killed outside the city limits while directing traffic in an emer-

gency situation is compensable under the workmen's compensation act. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

And off-duty status prior to emergency not bar to claim. The fact that decedent police officer was off duty prior to the onset of the

emergency does not bar a claim for compensation. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

29-5-110. Pension fund payments. If any police officer, deputy sheriff, or firefighter of any town, city, city and county, county, or fire protection district or of any state institution of higher education employing peace officers in accordance with article 7.5 of title 24, C.R.S., should become disabled or be killed by reason of the performance of temporary duty within the jurisdiction of another town, city, city and county, county, fire protection district, or state institution of higher education, as provided in sections 29-5-103 to 29-5-107, and the disability would entitle him or her or his or her death would entitle his or her survivor to payment from any police or firefighters' or employee pension fund of the town, city, city and county, county, fire protection district, or state institution of higher education assigning him or her to temporary duty in another jurisdiction, had the injury occurred during the performance of his or her duties within the assigning town, city, city and county, county, fire protection district, or state institution of higher education, the police officer, deputy sheriff, or firefighter, or his or her survivor, shall be entitled to the same payment from the pension fund of the assigning town, city, city and county, county, fire protection district, or state institution of higher education, as he or she would have been entitled to receive if the injury or death had occurred within the assigning town, city, city and county, county, fire protection district, or state institution of higher education, and he or she shall not be entitled to receive a payment from any police or firefighters' or employee pension fund of the jurisdiction in which he or she performed the temporary duties.

Source: L. 63: p. 731, § 8. C.R.S. 1963: § 99-2-11. L. 97: Entire section amended, p. 1026, § 54, effective August 6. L. 2008: Entire section amended, p. 91, § 17, effective March 18. L. 2009: Entire section amended, (SB 09-097), ch. 110, p. 459, § 10, effective August 5.

29-5-111. Liability of peace officers. (1) Notwithstanding the doctrines of sovereign immunity and respondeat superior, a city, town, county, or city and county or other political subdivision of the state or a state institution of higher education employing peace officers in accordance with article 7.5 of title 24, C.R.S., shall indemnify its paid peace officers and reserve officers, as defined in section 16-2.5-110, C.R.S., while the peace officers and reserve officers are on duty for any liability incurred by them and for any judgment, except a judgment for exemplary damages, entered against them for torts committed within the scope of their employment if the person claiming damages serves the political subdivision or state institution of higher education with a copy of the summons within ten days from the date when a copy of the summons is served on the peace officer or reserve officer. In no event shall any political subdivision or state institution of higher education be required so to indemnify its peace officers in excess of one hundred thousand dollars for one person in any single occurrence or three hundred thousand dollars for two or more persons for any single occurrence; except that in such instance no indemnity shall be allowed for any person in excess of one hundred thousand dollars. It is the duty of the city, town, county, city and county, or other political subdivision and of the state institution of higher education to provide the defense handled by the legal staff of the public entity or by other counsel, in the discretion of the public entity, for the peace officer in the claim or civil action. However, in the event that the court determines that a reserve officer, as defined in section 16-2.5-110, C.R.S., incurred the liability while acting outside the scope of his or her assigned duties or that the reserve officer acted in a willful and wanton manner in incurring the liability, the court shall order the reserve officer to reimburse the political subdivision or the state institution of higher education for reasonable costs and reasonable attorney fees expended for the defense of the reserve officer. With the approval of the governing body of the city, town, county, city and county, or other political subdivision or of the state institution of higher education, the claim or civil action may be settled or compromised. A city, town, county, city and county, or other political subdivision or a state institution of higher education may carry liability insurance to insure itself and its peace officers. If the political

subdivision or state institution of higher education purchases insurance that provides substantial coverage for the peace officers with a policy limitation of at least one hundred thousand dollars for one person in any single occurrence and three hundred thousand dollars for two or more persons for any single occurrence, except that in such instance no indemnity shall be allowed for any person in excess of one hundred thousand dollars, then the political subdivision or state institution of higher education shall be liable under this section to indemnify the peace officers only to the extent of the limits and for such torts as are covered by the policy and only to the extent of the coverage of the policy. Nothing in this section shall be deemed to condone the conduct of any peace officer who uses excessive force or who violates the statutory or constitutional rights of any person.

(2) This section shall apply only with respect to causes of action accruing on or after July 1, 1972.

Source: L. 71: pp. 1048, 1049, §§ 1, 2. C.R.S. 1963: § 99-2-12. L. 72: p. 612, § 135. L. 88: (1) amended, p. 723, § 5, effective July 1. L. 2003: (1) amended, p. 1618, § 26, effective August 6. L. 2008: (1) amended, p. 92, § 18, effective March 18. L. 2009: (1) amended, (SB 09-097), ch. 110, p. 459, § 11, effective August 5.

ANNOTATION

Annotator's note. For further annotations dealing with public entity liability, immunity, and duty of care, see §§ 24-10-106 and 24-10-106.5.

This section provides citizens a remedy for torts committed by police officers. *Wise v. Bravo*, 666 F.2d 1328 (10th Cir. 1981).

This section provides indemnification for liability incurred by peace officers and for judgments filed against them for torts committed within the scope of their employment. An action filed by the plaintiff seeking declaratory judgment and injunctive relief may not be so characterized and does not entitle a peace officer to indemnification. *City and County of Denver v. Blatnik*, 32 P.3d 593 (Colo. App. 2001).

The clause "Notwithstanding the doctrines of sovereign immunity . . ." clearly operates as a waiver of immunity. *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000).

Requirements of the immunity act, § 24-10-101 et seq., are extraneous to town's liability under this section. *Antonopoulos v. Town of Telluride*, 187 Colo. 392, 532 P.2d 346 (1975).

Liability different from that under immunity act. Secondary liability of a governmental entity as an indemnitor under this section is different and distinct from the direct liability imposed by the immunity act, § 24-10-101 et seq. *Antonopoulos v. Town of Telluride*, 187 Colo. 392, 532 P.2d 346 (1975).

This section and § 24-10-109 are not to be read together. *Antonopoulos v. Town of Telluride*, 187 Colo. 392, 532 P.2d 346 (1975).

This section and § 24-10-110 conflict regarding the reimbursement of defense costs for level I peace officers. The Governmental Immunity Act pertains to governmental employ-

ees generally, while this section defines the rights of police officers specifically. It is well settled that, in the event of apparent statutory conflict, specific language overrides general language. Therefore, in light of the conflict between the two statutes, this section takes precedence. *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000).

Time limitations. The only time limitation, other than the statute of limitations, imposed upon one seeking to hold a governmental entity secondarily liable is the requirement contained within this section. *Antonopoulos v. Town of Telluride*, 187 Colo. 392, 532 P.2d 346 (1975).

Immunity for tortious act of municipal officer deemed matter of concurrent local and state concern. Governmental immunity for tortious acts of municipal police officers and, specifically, limitations on compensatory damages for personal injuries in actions against municipal governments, based on such tortious conduct, are matters of concurrent local and statewide concern. *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979).

And municipality may increase compensation to tort victims. A municipality may provide greater monetary compensation to victims of torts committed by the municipality's own police officers than is provided under state statutes. *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979).

Whether a municipality provides its police officers with defense costs against tort actions is a matter of both state and local concern. Therefore, to the extent, if any, that the municipal charter conflicts with state law, this section supercedes the charter. *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000).

Applied in *Forrest v. County Comm'rs*, 629 P.2d 1105 (Colo. App. 1981); *Beacom v. Bd. of*

County Comm'rs, 657 P.2d 440 (Colo. 1983);
Nowakowski v. Dist. Court, 664 P.2d 709 (Colo.
1983).

ARTICLE 5.5

Political Subdivision Veteran's
Preference Enforcement Act

29-5.5-101.	Short title.	29-5.5-104.	Veterans preference points.
29-5.5-102.	Legislative declaration.	29-5.5-105.	Appeals.
29-5.5-103.	Definitions.		

29-5.5-101. Short title. This article shall be known and may be cited as the “Colorado Political Subdivision Veteran’s Preference Enforcement Act”.

Source: L. 98: Entire article added, p. 666, § 1, effective May 18.

29-5.5-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the public policy of this state is to encourage, wherever and whenever possible at both the state and local level, the hiring of veterans of the United States armed services. This policy has been expressed through the adoption of article XII, section 15 of the Colorado constitution and is a matter of statewide concern.

Source: L. 98: Entire article added, p. 666, § 1, effective May 18.

29-5.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Political subdivision of the state” shall have the same meaning as in article XII, section 15 of the Colorado constitution including, but not limited to, the regional transportation district.

(2) “Veterans preference points” means those points to be awarded pursuant to article XII, section 15 of the Colorado constitution to veterans applying for public employment.

Source: L. 98: Entire article added, p. 666, § 1, effective May 18.

29-5.5-104. Veterans preference points. Each applicant for appointment or employment in any civil service, merit, or personnel system of a political subdivision of the state that is comparable to that of the state shall be awarded, at a minimum, the appropriate veterans preference points pursuant to article XII, section 15 of the Colorado constitution.

Source: L. 98: Entire article added, p. 667, § 1, effective May 18.

ANNOTATION

Lack of updated language in the state personnel guidelines related to any undeclared war or other armed hostilities against an armed foreign enemy cannot be relied on by a local gov-

ernment to defeat constitutional intent. *Arthur v. City & County of Denver*, 198 P.3d 1285 (Colo. App. 2008).

29-5.5-105. Appeals. (1) An applicant who believes that the applicant is entitled to, but has not received, the veterans preference points required by article XII, section 15 of the Colorado constitution may, within thirty days after the notice of the hiring decision, submit to the hiring authority of the political subdivision of the state a written request for a notice of whether the applicant has been awarded the veterans preference points. The hiring authority of the political subdivision of the state shall respond within fifteen days to the request.

(2) The hiring authority of the political subdivision of the state or, at the political subdivision of the state hiring authority's discretion, a three-member panel shall hear any appeal concerning the awarding of veterans preference points as required by the article XII, section 15 of the Colorado constitution. Such hearing shall be conducted in accordance with the provisions of this section.

(3) The selection and examination process action shall be overturned if the hiring authority of the political subdivision of the state finds that:

(a) The applicant has not been awarded the preference points specified in article XII, section 15 of the Colorado constitution; and

(b) The applicant, if awarded the preference points specified in article XII, section 15 of the Colorado constitution would have otherwise obtained the position.

Source: L. 98: Entire article added, p. 667, § 1, effective May 18.

ARTICLE 6

Memorials

29-6-101. Erection of memorial build-
 ings.

29-6-102.
29-6-103.

Bond issue.
Gifts and bequests authorized.

29-6-101. Erection of memorial buildings. Any county, city and county, city, or town of the state of Colorado, including any city under special charter, has the power, by a vote of the taxpayers, to purchase or condemn ground for, erect and equip, or purchase and equip a building as a soldiers', sailors', and marines' memorial, commemorative of their military and naval service. Such building may be or include military headquarters, memorial rooms, library, assembly hall, gymnasium, natatorium, club rooms, and rest rooms. It may include a city hall and offices for any county or municipal purpose, community house, or recreation center; or it may be a memorial hospital; or it may be for any one or more of such purposes; and for similar or appropriate purposes may be extended to general community and neighborhood uses, all under the control and regulation as to charges and otherwise of the city or town council, or the board of county commissioners of a county. Such buildings may be erected as an appropriate annex to any other city or public building or by reconstructing the same.

Source: L. 21: p. 599, § 1. **C.L.** § 8247. **CSA:** C. 154, § 32. **CRS 53:** § 131-4-1. **C.R.S. 1963:** § 131-4-1.

29-6-102. Bond issue. For the purpose of providing for the acquisition of necessary ground therefor and purchasing, erecting, constructing, or reconstructing such building and for the necessary equipment therefor, the county, city and county, city, or town may issue bonds to be known as liberty memorial bonds, to be issued and sold as provided by law; and the county, city and county, city, or town shall provide for portions of such bonds to become due at different, definite periods, but none in less than five nor more than fifty years from the date of issue.

Source: L. 21: p. 600, § 2. **C.L.** § 8248. **CSA:** C. 154, § 33. **CRS 53:** § 131-4-2. **C.R.S. 1963:** § 131-4-2.

29-6-103. Gifts and bequests authorized. Gifts and bequests to the county, city and county, city, or town for any of the purposes provided in this article are authorized. The same shall be used and applied as provided in this article and as especially stipulated by the donor.

Source: L. 21: p. 600, § 3. **C.L.** § 8249. **CSA:** C. 154, § 34. **CRS 53:** § 131-4-3. **C.R.S. 1963:** § 131-4-3.

ARTICLE 6.5**Charitable Solicitations from Motorists**

29-6.5-101.	Legislative declaration.	29-6.5-103.	Local government authoriza-
29-6.5-102.	Definitions.		tion for solicitation of chari-
			table donations.

29-6.5-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) For over fifty years, firefighters across Colorado have engaged in charitable fundraising events to:

(I) Support medical research of debilitating diseases such as muscular dystrophy;

(II) Provide comprehensive health care and support services, advocacy, and education on behalf of children and adults with neuromuscular diseases; and

(III) Conduct summer camps for children with muscular dystrophy;

(b) The most successful fundraising event that firefighters have employed is the signature “fill the boot” campaign, which consists of firefighters asking motorists passing fire stations to contribute to the causes specified in paragraph (a) of this subsection (1) by putting money into firefighter boots or facsimiles of firefighter boots; and

(c) Other nonprofit and charitable organizations would benefit from the ability to solicit and accept donations in a similar manner.

(2) Therefore, it is the intent of the general assembly in enacting this article to clarify that local governments may, in their discretion, allow law enforcement personnel and firefighters, other local public safety personnel, and nonprofit or charitable organizations to conduct fundraising activities.

Source: L. 2012: Entire article added, (HB 12-1117), ch. 38, p. 135, § 1, effective March 22.

29-6.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Charitable organization” has the same meaning as set forth in section 6-16-103 (1), C.R.S.

(2) “Charitable purpose” has the same meaning as set forth in section 6-16-103 (2), C.R.S.

(3) “Local government” means any county, town, city, city and county, municipality, or other local entity having the authority to enact local ordinances.

Source: L. 2012: Entire article added, (HB 12-1117), ch. 38, p. 136, § 1, effective March 22.

29-6.5-103. Local government authorization for solicitation of charitable donations. (1) A local government may permit, in its discretion, a charitable organization to engage in a solicitation for a charitable purpose, which solicitation involves persons standing in or adjacent to a public roadway and soliciting donations from motorists, if:

(a) The persons solicit in an area that is entirely within the jurisdiction of the local government; and

(b) The number of days for which a local government grants permission for such solicitations does not exceed five days in any calendar year per charitable organization.

Source: L. 2012: Entire article added, (HB 12-1117), ch. 38, p. 136, § 1, effective March 22.

ARTICLE 7

Recreational Facilities Districts

29-7-101.	City or county may own and operate.	29-7-105.	Funds for television facilities.
29-7-102.	School district may own and operate.	29-7-106.	Tax limitations not to apply.
29-7-103.	Operation - admission fees.	29-7-107.	Recreational facility defined.
29-7-104.	Powers - eminent domain.	29-7-108.	Political subdivisions may unite in owning or operating recreational facilities.

29-7-101. City or county may own and operate. (1) Any city, town, village, county, metropolitan recreational district, or park and recreation district organized under article 1 of title 32, C.R.S., may acquire, sell, own, exchange, and operate public recreation facilities, open space and parklands, playgrounds, and television relay and translator facilities; acquire, equip, and maintain land, buildings, or other recreational facilities either within or without the corporate limits of such city, town, village, or county; and expend funds therefor and for all purposes connected therewith.

(2) Any county through its board of county commissioners shall have the power, authority, and jurisdiction to regulate and control public recreation lands and facilities owned or operated by the county by the promulgation of rules and regulations pursuant to a lawfully adopted resolution. The rules and regulations may include but are not limited to the following: Removal, destruction, mutilation, or defacing of any natural object or man-made object owned by the county; explosives or any form of firearm; animal control; any public use, including boating, fishing, camping, or hunting; and polluting or littering. Any person violating any rule or regulation lawfully adopted pursuant to this subsection (2) commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars. It is the duty of the sheriff and the sheriff's undersheriff and deputies, in their respective counties, as well as any county enforcement personnel authorized and appointed as described in subsection (3), to enforce the rules and regulations adopted pursuant to this subsection (2), and the county courts in their respective counties have jurisdiction in the prosecution of any violation of a rule or regulation adopted pursuant to this subsection (2). If authorized by resolution, the penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by any arresting law enforcement officer for any violation of a rule or regulation adopted pursuant to this subsection (2). As part of a resolution authorizing the penalty assessment procedure, the board of county commissioners may adopt a graduated fine schedule for violations. The graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same person. All fines and forfeitures for the violation of county regulations adopted pursuant to this subsection (2) shall be paid into the treasury of the county at such times and in such manner as may be prescribed by resolution; or, if there is no resolution providing for the payment, it shall be paid to the county treasurer at once.

(3) (a) In addition to the enforcement of the rules and regulations by the sheriff, an undersheriff, or a deputy sheriff, a board of county commissioners may by resolution designate specific other county personnel, however titled or administratively assigned, to enforce rules and regulations duly adopted by the county to control and regulate the use of county public lands and recreation facilities, by issuance of citations or summonses and complaints.

(b) Personnel designated pursuant to this subsection (3):

(I) Shall not be subject to peace officer certification or any other requirements of part 3 of article 31 of title 24, C.R.S.;

(II) Shall be included within the definition of "peace officer or firefighter engaged in the performance of his or her duties" found in section 18-3-201 (2), C.R.S.; and

(III) Shall not have the power to arrest or to execute warrants and shall not have authority to enforce any other resolution, ordinance, or statute, unless otherwise provided by law.

Source: L. 35: p. 1115, § 1. CSA: C. 136, § 1. L. 47: p. 696, § 1. CRS 53: § 114-1-1. L. 60: p. 180, § 1. C.R.S. 1963: § 114-1-1. L. 75: Entire section amended, p.

987, § 1, effective July 14. **L. 81:** (1)(b) amended, p. 1413, § 1, effective May 18; (1)(a) amended, p. 1612, § 7, effective June 19. **L. 96:** (2) amended and (3) added, p. 587, § 1, effective May 1. **L. 97:** (3)(b)(II) amended, p. 1026, § 55, effective August 6.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For comment, "People v. Emmert (198 Colo. 137, 597 P.2d 1025 (1979)): A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981).

County has implied power to sell beer as part of operation of golf clubhouse, as this is

incident to the expressly conferred power to operate a public recreational facility, the golf course. *Adams County Golf, Inc. v. Colo. Dept. of Rev.*, 199 Colo. 423, 610 P.2d 97 (1980).

Statute does not explicitly or implicitly authorize extraterritorial condemnation of stream fishing rights. *Aurora v. Commerce Groups Corp.*, 694 P.2d 382 (Colo. App. 1984).

29-7-102. School district may own and operate. (1) Any school district may operate a system of public recreation and playgrounds and television relay translator facilities and may exercise all other powers enumerated in section 29-7-101.

(2) (a) In addition to all other powers and duties that may be conferred by subsection (1) of this section and section 29-7-101, the board of education of a school district that is also a special district, as defined in section 29-21-101 (1) (g), and that began levying a tax for the operation and maintenance of a system of public recreation and playgrounds prior to August 4, 1999, may continue to levy such tax for said purposes, subject to the limitations set forth in paragraph (b) of this subsection (2).

(b) The board of education of a school district that is also a special district, as defined in section 29-21-101 (1) (g), shall submit, after notice, the question of either an imposition of a new tax after August 4, 1999, or any increase in the existing tax levy after said date for the operation and maintenance of a system of public recreation and playgrounds not previously established by resolution or ordinance, nor previously approved by a vote of the registered electors residing in the school district, to a vote of said registered electors at the next general election or the first Tuesday in November of odd-numbered years or on the school district's biennial election date.

(c) Following a vote by the registered electors residing in the school district that sets a maximum tax levy for the operation and maintenance of a system of public recreation and playgrounds, such tax levy shall remain in effect, subject to the requirements of section 29-1-301, until the registered electors residing in the school district have established a change in the levy by subsequent vote pursuant to the provisions of this section. A school district that is also a special district, as defined in section 29-21-101 (1) (g), and that began levying a tax for the operation and maintenance of a system of public recreation and playgrounds prior to August 4, 1999, may continue such levy until the registered electors residing in the school district have established a change in the levy by subsequent vote pursuant to the provisions of this section.

Source: **L. 35:** p. 1115, § 2. **CSA:** C. 136, § 2. **L. 47:** p. 696, § 2. **CRS 53:** § 114-1-2. **L. 60:** p. 180, § 2. **C.R.S. 1963:** § 114-1-2. **L. 99:** Entire section amended, p. 38, § 2, effective August 4.

Cross references: For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 15, Session Laws of Colorado 1999.

29-7-103. Operation - admission fees. Any city, town, village, county, or school district may operate such a system independently or may cooperate in its conduct in any manner which is mutually agreed upon or may delegate the operation of the system to a recreation board created by any or all of them and appropriate money voted for this purpose to such board, and it may make charges and require the payment of fees for the admission to and use and enjoyment of such recreation facilities and playgrounds.

Source: L. 35: p. 1115, § 3. CSA: C. 136, § 3. L. 47: p. 696, § 3. CRS 53: § 114-1-3. C.R.S. 1963: § 114-1-3.

29-7-104. Powers - eminent domain. Any municipal corporation or board given charge of the recreation system is authorized to conduct its activities on property under its custody and management; other public property under the custody of other municipal corporations or boards with the consent of such corporations or boards; and private property with the consent of the owners or without such consent as provided in this section. It has authority to accept gifts and bequests for the benefit of the recreational service, employ supervisors and directors of the recreational service and employ supervisors and directors of recreational work, take private property for the aforesaid purposes without the owner's consent upon payment of just compensation, and exercise the right of eminent domain in accordance with the provisions of articles 1 to 7 of title 38, C.R.S., and other applicable laws and statutes.

Source: L. 35: p. 1116, § 4. CSA: C. 136, § 4. L. 47: p. 696, § 4. CRS 53: § 114-1-4. C.R.S. 1963: § 114-1-4.

ANNOTATION

Law reviews. For article, "Water for Recreation: A Plea for Recognition", see 44 Den. L.J. 288 (1967).

Statute does not explicitly or implicitly authorize extraterritorial condemnation of stream fishing rights. *Aurora v. Commerce Group Corp.*, 694 P.2d 382 (Colo. App. 1984).

Parking lots and transit facilities are not recreational uses of land; therefore, a county

does not have authority pursuant to this section to condemn private property for parking facilities that may be used by people seeking access to recreational lands. *Dept. of Transp. v. Stapleton*, 81 P.3d 1105 (Colo. App. 2003), rev'd on other grounds, 97 P.3d 938 (Colo. 2004).

29-7-105. Funds for television facilities. Any county, city and county, city, town, village, school district, or recreational district may receive funds from any private or public source for the purpose of constructing and operating such television transmission and relay booster facilities.

Source: L. 60: p. 181, § 4. CRS 53: § 114-1-5. C.R.S. 1963: § 114-1-5.

29-7-106. Tax limitations not to apply. No tax levy for the purposes of television relay or translator facilities as specified in sections 29-7-101, 29-7-102, and 29-7-105 and 32-1-1005 (1) (a), C.R.S., shall be within the limitations prescribed for any county, city, city and county, town, village, school district, or recreation district.

Source: L. 60: p. 181, § 5. CRS 53: § 114-1-6. C.R.S. 1963: § 114-1-6. L. 81: Entire section amended, p. 1612, § 8, effective June 19.

29-7-107. Recreational facility defined. "Recreational facility" or "recreational system" as used in this article includes such land or interest in land as may be necessary, suitable, or proper for park or recreational purposes or for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest. The term "interests in land" as used in this section means and includes all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land held pursuant to this article when recorded shall run with the land to which it pertains for the benefit of the political subdivision holding such interest and may be protected and enforced by such subdivision in any court of general jurisdiction by any proceeding known at law or in equity.

Source: L. 67: p. 290, § 3. C.R.S. 1963: § 114-1-7.

ANNOTATION

Law reviews. For comment, “People v. Emmert (198 Colo. 137, 597 P.2d 1025 (1979)): A Step Backward for Recreational Water Use in Colorado”, see 52 U. Colo. L. Rev. 247 (1981).

29-7-108. Political subdivisions may unite in owning or operating recreational facilities. Any political subdivision of this state authorized under this article to own or operate a recreational facility may unite with any other similarly authorized political subdivision in owning or operating any recreational facility.

Source: L. 67: p. 290, § 3. C.R.S. 1963: § 114-1-8.

ARTICLE 7.5

Park and Open Space Act

29-7.5-101.	Short title.		space.
29-7.5-102.	Legislative declaration.	29-7.5-105.	Limitations on liability.
29-7.5-103.	Definitions.	29-7.5-106.	When liability is not limited.
29-7.5-104.	Use as park, trail, or open		

29-7.5-101. Short title. This article shall be known and may be cited as the “Park and Open Space Act of 1984”.

Source: L. 84: Entire article added, p. 808, § 1, effective April 30.

29-7.5-102. Legislative declaration. The general assembly declares that there is a need for parks, trail systems, and open space in urban areas of this state, that existing rights-of-way for high voltage electric transmission lines in such areas occupy significant land which could also be utilized for parks, trail systems, and open space, and that the safety of these lines could be enhanced by adopting appropriate safety measures as a part of utilizing this land for parks, trail systems, and open space. The general assembly further declares that the purpose of this article is to encourage the dedication and the utilization of such land for public parks, trail systems, and open space and the implementation of additional safety measures for these electric transmission lines.

Source: L. 84: Entire article added, p. 808, § 1, effective April 30.

29-7.5-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “High voltage line” means any overhead line for the transmission of electric current with a nominal voltage in excess of sixty-nine kilovolts and all supporting structures and accessories necessary for such line.
- (2) “Park and open space” means any land accepted as a public park, a public trail, or a public open space by the applicable park board.
- (3) “Park board” means the governing body of any local governmental entity within the state which is authorized by state law to accept land for public park, trail, or open space purposes.
- (4) “Transmission right-of-way” means any right-of-way, easement, or other land utilized for a high voltage line.
- (5) “Urban area” means any land located within any incorporated city or municipality. The term also means any land located in the unincorporated areas of any county which is zoned as residential land and for which a final plat for subdivided land has been approved

by the board of county commissioners pursuant to section 30-28-110 (3) and (4), C.R.S., and which is also included in a local governmental entity which has a statutory authorization to provide for public parks, trails, or open spaces.

Source: L. 84: Entire article added, p. 808, § 1, effective April 30.

29-7.5-104. Use as park, trail, or open space. In any urban area, the owners of any transmission right-of-way and the fee owner of any land subject to any transmission right-of-way may offer to dedicate or grant use of the transmission right-of-way to the park board for a public park, a public trail, or a public open space. This article shall not apply to any dedication or grant of use of a transmission right-of-way unless both the owner of the transmission right-of-way and the fee owner of the land involved consent to the dedication or grant of use. The park board may accept or reject this offered dedication or use of the transmission right-of-way based on the reasonable needs of the public, applicable rules and regulations governing the park board, and other criteria normally applied by the park board in accepting or rejecting dedications of land. In accepting or rejecting such offer, the park board shall consider, among other factors, methods for enhancing the safety of the transmission right-of-way involved through design of the park, trail, or open space improvements. The park board shall also consider and protect the interests and property rights of adjacent landowners, particularly those adjacent to the termination points of trails, who are not participating in the dedication or grant of use of the transmission right-of-way. If needed, the park board shall provide an access or egress from the point of termination to a public street or highway. For purposes of this article, the right of eminent domain shall not be exercised to obtain ingress or egress. Nothing in this article shall prevent negotiations for a dedication or grant of use of a transmission right-of-way in incorporated areas from occurring during the subdivision approval process; except that such dedication or grant of use shall not be finalized until the final subdivision plat is approved.

Source: L. 84: Entire article added, p. 808, § 1, effective April 30.

29-7.5-105. Limitations on liability. If a transmission right-of-way has been accepted by the park board as park, trail, or open space, then neither the owners or operators of the high voltage line, transmission right-of-way, or land subject to the transmission right-of-way, nor the governmental or quasi-governmental entity exercising jurisdiction over the park board, nor any of their employees, officers, agents, or board or council members shall have any liability for any injury to person or property or for the death of any person caused by an act or omission of such person or party on the dedicated lands.

Source: L. 84: Entire article added, p. 809, § 1, effective April 30.

29-7.5-106. When liability is not limited. Nothing in this article limits in any way any liability which would otherwise exist for loss, injury, or death due to gross negligence or willful misconduct. If the provisions of article 41 of title 33, C.R.S., also apply to persons for whom liability is limited pursuant to section 29-7.5-105, the liability and limitations on liability in this article shall supersede article 41 of title 33, C.R.S.

Source: L. 84: Entire article added, p. 810, § 1, effective April 30.

ARTICLE 8

Underground Conversion of Utilities

29-8-101.	Short title.	29-8-105.	Basis of assessments.
29-8-102.	Legislative declaration.	29-8-106.	Resolution for cost and feasibility study.
29-8-103.	Definitions.	29-8-107.	Bond of petitioners.
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29-8-109.	Resolution declaring intention		ment.
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29-8-101. Short title. This article shall be known and may be cited as the "Colorado Underground Conversion of Utilities Act".

Source: L. 71: p. 987, § 1. C.R.S. 1963: § 89-23-1.

ANNOTATION

City ordinance requiring relocation underground of overhead electricity and communications facilities was not preempted by this act, which is not the exclusive means for relo-

cating facilities underground. U S West Commc'ns v. City of Longmont, 924 P.2d 1071 (Colo. App. 1995), aff'd on other grounds, 948 P.2d 509 (Colo. 1997).

29-8-102. Legislative declaration. The general assembly finds that landowners, cities, towns, counties, public utilities, and cable operators in many areas of the state desire to convert existing overhead electric and communication facilities to underground locations. The general assembly further finds that the conversion of overhead electric and communication facilities to underground locations is a matter of statewide concern and interest. The general assembly declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken under this article, whether such areas are within the limits of a city or town or within a county. The general assembly further declares that all political subdivisions shall pursue such conversion only in accordance with this article; except that the use of the procedure set forth in this article is permissive and not mandatory for incidental and episodic conversions associated with public improvements such as street widening or sewer construction. Notwithstanding the provisions of this article, a political subdivision shall be able to perform such underground conversion without following the procedures outlined in this article if the political subdivision pays for all of the costs and

expenses of such conversion from the political subdivision's own funds on the condition that the political subdivision does not seek to recover the costs or expenses of such conversion from the public utility or cable operator.

Source: L. 71: p. 987, § 1. C.R.S. 1963: § 89-23-2. L. 99: Entire section amended, p. 372, § 1, effective April 22.

29-8-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Cable operator" shall have the same meaning as set forth in the federal "Cable Communications Policy Act of 1984", as amended, 47 U.S.C. sec. 522.

(1.5) "Communication service" means the transmission of intelligence by electrical means, including, but not limited to, telephone, telegraph, messenger-call, block, police, fire alarm, and traffic control circuits or the transmission of television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

(4) "Electric service" means the transmission and distribution of electricity for heat, light, or power.

(5) "Governing body" means the board of county commissioners or city council or board of trustees, as may be appropriate, depending on whether the improvement district is located in a county or within a city or town.

(6) "Net effective interest rate" means the net interest cost of bonds divided by the sum of the products derived by multiplying the principal amounts of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(7.5) "Political subdivision" means a county, city and county, city, town, home rule city, home rule town, service authority, school district, local improvement district, law enforcement authority, any special district such as water, sanitation, fire protection, metropolitan, irrigation, or drainage, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(8) "Public utility" means one or more persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and shall include any city, county, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Resolution" means ordinance, where the governing body properly acts by ordinance, or resolution, where the governing body is authorized to act by resolution.

(10) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground, or facilities within the confines of a power substation. "Communication facilities" does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio or outdoor public telephones. "Underground facilities" includes certain facilities even though such facilities remain above the surface, in accordance with standard underground practices, such as transformers, pull boxes, service terminals, meters, pedestal terminals, splice closures, apparatus cabinets, and similar facilities.

Source: L. 71: p. 987, § 1. C.R.S. 1963: § 89-23-3. L. 99: (1) amended and (1.5) and (7.5) added, p. 373, § 2, effective April 22. L. 2001: (3) and (4) amended, p. 240, § 1, effective July 1.

29-8-104. Powers conferred. (1) The governing body of every county is authorized to create local improvement districts under this article within the unincorporated portion of such county, and the governing body of every city and town is authorized to create local improvement districts under this article within its territorial limits to provide for the conversion of existing overhead electric or communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities which may be incidental thereto, under the provisions of this article.

(2) The governing body of every municipal utility may, by resolution or ordinance, impose a surcharge on those consumers within such municipal utility's service area who derive a direct benefit from the conversion of overhead electric and communication facilities to underground locations.

Source: L. 71: p. 988, § 1. C.R.S. 1963: § 89-23-4. L. 99: (2) added, p. 373, § 4, effective April 22.

29-8-105. Basis of assessments. When any improvement authorized to be made by any governing body by the terms of this article is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in its judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous, and adjacent lots and lands, and to the lots and lands otherwise benefited and included within the improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet of such lands and lots abutting, adjoining, contiguous, and adjacent thereto or included in the improvement district, or assessed upon a frontage, zone, or other equitable basis, in accordance with the benefits, as the same may be determined by the governing body. The entire cost of the improvement may be assessed against the benefited property as provided in this article or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed as provided in this article shall include the cost of the improvement, engineering and clerical service, advertising, cost of inspection, cost of collecting assessments, and interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of public entities, such as the federal government, state of Colorado, or any county, city, or town, shall not be considered as lands or property benefited by any improvement district, and unless such public entity within the boundaries of an improvement district consents in writing, filed before the governing body adopts the resolution provided for in section 29-8-109, the lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

Source: L. 71: p. 989, § 1. C.R.S. 1963: § 89-23-5.

29-8-106. Resolution for cost and feasibility study. (1) Any governing body may on its own initiative, or upon a petition signed by at least a majority of the property owners owning at least a majority of the assessable land of any proposed district requesting the creation of an improvement district as provided in this article, pass a resolution at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district for the purposes set out in this article will promote the public convenience, necessity, and welfare.

(2) The resolution must state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving such area by overhead electric or communication facilities shall make a study of the cost of conversion of its facilities in such area to underground service.

(3) The report of said study shall be provided to the governing body and made available in its office to all owners of land within the proposed improvement district. The resolution

of the governing body shall require that the public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known the description of the property and such other matters as may be required by the public utility in order to perform the work involved in the cost study.

(4) The resolution shall further state the governing body's preliminary determination as to the method of assessing each lot or parcel within the proposed improvement district area and shall provide the square feet or frontage feet of each lot or parcel, and zone or other information necessary for assessment in accordance with the governing body's preliminary determination. All public utilities serving such improvement district areas by overhead electric or communication facilities shall, within one hundred twenty days after receipt of the resolution, unless such time is extended, make a study of the costs of conversion of their facilities in such district to underground service, and the public utilities shall together provide to the governing body, and make available at their respective offices, a joint report as to the results of the study.

Source: L. 71: p. 989, § 1. C.R.S. 1963: § 89-23-6.

29-8-107. Bond of petitioners. At the time that action is commenced under section 29-8-106, or at any time prior to the time of the hearing provided for in section 29-8-112, and if requested by the governing body or public utility, a bond shall be filed, with security approved by the governing body or cash deposit made sufficient to pay all expenses of the governing body connected with the proceedings and of the public utilities for actual time and expenses incurred in regard to the cost and feasibility study in case the organization of the district is not effected. If at any time during the organization proceedings the governing body is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it, on its own initiative or at the request of a public utility, may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 71: p. 990, § 1. C.R.S. 1963: § 89-23-7.

29-8-108. Costs and feasibility report. (1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.

(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing its expertise in this area, and it may amend the boundaries of the proposed improvement district provided that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utility concerned on the basis of the amended district.

(3) The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six months of the submission of the estimate, for reasons not within the control of the public utility. Should such a delay result in a significant increase of the conversion cost, new hearings shall be held on the creation of the district. If only a minor increase results, only the hearing on the assessments need be held again.

Source: L. 71: p. 990, § 1. C.R.S. 1963: § 89-23-8.

29-8-109. Resolution declaring intention to create district. On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, as

provided in section 29-8-108 and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state: That the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and lands along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity, and welfare; and the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold a public hearing on the proposed improvement.

Source: L. 71: p. 991, § 1. C.R.S. 1963: § 89-23-9.

29-8-110. Notice of public hearing on proposed improvement - contents. (1) Following the passage of the resolution in section 29-8-109, the governing body shall cause a notice of a public hearing on the proposed improvement to be given in the manner provided in section 29-8-111. Such notice shall:

(a) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(b) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(c) State the estimated cost, as determined from the costs and feasibility report, and including the cost of the improvement and the cost of engineering and clerical service, advertising, inspection, collection of assessments, interests upon bonds, if issued, and for legal services for preparing proceedings and advising in regard thereto;

(d) State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the benefits to be derived by each tract, block, lot, and parcel of land within the district, and the proposed means of apportioning such cost;

(e) State the time and place at which the governing body will conduct a public hearing upon the proposed improvement and on the question of benefits to be derived by the real property in the district;

(f) State that all interested persons will be heard and that any property owner will be heard on the question of whether his property will be benefited by the proposed improvement.

Source: L. 71: p. 991, § 1. C.R.S. 1963: § 89-23-10.

29-8-111. Notice of public hearing on proposed improvement - manner of giving. Such notice shall be published in full one time in a newspaper of general circulation in the district or, if there is no such newspaper, by publication in a newspaper of general circulation in the county, city, or town in which said district is located. A copy of such notice shall be mailed to the last known address of each owner of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property records in the office of the county treasurer of the county wherein said property is located. In addition, a copy of such notice shall be addressed to "owner" and shall be so mailed, addressed to the street number of each piece of improved property to be affected by the assessment. Mailed notices and the published notice shall state where a copy of the resolution creating the district will be available for inspection by any interested parties.

Source: L. 71: p. 992, § 1. C.R.S. 1963: § 89-23-11.

29-8-112. Public hearing - changes in proposed improvements and area to be included in district. (1) On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all objections to the creation of the proposed district, the making of the proposed improvements, and the benefits accruing to any tract, block, lot, or parcel of land therein. Representatives of the public utility concerned shall be present at all such hearings. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings it appears to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utility concerned, appear to affect either the cost or feasibility of the improvements, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes.

(2) If action on the creation of the improvement district was initiated by petition as set forth in section 29-8-106, and if it appears that said petition is not signed by at least a majority of the property owners owning at least a majority of the assessable land of the proposed district, or if it is shown that the proposed improvement will not confer a general benefit on the district, or that the cost of the improvement would be excessive as compared with the value of the property in the district, the governing body shall thereupon dismiss the petition and adjudge the cost against those executing the bond filed to pay such costs. No appeal shall lie from the order dismissing said proceedings. Nothing in this section may prevent the filing of subsequent petitions for a similar district. The right to renew such a proceeding is expressly granted and authorized.

(3) After the hearing has been concluded and after all persons desiring to be heard have been heard, the governing body shall consider the arguments put forth and may make such changes in the area to be included in the district as it may consider desirable or necessary. However, no such changes shall be made unless a costs and feasibility report has been prepared on the basis of such changes.

(4) If at any time during the public hearing the governing body is presented with a petition signed by at least a majority of the property owners owning at least a majority of the assessable land of the proposed district protesting the proposed improvement, and such a petition is still outstanding at the close of the public hearing, the district and project shall be abandoned.

(5) If there is no such petition outstanding, the governing body, after consideration of matters brought forth at the public hearing, shall either abandon the district and project or adopt a resolution establishing the district and authorizing the project, either as described in the notice or with changes made as authorized in this section. Such resolution shall be published in the manner provided in section 29-8-111 but need not be mailed. If a resolution is adopted establishing the district, such resolution shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adopting of such resolution. Such action shall be subject to the provisions of section 29-8-113. Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding.

Source: L. 71: p. 992, § 1. C.R.S. 1963: § 89-23-12.

29-8-113. Waiver of objections. Every person who has real property within the boundaries of the district and who fails to appear before the governing body at the hearing and make any objection he may have to the creation of the district, the making of the improvements, and the inclusion of his real property in the district shall be deemed to have waived every such objection. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in section 29-8-117.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-13.

29-8-114. Proposed assessment list. After a decision is made by a governing body to proceed with the district and project, it shall cause to be prepared an assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-14.

29-8-115. Proposed assessment resolution. After the preparation of the proposed assessment list, the governing body shall cause to be prepared for adoption at the hearing provided for in section 29-8-117, a resolution declaring the entire cost of improvement, including the cost of construction as determined from the costs and feasibility report, other incidental costs, legal and fiscal fees and costs, the cost of the publication of notices, and all other costs properly incident to the construction of the improvement and the financing and collecting thereof. Such resolution shall specify what share, if any, of the total cost is payable from sources other than the imposition of assessments, and shall incorporate the proposed assessment list provided for in section 29-8-114.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-15.

29-8-116. Notice of public hearing on proposed assessments. (1) After the preparation of the aforesaid resolution, notice of a public hearing on the proposed assessments shall be given. Such notice shall be published one time in a newspaper in which the first notice of hearing was published at least twenty days before the date fixed for the hearing, and shall be mailed not less than fifteen days prior to the date fixed for such hearing to each owner of real property whose property will be assessed for part of the cost of the improvement at the last known address of such owner, using for such purpose the names and addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located. In addition, a copy of such notice shall be addressed to "owner" and shall be so mailed, addressed to the street number of each piece of improved property to be affected by such assessment.

(2) Each notice shall state that at the specified time and place the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the resolution will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.

(3) The notice shall further state where a copy of the resolution proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the resolution at the conclusion of the hearing.

(4) The public notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this article.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-16.

29-8-117. Public hearing on proposed assessment resolution. (1) On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot, or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot, or parcel. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such

corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, may increase, or may decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard.

(2) After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

Source: L. 71: p. 994, § 1. C.R.S. 1963: § 89-23-17.

29-8-118. Adoption of the assessment resolution. After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment resolution. The adoption of such resolution shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-18.

29-8-119. Assessment roll. The clerk of the governing body shall prepare a local assessment roll in book form showing in suitable columns each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest if, in pursuance of this article, the same is payable in installments, and the date when each installment will become due, with suitable columns for use, in case of payment of the whole amount or of any installment or penalty, and he shall deliver the same, duly certified, under seal as appropriate, to the proper officer for collection.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-19.

29-8-120. Payment of assessment. All assessments shall be due and payable within thirty days after the final publication of the assessing resolution without demand; except that all such assessments may be paid, at the election of the owner, in installments, with interest, as provided in section 29-8-121.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-20.

29-8-121. Installment payments. Failure to pay the whole assessment within said period of thirty days shall be conclusively considered to be an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. In case of such election, the assessment shall be payable in equal annual or semiannual installments of principal, the first of which installments shall be payable as prescribed by the governing body, and the last installment within not more than twenty years, with interest in all cases on the unpaid principal, payable annually or semiannually at a rate not exceeding the maximum net effective interest rate authorized by the governing body. The number of installments, the period of payments, the date of the initial payment, and the maximum net effective interest rate shall be determined by the governing body and set forth in the resolution required by section 29-8-115.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-21.

29-8-122. Failure to pay installments. Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectable immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a

month until the day of sale; but at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at one percent per month or fraction of a month, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if the default had not been suffered.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-22.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

29-8-123. Discount - assessment roll returned. Payment may be made to the city or town treasurer at any time within thirty days after the final publication of the assessing resolution and an allowance of five percent shall be made on all payments made during such period, but not thereafter. In the case of cities and towns, at the expiration of said thirty-day period, the city or town treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon, with the date of each payment. Said roll shall be certified by the city or town clerk under the seal of the city or town, and be hand delivered to the county treasurer of the same county, with his warrant for the collection of the same. The county treasurer shall show receipt for the same and all such rolls shall be numbered for convenient reference.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-23.

29-8-124. Sale of property for nonpayment. The county treasurer shall receive payment of all installment payments of assessments appearing upon the assessment roll, with interest. In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell any property concerning which such default is suffered for the payment of the whole of the unpaid assessment thereon. Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate in default of payment of general taxes.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-24.

29-8-125. Owner of interest may pay share. The owner of any divided or undivided interest in the property assessed may pay his share of any assessment, upon producing evidence of the extent of his interest, satisfactory to the treasurer having the roll in charge.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-25.

29-8-126. When collections paid city. In the case of improvement districts located within cities or towns, all collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the city or town treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement district.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-26.

29-8-127. Assessment lien. All assessments made under this article, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing resolution, a perpetual lien in the several amounts assessed against each lot or tract of land, and shall

have priority over all other liens excepting general tax liens. No sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-27.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

29-8-128. Advance payment of assessment installments. The governing body may, in the resolution levying the assessments, provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due, if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the property owner must pay such additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance. If no bonds have been issued, then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-28.

29-8-129. Issuance of bonds. (1) After the expiration of thirty days from the effective date of the resolution levying the assessments, the governing body may borrow money and issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. The bonds shall be authorized by resolution of the governing body. The resolution shall prescribe the form of said bonds, the manner of their execution, which may be effected by the use of the facsimile signatures of the officers of the governing body in accordance with the laws of the state in effect at the time of their execution, shall provide for the terms thereof, including the maximum net effective interest rate for the issue of bonds, and may direct that the bonds shall be sold at public or private sale at or below par. The bonds shall not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(2) The governing body shall prescribe other details in connection with the issue of bonds. The bonds so authorized shall mature serially over a period of not exceeding twenty years, but in no event shall such bonds extend over a longer period of time than the period of time over which such installments of special assessments are due and payable and ninety days thereafter.

(3) The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the irrevocable pledge and dedication of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Said resolution and bonds may also include such other terms or recitals which, in the judgment of the governing body, are necessary or proper to render the same marketable.

(4) Any premium received on the sale of the bonds may be applied as other bond proceeds or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds. The bonds shall be callable for redemption from the

proceeds of the sale of any property sold for the nonpayment of special assessments, but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity. The governing body may provide that the bonds shall be redeemable on any interest payment date prior to maturity pursuant to such notice and at such premiums as it deems advisable. Interest may be evidenced by interest coupons attached to such bonds and signed with a facsimile signature, as above provided, of one of the individuals who signed the bonds.

(5) In connection with the issuance of bonds payable solely from special assessments, the governing body may provide for the submission of the question of issuing such bonds to the registered electors eligible to vote on the question. For local improvement districts created by the governing body of any county pursuant to this article, the governing body may provide that all registered electors of the county shall be eligible to vote on the question or that only registered electors who are owners of property within or residents of the district shall be eligible to vote. For local improvement districts created by the governing body of any city or town pursuant to this article, the governing body may provide that all registered electors of the city or town shall be eligible to vote on the question or that only registered electors who are owners of property within or residents of the district shall be eligible to vote.

(6) In connection with the issuance of bonds payable from special assessments which are additionally secured by a pledge of any other funds of the county, city, or town, the governing body may provide for the submission of the question of issuing the bonds to all registered electors of the county, city, or town.

Source: L. 71: p. 997, § 1. C.R.S. 1963: § 89-23-29. L. 87: (1) amended, p. 325, § 72, effective July 1. L. 94: (1) amended and (5) and (6) added, p. 1188, § 83, effective July 1.

29-8-130. Civil action - grounds. (1) No civil action shall be brought or maintained to enjoin the collection of assessments or otherwise test the validity of assessments levied under this article except upon the following grounds:

(a) That notice of a hearing upon the amount of the assessment was not given as required in this article. Any person presenting objections to the governing body at or before the hearing on assessments shall be deemed to have waived this ground.

(b) That the hearing upon the amount of the assessment as provided in this article was not held;

(c) That the improvement ordered was not one authorized by this article;

(d) That the assessment levied exceeds the benefits received by the property assessed.

(2) Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessment to raise his objection to such assessment shall be deemed to have waived all objection to such assessment, except objections on grounds specified in subsections (1) (a) and (1) (b) of this section. Any action brought under this article shall be commenced within thirty days after the passage of the assessing resolution or else be thereafter perpetually barred. Any such action shall be given preference in the courts of the state. If such action is unsuccessful, the courts may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover such costs at the commencement of such action. The burden of proof to show that such special assessment or part thereof is invalid, inequitable, or unjust shall rest upon the party who brings such suit.

Source: L. 71: p. 998, § 1. C.R.S. 1963: § 89-23-30.

29-8-131. Conversion costs. (1) In determining the conversion costs included in the costs and feasibility report required by section 29-8-108, the public utility shall be entitled to amounts sufficient to repay them, with a reasonable allowance for overhead expense, for the following, as computed and reflected by the uniform system of accounts approved by the public utilities commission or federal communications commission, or in the event the public utility is not subject to regulation by either of the above governmental agencies, by

the public utility's system of accounts then in use and in accordance with standard accounting procedures of said public utility:

(a) The original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(b) The estimated costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed;

(c) If the estimated cost of constructing underground facilities exceeds the original cost of existing overhead electric and communication facilities, then the difference between the two;

(d) The cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for aboveground facilities, or where the preexisting easements are insufficient for the underground facilities.

(2) However, in the event that conversion costs are included in tariffs, rules, or regulations filed and in effect with the public utilities commission, such conversion costs shall be the cost included in the costs and feasibility report.

Source: L. 71: p. 998, § 1. C.R.S. 1963: § 89-23-31.

29-8-132. Maintenance, construction, and title to converted facilities. The public utility has the duty to maintain, repair, and replace all underground facilities installed under this article. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities, that is, the removal of the overhead facilities and replacement by underground facilities.

Source: L. 71: p. 999, § 1. C.R.S. 1963: § 89-23-32.

29-8-133. Conversion costs and service connection. (1) The public utility performing the conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution. This shall include the digging and the back filling of a trench upon such lot or parcel, unless the owner executes a written objection thereto and files the same with the clerk of the governing body not later than the date set for hearing objections to the improvement district as provided by law. Failure to file such written objection shall be taken as a consent and grant of easement to the public utility and shall be construed as express authority to the public utility and their respective officers, agents, and employees to enter upon such lot or parcel for such purpose, and, through failure to object, any right of protest or objection with respect to the doing of such work shall be waived. If an owner does file such written objection, he shall then be responsible for providing a trench which is in accordance with applicable rules, regulations, or tariffs from the owner's service entrance to a point designated by the public utility and for back filling a trench following installation of the underground service by the public utility involved.

(2) In any event, the cost of any work done by the public utility shall be included in the assessment to be levied upon such lot or parcel. Should a written objection be filed as provided in subsection (1) of this section, the owner involved shall be obligated for and the public utility involved shall be entitled to payment for the actual cost for such work accomplished upon the owner's property by the public utility; such amount shall be less than the cost if the public utility had performed the trenching and back filling.

(3) The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service.

Source: L. 71: p. 999, § 1. C.R.S. 1963: § 89-23-33.

29-8-134. Notice of possible disconnection. There shall be included in the notice of the public hearing concerning the improvements required by section 29-8-110 notice that all owners of land within the local improvement district may file written requests for inclusion of the cost of conversion of utility facilities upon their property within the contemplation of section 29-8-133. Such notice shall further advise that any owner who does not execute the objections provided for in section 29-8-133, or otherwise provide for underground service connections to his property, in a manner satisfactory to the public utility involved, shall be subject to disconnection from the electric or communication facilities providing service to all buildings, structures, and improvements located upon the lot or parcel.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-34.

29-8-135. Notice of disconnection. If the owner or person in possession of any lot or parcel of land prevents entrance upon the lot or parcel for conversion purposes, or fails to perform under section 29-8-133 and has not otherwise provided for underground service connections to the property in a manner satisfactory to the public utility involved, within sixty days from the time the converted facilities are ready for connection to the property, the electric or communication service shall be disconnected and removed and all overhead electric or communication facilities providing service to any building, structure, and improvement located upon such lot or parcel shall be disconnected. Written notice of disconnection shall be given at least twenty days prior to disconnection by leaving a copy of such notice at the principal building, structure, or improvement located upon such lot or parcel.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-35.

29-8-136. Payment of public utility. Upon completion of the conversion contemplated by this article, the public utility shall present the governing body with its verified bill for conversion costs, as computed under section 29-8-131, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In no event shall the bill for conversion cost presented by the public utility exceed the amount of estimated conversion costs by the public utility. In the event the conversion costs are less than the estimated conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such time as the governing body determines. The bill of the public utility shall be paid within thirty days by the governing body from the improvement district funds or such other source as is properly designated by the governing body. In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission and as is in use at the time of the conversion by the public utility involved, as described in section 29-8-131.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-36.

29-8-137. Reinstallation of overhead facilities not permitted. Once removed, no overhead electric or communication facilities may be installed in a local improvement district for conversion of overhead electric and communication facilities.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-37.

29-8-137.5. Applicability to cable operators. This article shall apply to the overhead communication facilities of cable operators, and those provisions that refer to a public utility or public utilities shall also apply to cable operators.

Source: L. 99: Entire section added, p. 373, § 5, effective April 22.

29-8-138. No limitation on public utilities commission jurisdiction or franchises. Nothing contained in this article shall vest any jurisdiction over any public utility in the governing bodies. The public utilities commission shall retain all jurisdiction conferred on it by law. Nothing contained in this article shall be interpreted in such a way as to be in conflict with franchises granted to any public utility, and in the event of any conflict, such franchises shall control over the requirements of this article.

Source: L. 71: p. 1001, § 1. **C.R.S. 1963:** § 89-23-38.

29-8-139. Nonseverability. If any provision of this article is held invalid, such invalidity shall invalidate this article in its entirety, and to this end the provisions of this article are declared to be nonseverable.

Source: L. 71: p. 1001, § 1. **C.R.S. 1963:** § 89-23-39.

29-8-140. Abatement of construction. If an improvement district is established under this article, the public utility involved shall not be required to commence conversion until the resolution, the assessment roll, and issuance of bonds have become final and no civil action has been filed, or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

Source: L. 71: p. 1001, § 1. **C.R.S. 1963:** § 89-23-40.

29-8-141. Early hearings. All cases in which there may arise a question of validity of the organization of a district or a question of the validity of any proceeding under this article shall be advanced as a matter of immediate public interest and concern and heard at the earliest practicable moment. The courts shall be open at all times for the purpose of this article.

Source: L. 71: p. 1001, § 1. **C.R.S. 1963:** § 89-23-41.

29-8-142. Liberal construction. This article, being necessary to secure and preserve the public health, safety, and general welfare, shall be liberally construed to effect its purpose.

Source: L. 71: p. 1001, § 1. **C.R.S. 1963:** § 89-23-42.

ARTICLE 9

Public Meetings

29-9-101. (Repealed)

Source: L. 91: Entire article repealed, p. 820, § 3, effective June 1.

Editor's note: This article was numbered as article 19 of chapter 3, C.R.S. 1963. For amendments to this article prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the public meetings law for state agencies and the general assembly, see § 24-6-402; for current provisions relating to open meetings, see part 4 of article 6 of title 24.

ARTICLE 10

Seals

29-10-101. Seals.

29-10-101. Seals. Whenever this title requires the use of a seal in the performance of any duties, it shall be sufficient that a rubber stamp with a facsimile affixed thereon of the seal required to be used is placed or stamped upon the document requiring the seal with indelible ink.

Source: L. 75: Entire article added, p. 489, § 6, effective May 26.

ARTICLE 10.5

Flag of the United States

29-10.5-101. Display of flag of the United
States - legislative declaration -
definitions.

**29-10.5-101. Display of flag of the United States - legislative declaration - defini-
tions.** (1) Any local government that purchases a flag of the United States for display may only display such flag if it has been made in the United States.

(2) For purposes of this article, “local government” means a county, a municipality as defined in section 31-1-101 (6), C.R.S., a school district, or a special district formed in accordance with the provisions of title 32, C.R.S.

(3) The general assembly hereby finds and declares that the matter addressed in this article is a matter of statewide concern.

Source: L. 2008: Entire article added, p. 94, § 2, effective September 11, 2009.

ARTICLE 11

Emergency Telephone and Nonemergency
Referral Services

PART 1

EMERGENCY TELEPHONE SERVICE

- 29-11-100.5. Legislative declaration - provi-
sion of emergency service to
wireless and multi-line tele-
phone service users.
- 29-11-101. Definitions.
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- erning body - administrative
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- 29-11-104. Agreements or contracts for
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- use of funds collected.
- 29-11-105. Immunity of providers.
- 29-11-106. Disclosure of 9-1-1 dialing and
calling capabilities.

PART 2

HUMAN SERVICES REFERRAL SERVICE

- 29-11-201. Legislative declaration.
- 29-11-202. Definitions.
- 29-11-203. Human services referral service
- immunity.

PART 1

EMERGENCY TELEPHONE SERVICE

29-11-100.5. Legislative declaration - provision of emergency service to wireless and multi-line telephone service users. (1) The general assembly hereby finds and declares that dialing 9-1-1 is the most effective and familiar way the public has of seeking emergency assistance. The amendments to this part 1 made in Senate Bill 97-132, enacted at the first regular session of the sixty-first general assembly, are intended to provide a funding mechanism for 9-1-1 and enhanced 9-1-1 service for wireless service users. Enhanced 9-1-1 permits rapid response in situations where callers are unable to relay their phone number or location. Public safety answering points will need to make extensive changes in, and additions to, existing equipment to provide enhanced 9-1-1 service to wireless service users. To do so, public safety answering points must have the resources to purchase and update equipment, software, and training. A mechanism for recovery of costs reasonably incurred by wireless carriers, service suppliers, and basic emergency service providers in the acquisition and transmission of 9-1-1 information to public safety answering points is necessary to ensure that wireless service users receive the same level of 9-1-1 service as wireline service users.

(2) The general assembly further finds and declares that public safety agencies increasingly rely on enhanced 9-1-1 to provide dependable and precise information about the 9-1-1 caller's location and an accurate telephone number to reach the caller. Many multi-line telephone systems do not provide precise information about the 9-1-1 caller's location or telephone number. Inadequate location information can be life threatening if the caller is unable to verbalize the correct location. Not knowing an accurate location for a caller can result in a delay in service. In addition, many end-use customers of multi-line telephone systems do not know how to dial a 9-1-1 call from such telephones. Disclosure about 9-1-1 dialing and about the location identification capability of multi-line telephone systems are necessary first steps to ensure that multi-line telephone system service users can obtain emergency assistance by dialing 9-1-1.

(3) Nothing in this part 1 should be construed to alter the method of regulation or deregulation of providers of telecommunications service as set forth in article 15 of title 40, C.R.S.

Source: **L. 97:** Entire section added, p. 571, § 1, effective April 30. **L. 2001:** Entire section amended, p. 64, § 1, effective August 8. **L. 2004:** (1) and (3) amended, p. 13, § 2, effective February 20.

29-11-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Automatic location identification" ("ALI") means the automatic display, on equipment at the PSAP, of the location of the caller's telephone number, the address for the telephone, including nonlisted and nonpublished numbers and addresses, and other information about the caller's precise location.

(1.1) "Automatic number identification" ("ANI") means the automatic display, on equipment at the PSAP, of the caller's telephone number.

(1.2) "Basic emergency service provider" ("BESP") means any person authorized by the commission to undertake the aggregation and transportation of 9-1-1 calls to a PSAP.

(1.3) "Commission" or "public utilities commission" means the public utilities commission of the state of Colorado, created in section 40-2-101, C.R.S.

(1.5) "Emergency notification service" means an informational service that, upon activation by a public safety agency, uses the 9-1-1 database or a database derived from the 9-1-1 database to rapidly notify all telephone customers within a specified geographic area of hazardous conditions or emergent events that threaten their lives or property, including, without limitation, floods, fires, and hazardous materials incidents.

(1.6) "Emergency service provider" means a primary provider of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services.

(1.7) “Emergency telephone charge” means a charge to pay the equipment costs, the installation costs, and the directly-related costs of the continued operation of an emergency telephone service according to the rates and schedules filed with the public utilities commission, if applicable.

(2) “Emergency telephone service” means a telephone system utilizing the single three-digit number 9-1-1 for reporting police, fire, medical, or other emergency situations.

(2.5) “Equipment supplier” means any person providing telephone or other equipment necessary for an emergency telephone service to any public agency or governing body in this state, through lease or sale.

(3) “Exchange access facilities” means the access from a specific customer’s premises to the telecommunications network to effect the transfer of information.

(4) “Governing body” means the board of county commissioners of a county or the city council or other governing body of a city, city and county, or town or the board of directors of a special district.

(4.3) “Interconnected voice-over-internet-protocol service” means a service that:

- (a) Enables real-time, two-way voice communications;
- (b) Requires a broadband connection from the service user’s location;
- (c) Requires internet protocol-compatible customer premises equipment; and
- (d) Permits service users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(4.5) “MLTS operator” means the person that operates an MLTS from which an end-user may place a 9-1-1 call through the public switched network.

(4.6) “Multi-line telephone system” (“MLTS”) means a system comprised of common control units, telephones, and control hardware and software providing local telephone service to multiple end-use customers in businesses, apartments, townhouses, condominiums, schools, dormitories, hotels, motels, resorts, extended care facilities, or similar entities, facilities, or structures. “Multi-line telephone system” includes:

(a) Network and premises-based systems such as centrex, pbx, and hybrid-key telephone systems; and

(b) Systems owned or leased by governmental agencies, nonprofit entities, and for-profit businesses.

(5) “Person” means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation (municipal or private and whether organized for profit or not), governmental agency, state, county, political subdivision, state department, commission, board, or bureau, fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee, or trustee in bankruptcy or any other service user.

(5.5) “Prepaid wireless telecommunications service” means wireless telecommunications access that allows a caller to dial 911 to access the 911 system, is paid for in advance, and is sold in predetermined units or dollars, of which the number of units or dollars available to the caller declines with use in a known amount.

(6) “Public agency” means any city, city and county, town, county, municipal corporation, public district, or public authority located in whole or in part within this state which provides or has the authority to provide fire fighting, law enforcement, ambulance, emergency medical, or other emergency services.

(6.5) “Public safety answering point” (“PSAP”) means a facility equipped and staffed on a 24-hour basis to receive and process 9-1-1 calls.

(6.7) “Rates” means the rates billed by a service supplier pursuant to tariffs, price lists, or contracts, which rates represent the service supplier’s recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses, or similar charges.

(7) “Service supplier” means a person providing exchange telephone services, a person providing telecommunications service via wireless carrier, and a person providing interconnected voice-over-internet-protocol service to any service user in this state, either directly or by resale.

(8) “Service user” means a person who is provided exchange telephone service, a person who is provided telecommunications service via wireless carrier, and a person who is provided interconnected voice-over-internet-protocol service in this state.

- (9) (Deleted by amendment, L. 97, p. 572, § 2, effective April 30, 1997.)
- (10) “Telecommunications service” has the meaning set forth in section 40-15-102 (29), C.R.S.
- (11) “Wireless automatic location identification” (“wireless ALI”) means the automatic display, on equipment at the PSAP, of the location of the wireless service user initiating a 9-1-1 call to the PSAP.
- (12) “Wireless automatic number identification” (“wireless ANI”) means the mobile identification number of the wireless service user initiating a 9-1-1 call to the PSAP.
- (13) “Wireless carrier” means a cellular licensee, a personal communications service licensee, and certain specialized mobile radio providers designated as covered carriers by the federal communications commission in 47 CFR 20.18 and any successor to such rule.
- (14) “Wireless communications access” means the radio equipment and assigned mobile identification number used to connect a wireless customer to a wireless carrier for two-way interactive voice or voice-capable services.

Source: L. 81: Entire article added, p. 1415, § 1, effective May 26. L. 85: (1) amended and (2.5) added, p. 1052, § 1, effective April 17. L. 97: (1), (2), (7), (8), and (9) amended and (1.3), (1.7), (6.5), (6.7), and (10) to (14) added, p. 572, § 2, effective April 30. L. 2001: (1) amended and (1.1), (1.2), (4.5), and (4.6) added, p. 65, § 2, effective April 8. L. 2002: (1.5) added, p. 83, § 1, effective March 22. L. 2004: (1.6) added, p. 1879, § 1, effective July 1; (13) and (14) amended, p. 1202, § 70, effective August 4. L. 2008: (3), (7), and (8) amended and (4.3) added, p. 683, § 1, effective August 5. L. 2010: (5.5) added, (SB 10-120), ch. 371, p. 1739, § 1, effective January 1, 2011.

29-11-102. Imposition of charge - liability of user for charge - collection - uncollected amounts - rules. (1) (a) In addition to any other powers for the protection of the public health, a governing body may incur any equipment, installation, and other directly related costs for the continued operation of an emergency telephone service as further described in section 29-11-104, and may pay such costs by imposing an emergency telephone charge for such service in those portions of the governing body’s jurisdiction for which emergency telephone service will be provided. The governing body may do such other acts as may be expedient for the protection and preservation of the public health and as may be necessary for the acquisition of equipment, for the provision of initial services, and for the operation of the emergency telephone service.

(b) If the emergency telephone service is to be provided for territory which is included in whole or in part in the jurisdiction of the governing bodies of two or more public agencies which are the primary providers of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services, the agreement for such service with a BESF or any equipment supplier shall be entered into by each such governing body unless any such body expressly excludes itself therefrom. Any such agreement shall provide that each governing body that is a customer of such service shall make payment therefor from charges imposed under paragraph (a) of this subsection (1), unless all such customers make payments therefor from general revenues. Nothing in this paragraph (b) shall be construed to prevent two or more such governing bodies from entering into a contract under part 2 of article 1 of this title and to establish a separate legal entity thereunder to enter into such an agreement as the customer of the BESF or any equipment supplier.

(2) (a) The governing body is hereby authorized, by ordinance in the case of cities and by resolution in the case of counties or special districts, to impose such charge in an amount not to exceed seventy cents per month per exchange access facility, per wireless communications access, and per interconnected voice-over-internet-protocol service in those portions of the governing body’s jurisdiction for which emergency telephone service will be provided.

(b) In the event the governing body determines that a charge in excess of seventy cents per month is necessary in order to provide continued and adequate emergency telephone service, the governing body shall obtain from the public utilities commission approval of such higher charge before the imposition thereof.

(c) Regardless of the level at which the charge is set, the amount of the charge imposed per exchange access facility, per wireless communications access, and per interconnected voice-over-internet-protocol service shall be equal.

(d) The proceeds of the charge shall be utilized to pay for emergency telephone service, as set forth in section 29-11-104 (2), and may be imposed at any time after the governing body requests such service from the provider or, in the case of wireless carriers, at any time after the governing body requests wireless ANI or wireless ALI from the wireless carrier.

(e) This subsection (2) shall not apply to prepaid wireless telecommunications services.

(3) Such charge shall be imposed only upon service users whose address is in those portions of the governing body's jurisdiction for which emergency telephone service shall be provided; however, such charge shall not be imposed upon any state or local governmental entity.

(4) Every billed service user shall be liable for any charge imposed under this article until it has been paid to the service supplier.

(5) The duty to collect or pay any charge imposed under the authority of this article shall commence at such time as may be specified by the governing body. Charges imposed under the authority of this article and required to be collected by the service supplier shall be added to and may be stated separately in the billings, if any, to the service user.

(6) The service supplier shall have no obligation to take any legal action to enforce the collection of any charge imposed under the authority of this article. Such action may be brought by or in behalf of the public agency imposing the charge or the separate legal entity formed pursuant to paragraph (b) of subsection (1) of this section. The service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users that carry a balance that can be determined by the service supplier to be the nonpayment of any charge imposed under the authority of this article. The service supplier shall not be held liable for such uncollected amounts that have been billed to the service user.

(7) Any charge imposed under the authority of this article shall be collected insofar as practicable at the same time as, and along with, the charges for the rate in accordance with the regular billing practice of the service supplier. The rates determined by or stated on the billing of the service supplier are presumed to be correct if such charges were made in accordance with the service supplier's business practices. The presumption may be rebutted by evidence which establishes that an incorrect rate was charged.

Source: L. 81: Entire article added, p. 1416, § 1, effective May 26. L. 85: (1) amended and (2.5) added, p. 1052, § 2, effective April 17. L. 90: (2) and (3) amended, p. 1451, § 8, effective July 1. L. 97: (1)(b), (2), (3), and (7) amended, p. 573, § 3, effective April 30. L. 2004: (1)(a) amended, p. 1879, § 2, effective July 1. L. 2008: (2)(a), (2)(c), (5), and (6) amended, p. 684, § 2, effective August 5. L. 2010: (2)(e) added, (SB 10-120), ch. 371, p. 1739, § 2, effective January 1, 2011.

29-11-102.5. Imposition of charge on prepaid wireless - rules - prepaid wireless trust cash fund - definitions. (1) As used in this section:

(a) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

(b) "Department" means the department of revenue.

(c) "Prepaid wireless E911 charge" means the charge that is required to be collected by a seller from a consumer under subsection (2) of this section.

(d) "Provider" means a person that provides prepaid wireless telecommunications service.

(e) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(f) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

(2) (a) A prepaid wireless E911 charge of one and four-tenths percent of the price of the retail transaction is hereby imposed on each retail transaction.

(b) (I) The seller shall collect the prepaid wireless E911 charge from the consumer on each retail transaction occurring in this state. The amount of the prepaid wireless E911 charge shall be either disclosed to the consumer or separately stated on an invoice, receipt, or other similar document the seller provides to the consumer. A seller shall elect to either disclose or separately state the charge and shall not change the election without the written consent of the department.

(II) For purposes of this paragraph (b), a retail transaction occurs in Colorado if:

(A) The consumer effects the retail transaction in person at a business location in Colorado;

(B) If sub-subparagraph (A) of this subparagraph (II) does not apply, the product is delivered to the consumer at a Colorado address provided to the seller;

(C) If sub-subparagraphs (A) and (B) of this subparagraph (II) do not apply, the seller's records, maintained in the ordinary course of business, indicate that the consumer's address is in Colorado and the records are not made or kept in bad faith;

(D) If sub-subparagraphs (A) to (C) of this subparagraph (II) do not apply, the consumer gives a Colorado address during the consummation of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith; or

(E) If sub-subparagraphs (A) to (D) of this subparagraph (II) do not apply, the mobile telephone number is associated with a Colorado location.

(c) The prepaid wireless E911 charge is the liability of the consumer and not of the seller or of any provider; except that the seller shall be liable to remit all prepaid wireless E911 charges that the seller collects from consumers as provided in subsection (3) of this section. The seller shall be deemed to have collected the charge notwithstanding that the amount of the charge has neither been separately disclosed nor stated on an invoice, receipt, or other similar document the seller provides to the consumer.

(d) The amount of the prepaid wireless E911 charge that is collected by a seller from a consumer shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(3) (a) The seller shall remit any collected prepaid wireless E911 charges to the department at the times and in the manner provided in part 1 of article 26 of title 39, C.R.S. The department shall establish, by rule, registration and payment procedures that substantially coincide with the registration and payment procedures that apply under part 1 of article 26 of title 39, C.R.S. A seller is subject to the penalties under part 1 of article 26 of title 39, C.R.S., for failure to collect or remit a prepaid wireless E911 charge in accordance with this section.

(b) (I) Effective July 1, 2011, a seller may deduct and retain three and three-tenths percent of the prepaid wireless E911 charges that are collected by the seller from consumers.

(II) Repealed.

(c) The audit and appeal procedures applicable to the state sales tax under part 1 of article 26 of title 39, C.R.S., shall apply to prepaid wireless E911 charges.

(d) The department shall establish procedures by which a seller may document that a transaction is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting that a sale was wholesale for purposes of the sales tax under part 1 of article 26 of title 39, C.R.S.

(e) (I) Remittances of prepaid wireless E911 charges received by the department are collections for the local governing body, not general revenues of the state, and shall be held in trust in the prepaid wireless trust cash fund, which is hereby created. Except as provided in subparagraph (II) of this paragraph (e), the department shall transmit the moneys in the fund to each governing body within sixty days after the department receives the money in accordance with section 29-2-106 for use by such governing body for the purposes permitted under section 29-11-104.

(II) The department may expend an amount, not to exceed three percent of the collected charges in the prepaid wireless trust cash fund, necessary to reimburse the department for its direct costs of administering the collection and remittance of prepaid wireless E911

charges; except that the department may expend up to an additional four hundred fifty thousand dollars from January 1, 2011, through January 1, 2012, to cover the initial cost of establishing the collection and remittance process.

(III) The public utilities commission shall establish a formula for distribution of revenues from the prepaid wireless E911 charge based upon the governing authority's portion of the total 911 wireless call volume. The public utilities commission, or its designee, shall collect and transmit the percentage of wireless calls processed by each public safety answering point to the department by November 15 of each year. The public utilities commission may promulgate rules to implement this subparagraph (III).

(4) The prepaid wireless E911 charge imposed by this section shall be the only direct E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state. No tax, fee, surcharge, or other charge to fund E911 shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency upon a provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Source: L. 2010: Entire section added, (SB 10-120), ch. 371, p. 1739, § 3, effective January 1, 2011.

Editor's note: Subsection (3)(b)(II)(B) provided for the repeal of subsection (3)(b)(II), effective July 1, 2011. (See L. 2010, p. 1739.)

29-11-103. Remittance of charge to governing body - administrative fee - establishment of rate of charge. (1) Any charge imposed under the authority of this article and the amounts required to be collected or paid are to be remitted monthly. The amount of the charge collected or paid in one month by the service supplier shall be remitted to the governing body no later than thirty days after the close of that month. On or before the sixtieth day of each calendar quarter, a return for the preceding quarter shall be filed with the governing body in such form as the governing body and service supplier shall agree upon. The service supplier required to file the return shall deliver the return, together with a remittance of the amount of the charge payable, to the office of the governing body. The service supplier shall maintain a record of the amount of each charge collected pursuant to this article. Such record shall be maintained for a period of one year after the time the charge was collected.

(2) From every remittance to the governing body made on or before the date when the same becomes due, the service supplier required to remit the same shall be entitled to deduct and retain two percent of said remittance.

(3) (a) At least once each calendar year, the governing body shall establish a rate of charge, not to exceed the amount authorized, that together with any surplus revenues carried forward will produce sufficient revenues to fund the expenditures authorized by this article. Amounts collected in excess of such necessary expenditures within a given year shall be carried forward to subsequent years and shall be used in accordance with section 29-11-104 (2). Immediately upon determining such rate, the governing body shall publish in its minutes the new rate, and if the rate has been changed from the prior rate, it shall notify by registered mail every service supplier at least sixty days before such new rate will become effective.

(b) The governing body may, at its own expense, require an annual audit of the service supplier's books and records concerning the collection and remittance of the charge authorized by this article. Public inspection of the audit and of documents reviewed in the audit shall be subject to section 24-72-204, C.R.S.

Source: L. 81: Entire article added, p. 1417, § 1, effective May 26. **L. 90:** (1) and (2) amended, p. 1451, § 9, effective July 1. **L. 97:** (3) amended, p. 574, § 4, effective April 30. **L. 2008:** (1) and (3)(a) amended, p. 684, § 3, effective August 5.

29-11-104. Agreements or contracts for emergency telephone service - use of funds collected. (1) Any governing body imposing the charge authorized by this article may enter into an agreement directly with the supplier of the emergency telephone service or may contract and cooperate with any public agency or with other states or their political subdivisions or with any association or corporation for their political subdivisions or with any association or corporation for the administration of emergency telephone service as provided by law.

(2) (a) (I) Except as otherwise provided in paragraph (b) of this subsection (2), funds collected from the charges imposed pursuant to this article shall be spent solely to pay for:

(A) Costs of equipment directly related to the receipt and routing of emergency calls and installation thereof;

(B) Monthly recurring charges of service suppliers and basic emergency service providers (BESPs) for the emergency telephone service, which charges shall be billed by the BESP to the governing body of each jurisdiction in which it provides service;

(C) Reimbursement of the costs of wireless carriers and BESPs for equipment changes necessary for the provision or transmission of wireless ANI or wireless ALI to a public safety answering point;

(D) Costs related to the provision of the emergency notification service and the emergency telephone service, including costs associated with total implementation of both services by emergency service providers, including costs for programming, radios, and emergency training programs; and

(E) Other costs directly related to the continued operation of the emergency telephone service and the emergency notification service.

(II) If moneys are available after the costs and charges enumerated in subparagraph (I) of this paragraph (a) are fully paid, such funds may be expended for emergency medical services provided by telephone or the necessary equipment to redirect calls for nonemergency telephone services.

(b) Funds collected from the charges imposed pursuant to this article may also be spent for personnel expenses necessarily incurred for a public safety answering point. As used in this paragraph (b), "personnel expenses necessarily incurred" includes only expenses incurred for:

(I) Persons employed to take emergency telephone calls and dispatch them appropriately; and

(II) Persons employed to maintain the computer data base of the public safety answering point.

(c) (Deleted by amendment, L. 2004, p. 1880, § 3, effective July 1, 2004.)

(3) Funds collected from the charges imposed pursuant to this article shall be credited to a cash fund, apart from the general fund of the public agency, for payments pursuant to subsection (2) of this section. Any moneys remaining in such cash fund at the end of any fiscal year shall remain therein for payments during any succeeding year; except that, if such emergency telephone service is discontinued, moneys remaining in the fund after all payments to the service suppliers, basic emergency service providers, and all equipment suppliers pursuant to subsection (2) of this section have been made shall be transferred to the general fund of the public agency or proportionately to the general fund of each participating public agency.

(4) A wireless carrier or BESP that provides wireless ALI or wireless ANI services at the request of a governing body, and pursuant to a contract between the wireless carrier or BESP and the governing body, shall be reimbursed by such governing body or its designee for the costs incurred in making any equipment changes necessary for the provision of such services.

(5) Each governing body shall include as a part of the audit required by part 6 of article 1 of this title an audit on the use of the funds collected from the charges imposed pursuant

to this article for compliance with paragraph (a) of subsection (2) of this section. A copy of each audit report shall be made available on the governing body's web site if the governing body has a web site.

Source: **L. 81:** Entire article added, p. 1418, § 1, effective May 26. **L. 85:** (2) and (3) amended, p. 1053, § 3, effective April 17. **L. 92:** (2) amended, p. 964, § 1, effective June 1. **L. 95:** (2) amended, p. 247, § 1, effective April 17. **L. 97:** (2) and (3) amended and (4) added, p. 575, § 5, effective April 30. **L. 2002:** (2)(a)(I)(C) and (2)(a)(I)(D) amended and (2)(a)(I)(E) added, p. 83, § 2, effective March 22. **L. 2004:** (2) amended, p. 1880, § 3, effective July 1. **L. 2008:** (5) added, p. 685, § 4, effective August 5.

29-11-105. Immunity of providers. No basic emergency service provider or service supplier and no employee or agent thereof shall be liable to any person or entity for infringement or invasion of the right of privacy of any person caused or claimed to have been caused, directly or indirectly, by any act or omission in connection with the installation, operation, maintenance, removal, presence, condition, occasion, or use of emergency service features, automatic number identification (ANI), or automatic location identification (ALI) service and the equipment associated therewith, including without limitation the identification of the telephone number, address, or name associated with the telephone used by the party or parties accessing 9-1-1 service, wireless ANI service, or wireless ALI service, and that arise out of the negligence or other wrongful act of the provider or supplier, the customer, the governing body or any of its users, agencies, or municipalities, or the employee or agent of any of said persons and entities. In addition, no basic emergency service provider or service supplier or any employee or agent thereof shall be liable for any damages in a civil action for injuries, death, or loss to person or property incurred as a result of any act or omission of such provider, service supplier, employee, or agent in connection with developing, adopting, implementing, maintaining, enhancing, or operating an emergency telephone service unless such damage or injury was intentionally caused by or resulted from gross negligence of the provider, supplier, employee, or agent.

Source: **L. 97:** Entire section added, p. 576, § 6, effective April 30.

29-11-106. Disclosure of 9-1-1 dialing and calling capabilities. (1) When the method of dialing a local call from an MLTS telephone requires the dialing of an additional digit to access the public switched network, MLTS operators shall provide written information to their end-users describing the proper method of dialing 9-1-1 from an MLTS telephone in an emergency. MLTS operators that do not give the ANI, the ALI, or both shall disclose such fact in writing to their end-users and instruct them to provide their telephone number and exact location when calling 9-1-1.

(2) (a) For purposes of this section, "end-user" means the person making telephone calls, including 9-1-1 calls, from the MLTS providing telephone service to the person's place of employment or to the person's permanent or temporary residence.

(b) For purposes of this section, "MLTS operator" means the person who has responsibility to the end-user to coordinate telephone line number and address location assignments.

(3) The public utilities commission may promulgate rules to implement this section in accordance with article 4 of title 24, C.R.S.

(4) Nothing in this section shall be construed to alter the method of regulation or deregulation of providers of telecommunications service by the public utilities commission as set forth in article 15 of title 40, C.R.S.

Source: **L. 2001:** Entire section added, p. 66, § 3, effective August 8.

PART 2

HUMAN SERVICES REFERRAL SERVICE

29-11-201. Legislative declaration. The general assembly hereby finds and declares that obtaining access to appropriate community-based organizations and governmental agencies providing for human services is a critical first step for many individuals and families of Colorado to receiving the help and assistance they need. In 2000, in recognition of the need to promote effective access to human services, the federal communications commission reserved the three-digit telephone number of 2-1-1 for access to community health and human services information. The public utilities commission approved the use of a 2-1-1 number for Colorado in October of 2002, and while four pilot sites are operating in specified counties, there is a need for service in all counties of this state. The 2-1-1 human services referral service is dedicated to providing individuals and families with referral information to obtain nonemergency services such as food assistance, shelter, job assistance, and low-cost health care, for those in need. Due to the importance of the human services referral system and the need to assure that this system is enabled in all areas of the state of Colorado, the general assembly hereby finds and declares that the human services referral service providers should receive protection of immunity that is similar to the protection afforded to the 9-1-1 emergency service.

Source: L. 2004: Entire part added, p. 12, § 1, effective February 20.

29-11-202. Definitions. For purposes of this part 2, unless the context otherwise requires:

(1) "Colorado 2-1-1 collaborative" means the group authorized by the public utilities commission to establish the provision of human services referral services in the state of Colorado.

(2) "Human services referral service provider" means a service that is authorized by the Colorado 2-1-1 collaborative to provide health and human services referral information.

Source: L. 2004: Entire part added, p. 13, § 1, effective February 20.

29-11-203. Human services referral service - immunity. (1) No Colorado 2-1-1 collaborative, human services referral service provider, or employee, agent, or financial supporter thereof shall be liable to any person or entity for any damages in a civil action for injuries, death, or loss to person or property incurred as a result of any act or omission of the Colorado 2-1-1 collaborative, human services referral service provider, or any employee or agent thereof in connection with developing, adopting, authorizing, implementing, maintaining, enhancing, or operating a referral service unless such damage or injury was intentionally caused by or resulted from gross negligence of the Colorado 2-1-1 collaborative, human services referral service provider, employee, agent, or financial supporter in connection with the provision of human services referral service.

(2) No Colorado 2-1-1 collaborative, human services referral service provider or employee, agent, or financial supporter thereof shall be liable to any person or entity for infringement or invasion of the right of privacy of any person caused or claimed to have been caused, directly or indirectly, by any act or omission in connection with the provision of human service referral information to any person or entity unless the infringement or invasion of the right of privacy arose out of the gross negligence or other wrongful and intentional act of the Colorado 2-1-1 collaborative, human services referral service provider, employee, agent, or financial supporter thereof.

Source: L. 2004: Entire part added, p. 13, § 1, effective February 20.

ARTICLE 11.5**Alternative Forms of Payment
to Local Governments**

29-11.5-101.	Definitions.	29-11.5-103.	Limitations on convenience fees for the use of alternative forms of payment.
29-11.5-102.	Acceptance of alternative forms of payment for the payment of moneys payable to local governments - allocation of costs.	29-11.5-104.	Legislative declaration - master agreements.

29-11.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative forms of payment" means forms of payment, including but not limited to credit, charge, or debit cards, other than cash or check.

(2) "Collector local governmental entity" means any state or local governmental entity that collects moneys payable to a local governmental entity that the state or local governmental entity must remit to one or more other state or local governmental entities.

(3) "Local governmental entity" means any county, municipality, city and county, school district, special district, or other political subdivision of the state; any department, agency, institution, or authority of such a county, municipality, city and county, school district, special district, or other political subdivision; or an authorized agent of any of the foregoing.

(4) "Moneys payable to a local governmental entity" means moneys owed or paid to any local governmental entity other than bail bonds, judicial bonds, or other moneys that the local governmental entity must return to the payer upon the satisfaction of one or more specified conditions by the payer.

(5) "Provider of alternative forms of payment" means a person or entity, including but not limited to an issuer of credit, charge, or debit cards, that provides its customers the ability to use one or more alternative forms of payment.

Source: L. 99: Entire article added, p. 429, § 2, effective August 4.

29-11.5-102. Acceptance of alternative forms of payment for the payment of moneys payable to local governments - allocation of costs. (1) Any local governmental entity responsible for the collection of moneys payable to a local governmental entity may accept one or more alternative forms of payment for the payment of such moneys in accordance with the provisions of this article.

(2) A collector local governmental entity that chooses to accept one or more alternative forms of payment for the payment of moneys payable to a local governmental entity that the collector local governmental entity must remit to one or more other governmental entities shall either:

(a) Remit to such other governmental entities the gross amount of any payments made by alternative forms of payment that the collector local governmental entity is required to remit to such other governmental entities notwithstanding the deduction of any moneys from such gross amount by any provider of alternative forms of payment pursuant to a master agreement or other agreement authorized by this article; or

(b) Enter into an intergovernmental agreement with each such other governmental entity regarding the allocation of the costs of accepting such alternative forms of payment.

Source: L. 99: Entire article added, p. 429, § 2, effective August 4.

29-11.5-103. Limitations on convenience fees for the use of alternative forms of payment.

(1) and (2) (Deleted by amendment, L. 2003, p. 1442, § 2, effective April 29, 2003.)

(3) A local governmental entity may impose a convenience fee on persons who use alternative forms of payment, but the amount of any convenience fee imposed on or after

April 29, 2003, shall not exceed the actual additional cost incurred by the local governmental agency to process the transaction by alternative form of payment. Any convenience fee on a transaction involving an alternative form of payment shall be imposed in accordance with the rules of the alternative payment provider.

Source: **L. 99:** Entire article added, p. 429, § 2, effective August 4. **L. 2003:** Entire section amended, p. 1442, § 2, effective April 29.

- 29-11.5-104. Legislative declaration - master agreements.** (1) The general assembly hereby finds and declares that it is in the best interests of all Coloradans that local governmental entities that choose to accept alternative forms of payment do so in the most consumer-oriented, cost-effective, and uniform manner possible. Accordingly, it is the intent of the general assembly to encourage local governmental entities to join with other local governmental entities in contractual arrangements with providers of alternative forms of payment or to join one or more master agreements entered into by the state treasurer pursuant to section 24-19.5-104, C.R.S.
- (2) Any local governmental entity that accepts one or more alternative forms of payment for payments payable to a local governmental entity may:
- (a) Join with one or more other local governmental entities in negotiating and entering into one or more contracts with one or more providers of alternative forms of payment; or
- (b) Join in any master agreement entered into by the state treasurer pursuant to section 24-19.5-104, C.R.S., with the approval of the state treasurer or pursuant to any rules promulgated by the state treasurer.

Source: **L. 99:** Entire article added, p. 430, § 2, effective August 4.

ARTICLE 11.7

Regulation of Firearms

Law reviews: For article, “In the Crosshairs: Colorado’s New Gun Laws”, see 33 Colo. Law. 11 (January 2004).

29-11.7-101.	Legislative declaration.		prohibited.
29-11.7-102.	Firearms database - prohibited.	29-11.7-104.	Regulation - carrying - posting.
29-11.7-103.	Regulation - type of firearm -		

- 29-11.7-101. Legislative declaration.** (1) The general assembly hereby finds that:
- (a) Section 3 of article II of the state constitution, the article referred to as the state bill of rights, declares that all persons have certain inalienable rights, which include the right to defend their lives and liberties;
- (b) Section 13 of article II of the state constitution protects the fundamental right of a person to keep and bear arms and implements section 3 of article II of the state constitution;
- (c) The general assembly recognizes a duty to protect and defend the fundamental civil rights set forth in paragraphs (a) and (b) of this subsection (1);
- (d) There exists a widespread inconsistency among jurisdictions within the state with regard to firearms regulations;
- (e) This inconsistency among local government laws regulating lawful firearm possession and ownership has extraterritorial impact on state citizens and the general public by subjecting them to criminal and civil penalties in some jurisdictions for conduct wholly lawful in other jurisdictions;
- (f) Inconsistency among local governments of laws regulating the possession and ownership of firearms results in persons being treated differently under the law solely on the basis of where they reside, and a person’s residence in a particular county or city or city and county is not a rational classification when it is the basis for denial of equal treatment under the law;

(g) This inconsistency places citizens in the position of not knowing when they may be violating the local laws and therefore being unable to avoid violating the law and becoming subject to criminal and other penalties.

(2) Based on the findings specified in subsection (1) of this section, the general assembly concludes that:

(a) The regulation of firearms is a matter of statewide concern;

(b) It is necessary to provide statewide laws concerning the possession and ownership of a firearm to ensure that law-abiding persons are not unfairly placed in the position of unknowingly committing crimes involving firearms.

Source: L. 2003: Entire article added, p. 652, § 2, effective March 18.

29-11.7-102. Firearms database - prohibited. (1) A local government, including a law enforcement agency, shall not maintain a list or other form of record or database of:

(a) Persons who purchase or exchange firearms or who leave firearms for repair or sale on consignment;

(b) Persons who transfer firearms, unless the persons are federally licensed firearms dealers;

(c) The descriptions, including serial numbers, of firearms purchased, transferred, exchanged, or left for repair or sale on consignment.

Source: L. 2003: Entire article added, p. 653, § 2, effective March 18.

29-11.7-103. Regulation - type of firearm - prohibited. A local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law. Any such ordinance, regulation, or other law enacted by a local government prior to March 18, 2003, is void and unenforceable.

Source: L. 2003: Entire article added, p. 653, § 2, effective March 18.

29-11.7-104. Regulation - carrying - posting. A local government may enact an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area within the local government's jurisdiction. If a local government enacts an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area, the local government shall post signs at the public entrances to the building or specific area informing persons that the open carrying of firearms is prohibited in the building or specific area.

Source: L. 2003: Entire article added, p. 653, § 2, effective March 18.

ENERGY CONSERVATION

ARTICLE 12

Energy Conservation Standards for Nonresidential Buildings

29-12-101 to 29-12-107. (Repealed)

Editor's note: (1) This article was added in 1977 and was not amended prior to its repeal in 1980. For the text of this article prior to 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 29-12-107 provided for the repeal of this article, effective January 1, 1980. (See L. 77, p. 1424.)

ARTICLE 12.5**Energy Conservation Measures**

29-12.5-101.	Definitions.	measures - exception to debt limitations.
29-12.5-102.	Contract for analysis and recommendations.	29-12.5-104. Monitoring and reporting of energy and cost savings.
29-12.5-103.	Financing utility cost saving	

29-12.5-101. Definitions. As used in this article:

(1) "Board" means a governing body of any municipality or home rule county, a board of county commissioners of any county, a special district, or a board of education of any school district.

(2) (Deleted by amendment, L. 2002, p. 1027, § 55, effective June 1, 2002.)

(3) "Energy performance contract" means a contract for evaluations, recommendations, or implementation of one or more energy saving measures designed to produce utility costs savings or operation and maintenance cost savings, which contract:

(a) Sets forth savings attributable to the calculated utility cost savings or operation and maintenance cost savings for each year during the contract period;

(b) Provides that the amount of actual savings for each year during the contract period shall exceed annual contract payments, including maintenance costs, to be made during such year by the board contracting for utility cost-savings measures;

(c) Requires the party entering into such contract with the board to provide a written guarantee that the sum of utility cost savings and operation and maintenance cost savings for each year during the first three years of the contract period shall not be less than the calculated savings for that year set forth pursuant to paragraph (a) of this subsection (3);

(d) (Deleted by amendment, L. 2001, p. 1093, § 4, effective August 8, 2001.)

(e) Provides that, if all payments, except payments for maintenance and repairs and obligations on the termination of the contract prior to expiration, made by such board during any year subject to the guarantee in paragraph (c) of this subsection (3) exceed the sum of utility cost savings and operation and maintenance savings for that year, such party shall forfeit to such board that portion of such moneys equal to the amount by which such payments exceeded such savings;

(f) Requires such board, upon termination or expiration of the contract, to return to such party any moneys deposited with such board that are not forfeited to such board pursuant to paragraph (e) of this subsection (3);

(g) Requires that not less than one-tenth of all payments, except payments for maintenance and repairs and obligations on the termination of the contract prior to expiration, to be made by such board shall be made within two years from the date of execution of the contract; and

(h) Requires that the remaining such payments to be made by such board shall be made within twelve years from the date of execution of the contract; except that the maximum term of the payments shall be less than the cost-weighted average useful life of utility cost-savings equipment for which the contract is made, not to exceed twenty-five years.

(4) "Energy saving measure" means:

(a) The acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of a utility cost-savings measure and any attendant architectural and engineering consulting services; or

(b) Architectural and engineering consulting services related to utility cost savings.

(4.5) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more utility cost savings measures. The savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(5) "Political subdivision" means a municipality, county, or school district.

(6) "Shared-savings contract" means a contract for one or more energy saving measures, which contract:

(a) Provides that all payments to be made by the board contracting for the energy saving measures shall be a stated percentage of calculated savings of energy costs attributable to such measures over a defined period of time and that such payments shall be made only to the extent that such savings occur; except that this paragraph (a) shall not apply to payments for maintenance and repairs and obligations on termination of the contract prior to its expiration;

(b) Provides for an initial contract period of no longer than ten years; and

(c) Requires no additional capital investment or contribution of funds from such board or the political subdivision, other than funds available from state or federal energy grants.

(7) "Utility cost savings" means:

(a) A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or utility resulting from the implementation of one or more utility cost savings measures when compared with an established baseline of usage; or

(b) A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs, excepting other available capital contributions provided by the political subdivision.

(8) "Utility cost-savings contract" means an energy performance contract or a shared-savings contract or any other agreement in which utility cost savings are used to pay for services or equipment.

(9) "Utility cost-savings measure" means an installation, modification, or service that is designed to reduce energy consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(g) Energy recovery systems;

(h) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(i) Renewable energy and alternate energy systems;

(j) Devices that reduce water consumption or sewer charges;

(k) Changes in operation and maintenance practices;

(l) Procurement of low-cost energy supplies of all types, including electricity, natural gas, and other fuel sources, and water;

(m) Indoor air quality improvements that conform to applicable building code requirements;

(n) Daylighting systems;

(o) Building operation programs that reduce utility and operating costs including, but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;

(p) Services to reduce utility costs by identifying utility errors and optimizing rate schedules; or

(q) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the board.

Source: **L. 91:** Entire article added, p. 728, § 1, effective May 1. **L. 92:** (3)(d) amended, p. 548, § 22, effective May 28. **L. 2001:** (1), IP(2), (2)(a), (2)(d), (2)(i), IP(3), (3)(a), (3)(b), (3)(c), (3)(d), (3)(e), (3)(h), and (4) amended and (2)(j), (2)(k), (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), (2)(q), (4.5), (7), and (8) added, pp. 1093, 1096, §§ 4, 5, effective August 8. **L. 2002:** (2) amended and (9) added, p. 1027, § 55, effective June 1. **L. 2004:** (3)(f) amended, p. 1203, § 71, effective August 4.

29-12.5-102. Contract for analysis and recommendations. (1) The board of any political subdivision may contract with an architect, professional engineer, or other person experienced in the design and implementation of utility cost-savings measures or energy saving measures for an analysis and recommendations pertaining to such measures that would significantly increase utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the political subdivision.

(2) Such analysis and recommendations shall include estimates of the amounts by which utility cost savings and operation and maintenance cost savings would increase and estimates of all costs of such utility cost-savings measures or energy saving measures including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service.

Source: **L. 91:** Entire article added, p. 731, § 1, effective May 1. **L. 2001:** Entire section amended, p. 1096, § 6, effective August 8.

29-12.5-103. Financing utility cost savings measures - exception to debt limitations. (1) If the board, after receiving the analysis and recommendations pursuant to section 29-12.5-102, finds that the amount of money the political subdivision would spend on such utility cost-savings measures or energy saving measures is not likely to exceed the amount of money it would save in energy costs over the term of the contract, the board may:

(a) Enter into a utility cost-savings contract with any architect, professional engineer, or other person experienced in the design and implementation of energy saving measures for buildings or other facilities owned or rented by the political subdivision or with the entity or person who performed the energy analysis and provided recommendations pursuant to section 29-12.5-102; or

(b) Otherwise incur indebtedness to finance utility cost-savings measures or energy saving measures.

(2) (a) Except as provided in paragraph (b) of this subsection (2):

(I) No contract entered into or indebtedness incurred pursuant to this section shall constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or home rule debt limitation; and

(II) Any contract may be entered into and indebtedness incurred without approval of the qualified electors of the political subdivision.

(b) Paragraph (a) of this subsection (2) shall not apply to any indebtedness incurred by contract or otherwise under this section which exceeds or which causes the total outstanding indebtedness so incurred to exceed the following percentage of the latest valuation for assessment of the taxable property in the political subdivision:

(I) One percent for a school district;

(II) One-tenth of one percent for a county, except a home rule county;

(III) One-fifth of one percent for a home rule county; or

(IV) One-fifth of one percent for a municipality.

(3) When a utility cost-savings measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy.

Source: **L. 91:** Entire article added, p. 731, § 1, effective May 1. **L. 2001:** (1) and (3) amended, p. 1096, § 7, effective August 8.

29-12.5-104. Monitoring and reporting of energy and cost savings. The board shall monitor the reductions in energy consumption and cost savings attributable to the utility

cost-savings measures and energy saving measures financed pursuant to section 29-12.5-103 and shall annually prepare a report documenting such reductions and savings for the first two years of the contract. The report shall be certified by an architect or engineer independent of any person, firm, or corporation that provided goods or services to the board in connection with the utility cost-savings measures or energy saving measures that are the subject of the report.

Source: **L. 91:** Entire article added, p. 732, § 1, effective May 1. **L. 2001:** Entire section amended, p. 1097, § 8, effective August 8.

PROPERTY INSURANCE

ARTICLE 13

Local Governments - Authority to Insure Property

29-13-101.	Insurance on property of local governments.	29-13-103.	ance coverage.
29-13-102.	Authority for units of local government to pool insur-		Grounds and procedure for suspension or revocation of certificate.

29-13-101. Insurance on property of local governments. (1) Any unit of local government, which for purposes of this article includes counties, municipalities, school and special districts, and every other type of local government having the power to own property and impose taxes, may insure its property against all types of risk of loss for which such insurance may be procured from insurance companies authorized to do such business in this state.

(2) The insurance authorized by subsection (1) of this section may be provided by:

(a) Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes;

(b) An insurance company authorized to do business in this state which meets all of the requirements of the division of insurance for that purpose;

(c) A combination of the methods of obtaining insurance authorized in paragraphs (a) and (b) of this subsection (2).

(3) A unit of local government other than a school district may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the local government such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301. In the event that a local government has no annual tax levy, it may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund. A school district shall establish and maintain an insurance reserve fund in accordance with the provisions of section 22-45-103 (1) (e), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. The fund established pursuant to this subsection (3) shall be kept separate and apart from all other funds and shall be used only for the payment of loss of or damage to the property of the unit of local government or to secure and pay for premiums on insurance as provided in this article.

Source: **L. 79:** Entire article added, p. 1131, § 1, effective May 25. **L. 88:** (3) amended, p. 823, § 34, effective May 24. **L. 94:** (3) amended, p. 823, § 52, effective April 27.

Cross references: For authority of a public entity other than the state to establish and maintain an insurance reserve fund for self-insurance purposes, see also § 24-10-115.

29-13-102. Authority for units of local government to pool insurance coverage.

(1) Units of local government may cooperate with one another to form a self-insurance pool to provide all or part of the insurance coverage authorized by this article. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(2) Any self-insurance pool authorized by subsection (1) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5) and (10), C.R.S.

(3) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, and capitalization of the pool. The commissioner shall approve or disapprove such proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall submit written comments or recommendations regarding the proposal to the governing bodies of each participating unit of local government. If the commissioner approves the proposal, he shall issue a certificate of authority. If the commissioner disapproves the proposal, it may be resubmitted for approval after the necessary changes have been made in accordance with the written comments or recommendations of the commissioner. The costs of such review shall be paid by those units desiring to form such a pool. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(4) Each self-insurance pool for units of local government created in this state shall file, with the commissioner of insurance on or before March 30 of the next succeeding year, a written report, in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition. Such report shall include a detailed statement of assets and liabilities, the amount and character of the business transacted, and the moneys reserved and expended during the year. All such reports shall be transmitted to the governor and the local government committee of the house of representatives and the state, veterans, and military affairs committee of the senate, or any successor committees.

(5) The commissioner of insurance, or any person authorized by him, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(6) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any unit of local government which is a member of a self-insurance pool organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(7) In addition to property coverage pursuant to subsection (1) of this section and liability coverage pursuant to section 24-10-115.5, C.R.S., a self-insurance pool authorized by subsection (1) of this section may provide workers' compensation coverage pursuant to section 8-44-204, C.R.S.

Source: L. 79: Entire article added, p. 1132, § 1, effective May 25. L. 88: (1) amended, p. 428, § 3, effective April 20. L. 89: (7) added, p. 1019, § 2, effective April 4; (6) added, p. 1106, § 5, effective July 1. L. 90: (7) amended, p. 571, § 62, effective July 1. L. 92: (2) and (5) amended, pp. 1501, 1614, §§ 38, 172, effective July 1. L. 93: (5) amended, p. 1789, § 76, effective June 6. L. 2001: (4) amended, p. 1179, § 14, effective August 8. L. 2007: (4) amended, p. 2046, § 83, effective June 1.

ANNOTATION

Ambiguity in insurance contract with regard to the retroactive date of the contract must be resolved by giving effect to the intention of the parties, and, therefore, the date which the parties to the contract intended, based on undisputed testimony, is the date that coverage began. *Bd. of County Comm'rs v. Colo.*, 888 P.2d 352 (Colo. App. 1994).

Court rejected county's contention that the policy was unconscionable as a matter of law

because it had a short policy period and provided no coverage prior to its retroactive date since the county intended to obtain limited coverage, with no insurance during the gap period and was precisely in accord with the county's reasonable expectations. *Bd. of County Comm'rs v. Colo.*, 888 P.2d 352 (Colo. App. 1994).

29-13-103. Grounds and procedure for suspension or revocation of certificate.

(1) The certificate of authority issued to a unit of local government under this article may be revoked or suspended by the commissioner of insurance for any of the following reasons:

- (a) Insolvency or impairment;
- (b) Refusal or failure to submit an annual report as required by section 29-13-102 (4);
- (c) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;
- (d) Failure to submit to examination or any legal obligation relative thereto;
- (e) Refusal to pay the cost of examination as required by section 29-13-102 (3);
- (f) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;
- (g) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(2) If the commissioner of insurance finds upon examination, hearing, or other evidence that any unit of local government has committed any of the acts specified in subsection (1) of this section or any act otherwise prohibited in this article, the commissioner may suspend or revoke such certificate of authority if he deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a unit of local government, the commissioner shall grant the unit of local government fifteen days in which to show cause why such action should not be taken.

Source: L. 79: Entire article added, p. 1133, § 1, effective May 25.

BOND ANTICIPATION NOTES

ARTICLE 14

Bond Anticipation Note Act

29-14-101.	Short title.	29-14-106.	Limitations on issuance.
29-14-102.	Legislative declaration.	29-14-107.	No action maintainable.
29-14-103.	Definitions.	29-14-108.	Validation.
29-14-104.	Issuance of bond anticipation notes.	29-14-109.	Effect of and limitations upon validation.
29-14-105.	Bond anticipation note details.	29-14-110.	Application to certain public bodies.

29-14-101. Short title. This article shall be known and may be cited as the "Bond Anticipation Note Act".

Source: L. 81: Entire article added, p. 1419, § 1, effective July 1.

29-14-102. Legislative declaration. The general assembly hereby declares that the issuance of bond anticipation notes by any public body as defined in section 29-14-103 (6), when advantageous to the public body or the citizens thereof, will serve a public use and will promote the health, safety, security, and general welfare of the citizens thereof and of the people of the state of Colorado.

Source: L. 81: Entire article added, p. 1419, § 1, effective July 1.

29-14-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bond" means any bond, debenture, or other obligation authorized to be issued by a public body pursuant to any provision of law of the state.

(2) "Bond anticipation note" means any note, interim debenture, or other security evidencing an obligation and issued pursuant to this article.

(3) "Governing body" means a city council, board of trustees, commission, board of county commissioners, board of directors, or other legislative body of a public body in which the legislative powers of such public body are vested.

(4) "Indebtedness" means any bond issued by a public body pursuant to any law of this state which constitutes a debt for the purposes of section 6 of article XI of the state constitution, and the issuance of which must be submitted to a vote of the qualified electors of such public body pursuant to said section.

(5) "Legislative act" means an ordinance adopted by a governing body of a municipality or a resolution adopted by a governing body of any other public body.

(6) "Public body" means any county; any municipality as defined by section 31-1-101 (6), C.R.S.; any school district; any special district as defined in section 32-1-103 (20), C.R.S.; and any water conservancy district, city housing authority, county housing authority, urban renewal agency, downtown development authority, or community redevelopment agency, any corporate authority, any corporate commission, or any other political subdivision of this state constituting a body corporate.

Source: L. 81: Entire article added, p. 1419, § 1, effective July 1.

29-14-104. Issuance of bond anticipation notes. (1) Any public body may issue from time to time its bond anticipation notes for any purposes lawfully authorized to be undertaken by such public body or to redeem outstanding bond anticipation notes. Such bond anticipation notes shall be issued in anticipation of the issuance of bonds by the public body.

(2) Except as provided in this article, the bond anticipation notes shall be issued pursuant to the provisions of law which govern the issuance of the bonds in anticipation of which the bond anticipation notes are being issued.

(3) Bond anticipation notes issued pursuant to this article shall be payable from the proceeds of the sale of additional bond anticipation notes or from the proceeds of the sale of the bonds of the public body or other moneys of the public body legally available for such purpose.

Source: L. 81: Entire article added, p. 1420, § 1, effective July 1.

29-14-105. Bond anticipation note details. (1) Any bond anticipation notes may mature at such time not exceeding a period of time equal to the estimated time needed to effect the purpose for which they are issued, but not exceeding five years from the date or respective dates of the bond anticipation notes, as the governing body may determine. Bond anticipation notes may be issued in such denominations as determined by the governing body.

(2) The interest rate per annum on the bond anticipation notes shall be stated in the legislative act authorizing the issuance of the bond anticipation notes. Said interest rate may be evidenced by one or more set of coupons attached to said bond anticipation notes. Said interest rate need not be fixed at the time of the passage of such legislative act but may vary

based on a fixed formula determined by the governing body and set forth in the legislative act authorizing the issuance of the bond anticipation notes. Said variable interest rate may not exceed the authorized maximum net effective interest rate.

(3) The bond anticipation notes may be sold, at, above, or below the principal amounts thereof, as may be in the public interest.

(4) The bond anticipation notes may be sold at either public or private sale, as determined by the governing body.

Source: L. 81: Entire article added, p. 1420, § 1, effective July 1.

29-14-106. Limitations on issuance. (1) If the bond anticipation notes are being issued in anticipation of bonds which constitute an indebtedness, such bond anticipation notes shall not be issued:

(a) Unless the bonds have been authorized at an election as required by section 6 of article XI of the state constitution;

(b) In a principal amount in excess of the amount of bonds authorized to be issued at such election;

(c) At a maximum net effective interest rate higher than the maximum net effective interest rate at which such bonds may be issued;

(d) Unless the proceeds of such bond anticipation notes are to be used for the same purpose for which the bonds may be issued; and

(e) Unless the principal amount of the bond anticipation note together with the outstanding principal amount of other indebtedness of the public body is within the applicable limitation on the issuance of such indebtedness by the public body, if any.

(2) When bond anticipation notes are issued in anticipation of the issuance of bonds which constitute an indebtedness and which have been authorized at an election, a principal amount of the bonds so authorized equal to the original principal amount of the bond anticipation notes issued shall be issued solely for the purpose of retiring such bond anticipation notes. If such bond anticipation notes are retired from other legally available revenues of the public bonds, said bonds in such principal amount shall not be issued unless reauthorized at an election held in accordance with the state constitution and other laws of this state.

Source: L. 81: Entire article added, p. 1421, § 1, effective July 1.

29-14-107. No action maintainable. No action or proceeding, at law or in equity, to review any acts or proceedings, or to question the validity or enjoin the performance of any act, or the issuance of any bond anticipation notes authorized by this article, or for any other relief against any acts or proceedings done or had under this article, whether based upon irregularities or jurisdictional defects, shall be maintained, unless commenced within thirty days after the performance of the act or the effective date of the legislative act complained of, or else be thereafter perpetually barred.

Source: L. 81: Entire article added, p. 1421, § 1, effective July 1.

29-14-108. Validation. All bond anticipation notes and any coupons appertaining thereto issued or purportedly issued prior to July 1, 1981, and all acts or proceedings had or taken or purportedly had or taken prior to said date by or on behalf of public bodies, under law or under color of law, preliminary to and in the authorization, execution, sale, and issuance of all bond anticipation notes, including any coupons appertaining thereto, and the exercise of other powers in this article are validated, ratified, approved, and confirmed by this section except as provided in section 29-14-109, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities other than constitutional, in such bond anticipation notes, acts, and proceedings, in such authorization, execution, sale, and issuance, and in such exercise of power; and

such bond anticipation notes are and shall be binding, legal, valid, and enforceable obligations of such public body to which they appertain in accordance with their terms and their authorization proceedings.

Source: L. 81: Entire article added, p. 1421, § 1, effective July 1.

29-14-109. Effect of and limitations upon validation. This article shall operate to supply such legislative authority as may be necessary to validate any such bond anticipation notes issued prior to July 1, 1981, of such public bodies and any acts and proceedings taken appertaining to the issuance of such bond anticipation notes by such public bodies or otherwise prior to said date which the general assembly could have supplied or provided for in the law under which such bond anticipation notes were issued or such other contracts were executed and such acts or proceedings where taken; but this article shall be limited to the validation of such bond anticipation notes, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. This article shall not operate to validate, ratify, approve, confirm, or legalize any bond anticipation note or coupon, act, proceeding, or other matter, the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined, and shall not operate to confirm, validate, or legalize any bond anticipation note or coupon, act, proceeding, or other matter which, prior to July 1, 1981, has been determined in any legal proceeding to be illegal, void, or ineffective.

Source: L. 81: Entire article added, p. 1422, § 1, effective July 1.

29-14-110. Application to certain public bodies. It is the intent of the general assembly that the provisions of this article shall apply to home rule municipalities except insofar as superseded by charter or ordinance passed pursuant to such charter and shall apply to special territorial charter municipalities.

Source: L. 81: Entire article added, p. 1422, § 1, effective July 1.

TAX ANTICIPATION NOTES

ARTICLE 15

Tax Anticipation Note Act

29-15-101.	Short title.		notes.
29-15-102.	Legislative declaration.	29-15-108.	No impairment of contract.
29-15-103.	Definitions.	29-15-109.	No action maintainable.
29-15-104.	Issuance of tax anticipation notes.	29-15-110.	Independent authority.
29-15-105.	Tax anticipation note details.	29-15-111.	Application to certain public bodies.
29-15-106.	Limitation on issuance of tax anticipation notes.	29-15-112.	State treasurer may issue tax and revenue anticipation notes for school districts.
29-15-107.	Payment of tax anticipation		

29-15-101. Short title. This article shall be known and may be cited as the “Tax Anticipation Note Act”.

Source: L. 85: Entire article added, p. 1054, § 1, effective June 6.

29-15-102. Legislative declaration. The general assembly hereby declares that the issuance of tax anticipation notes by any public body as defined in section 29-15-103 (3),

when advantageous to the public body or the citizens thereof, will serve a public use and will promote the health, safety, security, and general welfare of the citizens thereof and of the people of the state of Colorado.

Source: L. 85: Entire article added, p. 1054, § 1, effective June 6.

29-15-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Governing body" means a city council, a board of trustees, a commission, a board of county commissioners, a board of directors, or any other legislative body in which the legislative powers of a public body are vested.

(2) "Legislative act" means an ordinance adopted by the governing body of a municipality or a resolution adopted by the governing body of any other public body.

(3) "Public body" means any county, any municipality as defined in section 31-1-101 (6), C.R.S., any school district or other district, or any public board, commission, authority, agency, political subdivision, or other public body in the state created pursuant to any general or special law or pursuant to any legislative or home rule charter.

(4) "Tax anticipation note" means any note, interim debenture, warrant, or other security evidencing an obligation and issued pursuant to this article.

(5) "Taxes" means ad valorem taxes on real or personal property.

Source: L. 85: Entire article added, p. 1054, § 1, effective June 6.

29-15-104. Issuance of tax anticipation notes. (1) Any public body may issue, from time to time, tax anticipation notes without an election if its governing body determines that the taxes to be received by the public body will not be received in time to pay the public body's projected budgeted expenses. Such tax anticipation notes shall be issued in anticipation of the collection of taxes estimated by the governing body to be received within its then current fiscal year.

(2) (a) Tax anticipation notes shall be both issued and made payable within the fiscal year for which such taxes are levied.

(b) The provisions of this subsection (2) limiting the term of tax anticipation notes shall not apply to tax anticipation notes issued by school districts on and after January 1, 1992.

(3) Tax anticipation notes may be paid from the proceeds of ad valorem taxes on real and personal property, investment proceeds on the ad valorem taxes, or the proceeds from the tax anticipation notes.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6. **L. 90:** (2) amended, p. 1084, § 46, effective May 31.

29-15-105. Tax anticipation note details. (1) Except as provided in subsection (2) of this section, any tax anticipation notes may be issued in one or more series, bear such dates, be in such denomination or denominations, mature on any date or dates occurring on or before the last day of the fiscal year of the public body in which the tax anticipation notes are issued, mature in such amount or amounts, bear interest at such rate or rates, be in such form, be payable at such place or places, and be subject to such terms of redemption with or without a premium as the legislative act of the governing body authorizing the issuance of the tax anticipation notes may provide. The tax anticipation notes may be sold at, above, or below the principal amounts thereof whenever such action is in the public interest, as determined by the governing body. The tax anticipation notes may be sold at either a public or a private sale, as determined by the governing body.

(2) Any tax anticipation notes issued by a school district may be issued in one or more series, bear such dates, be in such denomination or denominations, mature on or before August 31 of the fiscal year immediately following the fiscal year in which the tax anticipation notes were issued, mature in such amount or amounts, bear interest at such rate or rates, be in such form, be payable at such place or places, and be subject to such terms of redemption with or without a premium as the legislative act of the governing body

authorizing the issuance of the tax anticipation notes may provide. The tax anticipation notes may be sold at, above, or below the principal amounts thereof whenever such action is in the public interest, as determined by the governing body. The tax anticipation notes may be sold at either a public or a private sale, as determined by the governing body.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6. L. 95: Entire section amended, p. 608, § 6, effective May 22.

29-15-106. Limitation on issuance of tax anticipation notes. (1) For all public bodies except school districts, the amount of tax anticipation notes issued by a public body in any fiscal year shall not exceed fifty percent of all taxes estimated to be received by such governing body in its current fiscal year, as shown by its then current budget.

(2) For school districts, the amount of tax anticipation notes issued by the school district in any fiscal year shall not exceed seventy-five percent of all taxes estimated to be received by such school district in its current fiscal year, as shown by its then current budget.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6. L. 94: Entire section amended, p. 809, § 16, effective April 27.

29-15-107. Payment of tax anticipation notes. All ad valorem taxes on real and personal property, investment, proceeds on the ad valorem taxes, or the proceeds from tax anticipation notes received by the public body after the issuance of the tax anticipation notes, except taxes collected for retirement of existing debt, shall be paid into a special fund to be known as the tax anticipation note principal and interest redemption fund until such time as the moneys in such fund are sufficient to pay when due the principal of and the premiums, if any, and interest on the tax anticipation notes. All moneys in such fund not in excess of the amount required for such purpose shall be used to pay the principal of and the premiums, if any, and interest on the tax anticipation notes and shall be used for no other purpose.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6.

29-15-108. No impairment of contract. As long as any tax anticipation notes are outstanding, this article and the provisions of law authorizing the levy of taxes shall not be repealed or amended in such a manner as would materially impair the contractual rights and remedies of the holders of the tax anticipation notes.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6.

29-15-109. No action maintainable. No action or proceeding, at law or in equity, to review any act or proceeding, or to question the validity or enjoin the performance of any act or the issuance of any tax anticipation notes authorized by this article, or to obtain any other relief against any acts or proceedings done or had under this article, whether based upon irregularities or jurisdictional defects, shall be maintained unless such action or proceeding is commenced within thirty days after the performance of the act or the effective date of the legislative act complained of; otherwise, it shall be thereafter perpetually barred.

Source: L. 85: Entire article added, p. 1056, § 1, effective June 6.

29-15-110. Independent authority. The authority granted by this article shall constitute separate and independent authority for the powers granted in this article and shall be effective without reference to the powers or limitations contained in any other law, and the provisions of this article shall not be deemed to constitute limitations on the powers granted to public bodies under any other law.

Source: L. 85: Entire article added, p. 1056, § 1, effective June 6.

29-15-111. Application to certain public bodies. It is the intent of the general assembly that the provisions of this article shall apply to home rule municipalities except insofar as such provisions may be superseded by their charters or any legislative acts passed pursuant to such charters and also shall apply to special territorial charter municipalities.

Source: L. 85: Entire article added, p. 1056, § 1, effective June 6.

29-15-112. State treasurer may issue tax and revenue anticipation notes for school districts. (1) The state treasurer is hereby authorized to issue tax and revenue anticipation notes for school districts in accordance with the provisions of this section for the purpose of alleviating temporary cash flow deficits of such school districts by making interest-free loans pursuant to section 22-54-110, C.R.S.

(2) In addition to powers otherwise granted to the state treasurer by law, the state treasurer shall have the following powers in connection with the issuance of tax and revenue anticipation notes pursuant to the provisions of this section:

(a) To use the seal of the state treasurer;

(b) To adopt resolutions or enter into indentures of trust or other instruments to provide for the issuance of the tax and revenue anticipation notes;

(c) To engage the services of consultants, financial advisors, underwriters, attorneys, trustees, paying agents, registrars, remarketing agents, indexing agents, depositaries, and other agents whose services may be required in connection with the issuance of the tax and revenue anticipation notes;

(d) To enter into contracts, agreements, and other instruments in connection with the issuance of the tax and revenue anticipation notes, including but not limited to contracts with persons specified in paragraph (c) of this subsection (2), contracts providing for the purchase or repurchase of the tax and revenue anticipation notes, agreements with school districts regarding the payment of loans and other matters relating to the issuance of the tax and revenue anticipation notes, and indentures of trust or other instruments providing for the issuance of the tax and revenue anticipation notes;

(e) To provide credit enhancement for the tax and revenue anticipation notes by:

(I) Entering into such agreements as may be necessary to obtain a credit facility with respect to any issue of notes;

(II) Pledging toward the payment of the premium, if any, and interest on the tax and revenue anticipation notes moneys from the state general fund in an amount not exceeding the amount of the premium, if any, and interest on such notes. The provisions of section 24-75-907 (2) and (3), C.R.S., that relate to the creation of a restricted account and to liens shall apply to the pledge of such moneys; except that the restricted account shall not exceed the amount of the premium, if any, and interest on the tax and revenue anticipation notes; and

(III) Pledging toward the payment of the principal on the tax and revenue anticipation notes moneys in the school district tax and revenue anticipation notes repayment account created pursuant to paragraph (b) of subsection (4) of this section.

(f) To assist a school district in determining whether it will have a cash flow deficit that will require a loan pursuant to section 22-54-110, C.R.S., and to determine the total amount of tax and revenue anticipation notes that should be issued on behalf of the district; and

(g) To do all other things necessary and convenient in connection with the issuance of tax and revenue anticipation notes pursuant to the provisions of this section and with the establishment of school district responsibilities relating to the tax and revenue anticipation notes and compliance with federal tax laws and regulations.

(3) (a) The proceeds of the tax and revenue anticipation notes may be used for the following purposes:

(I) To make interest-free loans to school districts pursuant to section 22-54-110, C.R.S., to alleviate cash flow deficits;

(II) To pay the costs of issuing the tax and revenue anticipation notes, including the cost of obtaining a credit facility;

(III) To pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes; and

(IV) To pay any other expense or charge incurred in connection with actions of the state treasurer authorized by the provisions of this section or section 22-54-110, C.R.S.

(b) Pending use of the proceeds of the tax and revenue anticipation notes in accordance with paragraph (a) of this subsection (3), such proceeds may be invested by the state treasurer in any investments that are legal investments for the state or may be deposited in any eligible public depository. The income from any such investment or deposit may be used for the following purposes:

(I) To pay the costs of issuing the tax and revenue anticipation notes, including the cost of obtaining a credit facility; and

(II) To pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes.

(4) (a) (I) Tax and revenue anticipation notes issued pursuant to the provisions of this section shall be payable from:

(A) One or more payments by the school district receiving a loan from the proceeds from such notes, which payment or payments by the school district shall be, in the aggregate, sufficient to pay the principal on the tax and revenue anticipation notes issued to fund such loan;

(B) Any moneys from the state general fund that are pledged pursuant to subparagraph (II) of paragraph (e) of subsection (2) of this section;

(C) Income earned from any investment or deposit pursuant to paragraph (b) of subsection (3) of this section and paragraph (b) of this subsection (4); and

(D) If a district fails to fully repay a loan made pursuant to section 22-54-110, C.R.S., from the proceeds of the tax and revenue anticipation notes, any funds that are on hand or in the custody or possession of the state treasurer and that are eligible for investment.

(II) The financial obligation of the state treasurer to pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes shall be deemed discharged on any date on which moneys or investments in an amount sufficient for the payment of the principal, premium, if any, and interest related to the notes on the date of their final maturity is on deposit in one or more segregated and restricted accounts that are pledged irrevocably for such purpose. Such segregated and restricted accounts shall be the school district tax and revenue anticipation notes repayment account or a special account created by the controller pursuant to subparagraph (II) of paragraph (e) of subsection (2) of this section or otherwise created at the request of the state treasurer. Following such deposit, the principal, premium, if any, and interest related to the notes shall be payable solely from the segregated and restricted accounts without further financial obligation whatsoever of the state treasurer or the state. Any moneys in the segregated and restricted accounts, pending use for their intended purpose, may be invested or reinvested only in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., as such investment requirements may otherwise be limited pursuant to the terms of the resolution, indenture of trust, or other instrument providing for the issuance of the notes.

(b) There is hereby created in the general fund an account that shall be known as the school district tax and revenue anticipation notes repayment account. All payments received from school districts pursuant to paragraph (a) of this subsection (4) shall be deposited by the state treasurer in the school district tax and revenue anticipation notes repayment account and may be invested by the state treasurer in any investments that are legal investments for the state or may be deposited in any eligible public depository. All moneys in the account that are not in excess of the amount required to pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes are pledged irrevocably and shall be used for the purpose of paying the principal, premium, if any, and interest related to the tax and revenue anticipation notes for no other purpose.

(5) (a) Tax and revenue anticipation notes issued by the state treasurer pursuant to the provisions of this section shall be issued pursuant to a resolution or other authorizing instrument of the state treasurer. Notwithstanding any other provision of this article to the contrary, such notes may be issued in such aggregate principal amount, may be issued in one or more series, may bear such dates, may be in such denomination, may mature in such amount, may bear interest at such rate, may be in such form, may be payable at such place, and may be subject to such terms of redemption with or without a premium as the state

treasurer by resolution or other authorizing instrument may provide. The rate of interest borne by the tax and revenue anticipation notes may be fixed, adjustable, or variable or any combination thereof. If any rate is adjustable or variable, the standard, index, method, or formula pursuant to which such rate is to be from time to time determined shall be set forth in the resolution or other authorizing instrument of the state treasurer. Such resolution or other authorizing instrument may also include a delegation of authority to an agent acting for and on behalf of the state treasurer to determine a rate within parameters, including a maximum interest rate, prescribed by the state treasurer. Tax and revenue anticipation notes issued pursuant to the provisions of this section may be sold at public or private sale and may be sold at, above, or below the principal amounts thereof.

(b) The tax and revenue anticipation notes shall mature on any date or dates occurring on or before August 31 of the fiscal year immediately following the fiscal year in which the notes are issued. In the event that the tax and revenue anticipation notes have a date of maturity that is after the end of the fiscal year in which the notes are issued, on or before the final day of the fiscal year in which the notes are issued there shall be deposited in one or more special segregated and restricted accounts and pledged irrevocably to the payment of the notes an amount sufficient to pay the principal, premium, if any, and interest related to the notes on their stated maturity date.

(6) (a) Tax and revenue anticipation notes issued pursuant to the provisions of this section shall be signed by the state treasurer and countersigned by the deputy state treasurer, and the seal of the state treasurer shall be affixed thereto.

(b) Pursuant to article 55 of title 11, C.R.S., any signature required by paragraph (a) of this subsection (6) may be a facsimile signature imprinted, engraved, stamped, or otherwise placed on the tax and revenue anticipation notes. If all signatures of public officials on the tax and revenue anticipation notes are facsimile signatures, provisions shall be made for a manual authenticating signature on the tax and revenue anticipation notes by or on behalf of a designated authenticating agent. If an official ceases to hold office before delivery of the tax and revenue anticipation notes signed by such official, the signature or facsimile signature of the official is nevertheless valid and sufficient for all purposes. A facsimile of the seal of the state treasurer may be imprinted, engraved, stamped, or otherwise placed on the notes.

(7) Tax and revenue anticipation notes issued pursuant to the provisions of this section shall be payable solely from the revenues pledged thereto, and the owners or holders of the notes may not look to any other source for repayment of the principal of or interest on the notes. Such tax and revenue anticipation notes shall not constitute a debt or an indebtedness of the state or any school district within the meaning of any applicable provision of the state constitution or state statutes.

(8) Any tax and revenue anticipation notes issued pursuant to the provisions of this section shall constitute a contract between the state treasurer and the owner or holder thereof, and neither the state nor any of its political subdivisions shall take any action impairing such contract.

(9) The tax and revenue anticipation notes issued pursuant to the provisions of this section shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Colorado.

Source: **L. 90:** Entire section added, p. 1084, § 47, effective May 31. **L. 91:** Entire section amended, p. 531, § 1, effective March 28. **L. 91, 2nd Ex. Sess.:** (2)(f)(II) and (4) amended, p. 55, § 1, effective October 11. **L. 95:** (10) amended, p. 609, § 7, effective May 22. **L. 2003:** Entire section RC&RE, p. 2168, § 1, effective July 1.

Editor's note: Subsection (10) provided for the repeal of this section, effective July 31, 2000. (See L. 95, p. 609.)

LAND USE CONTROL AND CONSERVATION

ARTICLE 20

Local Government Regulation of Land Use

Law reviews. For article, “Vested Property Rights in Colorado: The Legislature Rushes in Where”, see Den. U. L. Rev. 31 (1988); for article, “Cooperative Management of Urban Growth Areas Through IGAs”, see 29 Colo. Law. 85 (November 2000); for article, “Transferable Development Rights and Their Application in Colorado: An Overview”, see 34 Colo. Law. 75 (March 2005).

PART 1

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CONTROL ENABLING ACT

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PART 1

LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT

29-20-101. Short title. This article shall be known and may be cited as the “Local Government Land Use Control Enabling Act of 1974”.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17.

ANNOTATION

Law reviews. For article, “Cumulative Impact Assessment of Western Energy Development: Will it Happen?”, see 51 U. Colo. L. Rev. 551 (1980).

29-20-102. Legislative declaration. (1) The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions.

Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

(2) The general assembly further finds and declares that local governments will be better able to properly plan for growth and serve new residents if they are authorized to impose impact fees as a condition of approval of development permits. However, impact fees and other development charges can affect growth and development patterns outside a local government's jurisdiction, and uniform impact fee authority among local governments will encourage proper growth management.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17. **L. 2001, 2nd Ex. Sess.:** Entire section amended, p. 27, § 1, effective November 6.

ANNOTATION

Applied in *City & County of Denver v. Theobald v. Bd. of County Comm'rs*, 644 P.2d Bergland, 517 F. Supp. 155 (D. Colo. 1981); 942 (Colo. 1982).

29-20-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction; except that, for purposes of part 3 of this article, "development permit" is limited to an application regarding a specific project that includes new water use in an amount more than that used by fifty single-family equivalents, or fewer as determined by the local government.

(1.5) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

(2) "Power authority" means an authority created pursuant to section 29-1-204.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17. **L. 2001:** (2) added, p. 597, § 3, effective May 30. **L. 2001, 2nd Ex. Sess.:** (1) amended and (1.5) added, p. 27, § 2, effective November 6. **L. 2008:** (1) amended, p. 1559, § 1, effective May 29.

29-20-104. Powers of local governments. (1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section shall not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;

(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;

(c) Preserving areas of historical and archaeological importance;

(d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;

(e) Regulating the location of activities and developments which may result in significant changes in population density;

(f) Providing for phased development of services and facilities;

(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17. L. 2001, 2nd Ex. Sess.: IP(1) amended, p. 28, § 3, effective November 6.

Editor's note: 43 U.S.C. 932, as referenced in subsection (1)(d), was repealed in 1976 by section 706 (a) of Pub.L. 94-579, but said repeal does not terminate any land use right or authorization existing prior to the repeal. See section 701 (a) of Pub.L. 94-579.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

This section does not confer upon counties the authority to impose conditions for granting permits for exploratory oil well operation when such authority was granted exclusively to state oil and gas conservation commission under Oil and Gas Conservation Act. *Oborne v. County Comm'rs of Douglas Cty.*, 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989).

Local Government Land Use Control Enabling Act (enabling act) and the County Planning Code and Building Codes (article 28 of title 30) authorize county regulation of land use in the unincorporated areas of the county. *Wilkinson v. Bd. of County Comm'rs*, 872 P.2d 1269 (Colo. App. 1993).

This section provides independent authority for local governments to regulate land use to protect wildlife habitat and wildlife species. *Droste v. Bd. of County Comm'rs*, 85 P.3d 585 (Colo. App. 2003).

No authority to adopt "subdivision" definition contrary to § 30-28-101. Sections 29-20-101 to 29-20-107 do not confer the authority upon a county to adopt a definition of "subdivision" in its regulations which is contrary to the express statutory definition found in § 30-28-101 (10). *Pennobscot, Inc. v. Bd. of County Comm'rs*, 642 P.2d 915 (Colo. 1982).

Or to adopt regulations covering land specifically excluded. Sections 29-20-101 to 29-20-107 do not confer the authority to adopt subdivision regulations covering parcels of land which are specifically excluded from the provisions of § 30-28-101 (10). *Pennobscot, Inc. v. Bd. of County Comm'rs*, 642 P.2d 915 (Colo. 1982).

County regulations concerning wetlands protection and nuisance abatement were related to valid county concerns under this act for local governments to regulate land use and protect environment. *Colo. Springs v. Eagle County Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

General assembly's grant of land use authority to local governments under the enabling act necessarily implies the authority of

a local government to impose, through a public hearing process, a moratorium of limited duration, 10 months in this case, or to halt further development pending adoption of a master plan. The length and conditions of a moratorium are subject to the protection of property owners against uncompensated takings as provided by part 2 of article 20 of this title. *Droste v. Bd. of County Comm'rs of Pitkin*, 159 P.3d 601 (Colo. 2007).

The enabling act grants broad powers to local governments regulating use of lands within their respective jurisdictions for protecting wildlife, controlling population density and growth, and protecting the surrounding environment, among other things. In light of this broad grant of powers, reading the enabling act to deny local governments authority to conduct studies for overall development of lands within their jurisdiction and to impose reasonable moratoriums on development to conduct those studies would be anomalous and would contravene the apparent purpose and intent of the general assembly. *Droste v. Bd. of County Comm'rs of Pitkin*, 141 P.3d 852 (Colo. App. 2005), aff'd, 159 P.3d 601 (Colo. 2007).

County had authority under the enabling act to impose temporary moratorium on developmental approvals concerning certain land within county. The enabling act is designed to give local governments additional or supplemental powers for the purposes set forth in the act, including development in hazardous areas, protecting wildlife habitats, protecting areas of historical or archeological significance, controlling population density, and providing for the phasing in of infrastructure. These special considerations, in many instances, supplement those normally involved in creating a zoning master plan or administering a zoning regimen. Accordingly, the enabling act and the county planning statute, article 28 of title 30, have different, though complementary, purposes, and the limitation on temporary zoning in § 30-28-121 does not prohibit or limit a moratorium on development for the purpose of conducting studies under the enabling act. *Droste v. Bd. of County Comm'rs of Pitkin*, 141 P.3d 852 (Colo. App. 2005), aff'd, 159 P.3d 601 (Colo. 2007).

Subsections (1)(e), (1)(g), and (1)(h) do not provide requisite authority to county to regulate roads on landowner's property. Here, record does not provide a factual predicate to

support county's argument. With respect to subsection (1)(e), there is nothing in the record to indicate what, if any, population changes may arise as a result of landowners' activities nor is there anything in the record to support a conclusion that any changes in population would be "significant". With respect to subsection (1)(g), there is nothing in the record elucidating any impact, significant or not, on the community or surrounding areas. Finally, with respect to sub-

section (1)(h), the county has not specifically adopted ordinances that deal with the particular roads at issue, as the roads are situated on parcels that are not subject to subdivision regulation. *Zweygardt v. Bd. of County Comm'rs of Elbert County*, 190 P.3d 848 (Colo. App. 2008).

Applied in *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982); *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

29-20-104.5. Impact fees. (1) Pursuant to the authority granted in section 29-20-104 (1) (g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government on capital facilities needed to serve new development. No impact fee or other similar development charge shall be imposed except pursuant to a schedule that is:

- (a) Legislatively adopted;
- (b) Generally applicable to a broad class of property; and
- (c) Intended to defray the projected impacts on capital facilities caused by proposed development.

(2) A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development. No impact fee or other similar development charge shall be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.

(3) Any schedule of impact fees or other similar development charges adopted by a local government pursuant to this section shall include provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development charge is imposed.

(4) As used in this section, the term "capital facility" means any improvement or facility that:

- (a) Is directly related to any service that a local government is authorized to provide;
- (b) Has an estimated useful life of five years or longer; and
- (c) Is required by the charter or general policy of a local government pursuant to a resolution or ordinance.

(5) Any impact fee or other similar development charge shall be collected and accounted for in accordance with part 8 of article 1 of this title. Notwithstanding the provisions of this section, a local government may waive an impact fee or other similar development charge on the development of low- or moderate- income housing or affordable employee housing as defined by the local government.

(6) No impact fee or other similar development charge shall be imposed on any development permit for which the applicant submitted a complete application before the adoption of a schedule of impact fees or other similar development charges by the local government pursuant to this section. No impact fee or other similar development charge imposed on any development activity shall be collected before the issuance of the development permit for such development activity. Nothing in this section shall be construed to prohibit a local government from deferring collection of an impact fee or other similar development charge until the issuance of a building permit or certificate of occupancy.

(7) Any person or entity that owns or has an interest in land that is or becomes subject to a schedule of fees or charges enacted pursuant to this section shall, by filing an application for a development permit, have standing to file an action for declaratory judgment to determine whether such schedule complies with the provisions of this section. An applicant for a development permit who believes that a local government has improperly applied a schedule of fees or charges adopted pursuant to this section to the development application may pay the fee or charge imposed and proceed with development without prejudice to the applicant's right to challenge the fee or charge imposed under rule 106 of

the Colorado rules of civil procedure. If the court determines that a local government has either imposed a fee or charge on a development that is not subject to the legislatively enacted schedule or improperly calculated the fee or charge due, it may enter judgment in favor of the applicant for the amount of any fee or charge wrongly collected with interest thereon from the date collected.

(8) (a) The general assembly hereby finds and declares that the matters addressed in this section are matters of statewide concern.

(b) This section shall not prohibit any local government from imposing impact fees or other similar development charges pursuant to a schedule that was legislatively adopted before October 1, 2001, so long as the local government complies with subsections (3), (5), (6), and (7) of this section. Any amendment of such schedule adopted after October 1, 2001, shall comply with all of the requirements of this section.

(9) If any provision of this section is held invalid, such invalidity shall invalidate this section in its entirety, and to this end the provisions of this section are declared to be nonseverable.

Source: L. 2001, 2nd Ex. Sess.: Entire section added, p. 28, § 4, effective November 6.

ANNOTATION

Law reviews. For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

29-20-105. Intergovernmental cooperation. (1) Local governments are authorized and encouraged to cooperate or contract with other units of government pursuant to part 2 of article 1 of this title for the purposes of planning or regulating the development of land including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.

(2) (a) Without limiting the ability of local governments to cooperate or contract with each other pursuant to the provisions of this part 1 or any other provision of law, local governments may provide through intergovernmental agreements for the joint adoption by the governing bodies, after notice and hearing, of mutually binding and enforceable comprehensive development plans for areas within their jurisdictions. This section shall not affect the validity of any intergovernmental agreement entered into prior to April 23, 1989.

(b) A comprehensive development plan may contain master plans, zoning plans, subdivision regulations, and building code, permit, and other land use standards, which, if set out in specific detail, may be in lieu of such regulations or ordinances of the local governments.

(c) Notwithstanding any other statutory provisions of article 28 of title 30, C.R.S., review of comprehensive development plans by the planning commissions of the local governments shall be discretionary, unless otherwise required by local ordinance. This subsection (2) shall not apply to the requirements of sections 30-28-110 and 30-28-127, C.R.S.

(d) An intergovernmental agreement providing for a comprehensive development plan may contain a provision that the plan may be amended only by the mutual agreement of the governing bodies of the local governments who are parties to the plan.

(e) In the event that a plan is silent as to a specific land use matter, existing local land use regulations shall control.

(f) (I) An intergovernmental agreement may contain provisions concerning annexation, including, but not limited to provisions:

(A) That a comprehensive development plan shall continue to control particular land areas even though the land areas are annexed or jurisdiction over the land areas is otherwise transferred pursuant to law between the local governmental entities who are parties to the agreement;

(B) For revenue sharing between local governments; and

(C) Concerning land areas that may be annexed by municipalities and the conditions related to such annexations as established in the comprehensive development plan.

(II) Nothing in this paragraph (f) shall be construed to render invalid any intergovernmental agreement or comprehensive development plan entered into prior to November 6, 2001.

(g) Each governing body that is a party to an intergovernmental agreement adopting a comprehensive development plan shall have standing in district court to enforce the terms of the agreement and the plan, including specific performance and injunctive relief. The district court shall schedule all actions to enforce an intergovernmental agreement and comprehensive development plan for expedited hearing.

(h) Local governments may, pursuant to an intergovernmental agreement, provide for revenue-sharing.

(i) Local governments shall not be required to enter into intergovernmental agreements or comprehensive development plans pursuant to this section.

Source: **L. 74:** Entire article added, p. 354, § 1, effective May 17. **L. 89:** Entire section amended, p. 1268, § 1, effective April 23. **L. 99:** (2)(a) amended, p. 590, § 2, effective July 1. **L. 2001, 2nd Ex. Sess.:** (2)(f) amended, p. 31, § 1, effective November 6.

ANNOTATION

Law reviews. For article, “Growth Management: Recent Developments in Municipal Annexation and Master Plans”, see 31 Colo. Law. 61 (March 2002).

29-20-105.5. Intergovernmental cooperation - intergovernmental agreements to address wildland fire mitigation - land owned by municipality for utility purposes - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) As wildland fires are impervious to the territorial boundaries of political subdivisions, adequate protection against the harm and hazards caused by such fires necessitates the full cooperation of all governmental entities within whose contiguous territorial boundaries forest lands or wildland areas are located;

(b) Because of the likely threat that wildland fires may cross territorial boundaries, particularly if cooperative fire mitigation policies are not established and maintained, protecting the public from the dangers of such fires, especially fires occurring in wildland-urban interface areas, is a matter of statewide concern;

(c) The provisions of this section are necessary to protect the public from the dangers of forest land and wildland fires; and

(d) The provisions of this section are enacted for the purpose of authorizing and requiring intergovernmental cooperation between a county and any local governments that own land areas located within the county to mitigate the harm caused by forest land or wildland fires affecting such contiguous land areas in the interest of protecting the public health and safety.

(2) As used in this section, unless the context otherwise requires:

(a) “Fire department” shall have the same meaning as set forth in section 24-33.5-1202 (3.5), C.R.S., and includes a fire department that uses paid firefighters, volunteer firefighters, or both. The term includes, without limitation, a not-for-profit nongovernmental entity that is organized to provide firefighting services.

(b) “Forest land” shall have the same meaning as set forth in section 39-1-102 (4.3), C.R.S.

(b.5) “Local government” means a home rule or statutory city, town, territorial charter city, or a city and county. “Local government” does not include a county or a home rule county.

(c) “Wildland area” means an area in which development is essentially nonexistent, except for roads, railroads, power lines, and similar infrastructure, and in which structures, if present, are widely scattered.

(d) "Wildland fire" means an unplanned or unwanted fire in a wildland area, including an unauthorized human-caused fire, an out-of-control prescribed fire, and any other fire in a wildland area where the objective is to extinguish the fire.

(e) "Utility purposes" means the use or management of property by a local government that is reasonably related to the provision of electric, natural gas, water, wastewater, and telecommunication services.

(3) (a) (I) On or before July 1, 2012, each local government that owns any land area for any reason other than for utility purposes that is located either entirely or partially outside its own territorial boundaries and inside the territorial boundaries of a county and that contains at least fifty percent forest land or land that constitutes a wildland area shall enter into an intergovernmental agreement with the county for the purpose of mitigating forest land or wildland fires affecting the contiguous land areas of the local government and county.

(II) On or before July 1, 2012, each local government that owns any land area for utility purposes that is located either entirely or partially outside its own territorial boundaries and inside the territorial boundaries of a county and that contains at least fifty percent forest land or land that constitutes a wildland area shall either:

(A) Enter into an intergovernmental agreement with the county for the purpose of mitigating forest land or wildland fires affecting the contiguous land areas of the local government and county; or

(B) Enter into an agreement with the Colorado state forest service created in section 36-7-201 (1), C.R.S., for the purpose of mitigating forest land or wildland fires affecting the contiguous land areas of the local government and county, and provide notification of the agreement to any county in which the local government owns any land area.

(III) In association with the governmental parties entering into any intergovernmental agreement or agreement with the Colorado state forest service, the parties to the agreement shall consult with any utility providers that have facilities in the areas subject to the agreement to the extent the provisions of the agreement will affect the providers.

(b) Any agreement required by subparagraph (I) or (II) of paragraph (a) of this subsection (3) shall address, without limitation, the following matters:

(I) The identification of all parties to the agreement and their respective roles and responsibilities with respect to the mitigation of forest land and wildland fires;

(II) The procedures for cooperation and coordination among the parties to the agreement;

(III) Management objectives for forest land and wildland fire prevention, preparedness, mitigation, suppression, reclamation, or rehabilitation and the designation of the local government with fiscal and operational authority for each objective;

(IV) A description of available emergency or mutual aid resources in the event of forest land or wildland fires;

(V) The specification of reimbursement and billing procedures; and

(VI) Action that may be undertaken by one party to the agreement if another party to the agreement fails to satisfy its duties or responsibilities under the agreement.

(c) The agreement required pursuant to paragraph (a) of this subsection (3) shall be executed by all parties to the agreement.

(4) Nothing in this section shall require any local government to enter into a new agreement if the local government is a party to an agreement in existence as of August 5, 2009, including, without limitation, a mutual aid agreement, that satisfies the requirements of this section unless the terms of any such agreement, including a mutual aid agreement, fail to address the responsibility among local governments for mitigating wildland fires in wildland-urban interface areas.

(5) (a) In accordance with the requirements of section 33-10-108 (3) (a), C.R.S., and pursuant to a contract, intergovernmental agreement, or memorandum of understanding, the division of parks and wildlife created in section 33-9-104, C.R.S., may allow fire mitigation personnel and accompanying equipment and material under the control or supervision of a fire department to enter state parks, state recreation areas, and natural areas for the purpose of mitigating forest land or wildland fires in or around such parks, recreation areas, and natural areas. Permissible activities to be undertaken by a fire department under this

paragraph (a) include, without limitation, prescribed burning as a component of wildfire mitigation or forest or wildland management and exercises to promote the training of firefighting personnel.

(b) Nothing in paragraph (a) of this subsection (5) shall be construed as affecting the authority of any state agency other than the division of parks and wildlife to enter into a contract, intergovernmental agreement, or memorandum of understanding for the purpose of allowing fire mitigation personnel and accompanying equipment and material under the control or supervision of a fire department to enter land areas under the jurisdiction of the state agency to undertake the permissible activities specified in paragraph (a) of this subsection (5).

(c) For purposes of this subsection (5), “state agency” shall have the same meaning as set forth in section 24-18-102 (9), C.R.S.

Source: **L. 2009:** Entire section added, (HB 09-1162), ch. 191, p. 833, § 1, effective August 5. **L. 2011:** (3)(a) amended, (HB 11-1317), ch. 229, p. 982, § 1, effective May 27. **L. 2012:** (2)(b.5) and (2)(e) added and (3)(a) and IP(3)(b) amended, (HB12-1285), ch. 85, p. 282, § 1, effective April 6.

29-20-105.6. Notification to military installations by local governments of land use changes - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that it is desirable for local governments in the state to cooperate with military installations located within the state in order to encourage compatible land use, help prevent incompatible urban encroachment upon military installations, and facilitate the continued presence of major military installations within the state.

(2) As used in this section, unless the context otherwise requires:

(a) “Local government” means a county, home rule or statutory city, town, territorial charter city, or a city and county.

(b) “Military installation” means:

(I) A base, camp, post, station, airfield, yard, center, or any other land area under the jurisdiction of the United States department of defense, including any leased facility, the total acreage of which installation is in excess of five hundred acres; or

(II) The Greeley Air National Guard station.

(3) Each local government whose territorial boundaries are within two miles of all or any portion of a military installation shall timely provide to the installation commanding officer and the flying mission commanding officer, or their designees, information relating to proposed zoning changes, and amendments to the local government’s comprehensive plan, or land development regulations that, if approved, would affect the use of any area within two miles of the military installation. Nothing in this subsection (3) is intended to require submission of any information in connection with a site-specific development application under consideration by the local government.

(4) Upon submission of the information required to be provided pursuant to subsection (3) of this section, the military installation shall have fourteen business days within which to review the information and submit comments to the local government on the impact the proposed changes may have on the mission of the military installation. Such comments may include:

(a) If the military installation has an airfield, whether the proposed changes will be compatible with the safety and noise standards contained in the air installation compatible use zone recommended by United States department of defense instruction 4165.57 for that airfield;

(b) Whether the proposed changes are compatible with the installation environmental noise management program of the military installation;

(c) Whether the proposed changes are compatible with any joint land use study for the area within which the changes are to take place, if such study has been completed; or

(d) Whether the military installation’s mission will be adversely affected by the proposed changes.

(5) The local government shall review any comments received from the commanding officer or the flying mission commanding officer, or their designees, pursuant to subsection

(4) of this section when considering approval of a comprehensive plan, amendments to the plan, or its land development regulations. The local government shall forward a copy of any such comments received to the office of smart growth created in section 24-32-3203 (1) (a), C.R.S.

(6) Notwithstanding any other provision of this section, nothing in this section is intended or shall be construed to require a local government to prepare a new master plan in effect as of August 11, 2010, in order to satisfy any of the requirements of this section.

Source: L. 2010: Entire section added, (SB 10-1205), ch. 242, p. 1076, § 1, effective August 11.

Editor's note: This section is similar to former § 29-1-207 as it existed prior to 2010.

29-20-106. Receipt of funds. Without limiting or superseding any authority presently exercised or previously granted, local governments are hereby authorized to receive and expend funds from other governmental and private sources for the purposes of planning for or regulating the use of land within their respective jurisdictions.

Source: L. 74: Entire article added, p. 354, § 1, effective May 17.

29-20-107. Compliance with other requirements. Except as provided in section 29-20-105 (2), where other procedural or substantive requirements for the planning for or regulation of the use of land are provided by law, such requirements shall control.

Source: L. 74: Entire article added, p. 354, § 1, effective May 17. **L. 89:** Entire section amended, p. 1269, § 2, effective April 23.

ANNOTATION

Under this section, a county cannot disregard a limitation of its authority found in another statute. The zoned land exemption contained in § 24-65.1-107 (1)(c)(II) is not, however, a "requirement" that is meant to "control" under this section. *Droste v. Bd. of County Comm'rs*, 85 P.3d 585 (Colo. App. 2003).

Dual authority exists under statutes granting land-use approval authority to counties and the

authority for issuance of hazardous waste or radioactive material disposal permits and licenses to department of public health and environment. *Adams Bd. of County Comm'rs v. Colo. Dept. of Pub. Health & Env't*, 218 P.3d 336 (Colo. 2009).

29-20-108. Local government regulation - location, construction, or improvement of major electrical or natural gas facilities - legislative declaration. (1) The general assembly finds, determines, and declares that the location, construction, and improvement of major electrical and natural gas facilities are matters of statewide concern. The general assembly further finds, determines, and declares that:

(a) A reliable supply of electric power and natural gas statewide is of vital importance to the health, safety, and welfare of the people of Colorado;

(b) Electric power is transmitted by means of an interconnected grid system serving every area of the state, and natural gas is carried through a series of interconnected pipelines statewide;

(c) Impacts on the electric grid system or natural gas pipelines in one area of the state may have impacts on other areas of the state; and

(d) It is critical that public utilities and power authorities that supply electric or natural gas service maintain the ability to meet the demands for such service as growth continues to occur statewide.

(2) Local government land use regulations shall require final local government action on any application of a public utility or a power authority providing electric or natural gas service that relates to the location, construction, or improvement of major electrical or

natural gas facilities within one hundred twenty days after the utility's or authority's submission of a preliminary application, if a preliminary application is required by the local government's land use regulations, or within ninety days after submission of a final application. If the local government does not take final action within such time, the application shall be deemed approved. Within twenty-eight days of the submission by a utility or authority of an application pursuant to this subsection (2), the local government shall notify the utility or authority of any additional information that must be supplied by the utility or authority to complete the application. The notice shall specify the particular provisions of the local government's land use regulations that necessitate submission of the required information. The one hundred twenty- or ninety-day period, as applicable, during which the local government is to take action on an application shall commence on the date that the utility or authority provides the requested information to the local government in response to the notice required by this subsection (2). If the local government does not notify the utility or authority within twenty-eight days that additional information is required to complete the application, the one hundred twenty- or ninety-day period, as applicable, shall commence on the date of the submission by the utility or authority of its application, and any request by a local government for additional information after the completion of the twenty-eight-day period shall not extend the applicable deadline for final local government action in accordance with the requirements of this subsection (2). Nothing in this subsection (2) shall be construed to supersede any timeline set by agreement between a local government and a utility or authority applying for local government approval of location, construction, or improvement of major electrical or natural gas facilities as defined in subsection (3) of this section.

(3) As used in this section, "major electrical or natural gas facilities" includes one or more of the following:

- (a) Electrical generating facilities;
- (b) Substations used for switching, regulating, transforming, or otherwise modifying the characteristics of electricity;
- (c) Transmission lines operated at a nominal voltage of sixty-nine thousand volts or above;
- (d) Structures and equipment associated with such electrical generating facilities, substations, or transmission lines; or
- (e) Structures and equipment utilized for the local distribution of natural gas service including, but not limited to, compressors, gas mains, and gas laterals.

(4) (a) A public utility or power authority shall notify the affected local government of its plans to site a major electrical or natural gas facility within the jurisdiction of the local government prior to submitting the preliminary or final permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or the filing of any annual filing with the public utilities commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a public utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or file annually with the public utilities commission to notify the public utilities commission of proposed construction of a new facility or the extension of an existing facility, then the public utility or power authority shall notify any affected local governments of its intention to site a major electrical or natural gas facility within the jurisdiction of the local government when such utility or authority determines that it intends to proceed to permit and construct the facility. Following such notification, the public utility or power authority shall consult with the affected local governments in order to identify the specific routes or geographic locations under consideration for the site of the major electrical or natural gas facility and attempt to resolve land use issues that may arise from the contemplated permit application.

(b) In addition to its preferred alternative within its permit application, the public utility or power authority shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.

(5) (a) If a local government denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of major electrical or

natural gas facilities, or if the local government imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the local government action to the public utilities commission for a determination under section 40-4-102, C.R.S., so long as one or more of the following conditions exist:

(I) The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to section 40-5-101, C.R.S., to construct the major electrical or natural gas facility that is the subject of the local government action;

(II) A certificate of public convenience and necessity is not required for the public utility or power authority to construct the major electrical or natural gas facility that is the subject of the local government action; or

(III) The public utilities commission has previously entered an order pursuant to section 40-4-102, C.R.S., that conflicts with the local government action.

(b) Any appeal brought by a public utility or power authority to the public utilities commission under this section shall be conducted in accordance with the procedural requirements of section 40-6-109.5, C.R.S. In addition to the formal evidentiary hearing on the appeal, conducted in accordance with the procedural requirements of section 40-6-109, C.R.S., the public utilities commission shall take statements from the public concerning the appealed local government action at an open hearing held at a location specified by the local government.

(c) An appeal brought pursuant to this subsection (5) shall include a statement of the reasons why the local government action would unreasonably impair the ability of a public utility or power authority to provide safe, reliable, and economical service to the public.

(d) The public utilities commission shall balance the local government interest with the statewide interest in the location, construction, or improvement of major electrical or natural gas facilities. In striking such balance, the public utilities commission shall render a decision that is consistent with article 65.1 of title 24, C.R.S., including section 24-65.1-105, C.R.S., and the commission shall consider the following factors:

(I) The demonstrated need for the major electrical or natural gas facility;

(II) The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans;

(III) Whether the proposed facility would exacerbate a natural hazard;

(IV) Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards;

(V) The relative merit of any reasonably available and economically feasible alternatives proposed by the public utility, the power authority, or the local government;

(VI) The impact that the local government action would have on the customers of the public utility or power authority who reside within and without the boundaries of the jurisdiction of the local government;

(VII) The basis for the local government's decision to deny the application or impose additional conditions to the application;

(VIII) The impact the proposed facility would have on residents within the local government's jurisdiction including, in the case of a right of way in which facilities have been placed underground, whether those residents have already paid to place such facilities underground, and if so, shall give strong consideration to that fact; and

(IX) The safety of residents within and without the boundaries of the jurisdiction of the local government.

(e) The public utilities commission shall deny any appeal brought under this section unless the public utility or power authority has complied with the notification and consultation requirements of subsection (4) of this section.

(f) The public utilities commission may consult with the department of local affairs on land use issues in connection with any appeal. All information provided by the department of local affairs to the public utilities commission shall be part of the official record of the appeal and shall be subject to cross-examination or comments by the parties to the appeal.

(g) Unless otherwise specified in this subsection (5), the appeal shall be conducted in accordance with article 6 of title 40, C.R.S., including the provisions of section 40-6-116, C.R.S., concerning any stay or suspension of the final determination made by the public utilities commission.

(h) Nothing in this section shall be construed to limit or diminish the right of a public utility, power authority, or local government to appeal a local government, public utility, or power authority action, decision, or determination to a court of law pursuant to any other provision of law, or any appeal brought in connection with any decision by the public utilities commission under this subsection (5). Appeals brought under this paragraph (h) shall be given priority over other pending matters.

(i) Nothing in this section shall be construed to limit the authority of a municipal government to require or grant a public utility franchise.

Source: **L. 2000:** Entire section added, p. 1608, § 1, effective July 1. **L. 2001:** (1)(d) and (2) amended and (4) and (5) added, p. 593, § 2, effective May 30. **L. 2005:** (2) amended, p. 315, § 1, effective August 8.

PART 2

REGULATORY IMPAIRMENT OF PROPERTY RIGHTS

29-20-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The right to own and use private property is a fundamental right, essential to the continued vitality of a democratic society;

(b) Governmental regulation of conduct, while equally essential to public order and the preservation of universally held values, must be carried out in a manner that appropriately balances the needs of the public with the rights and legitimate expectations of the individual; and

(c) This part 2 appropriately and necessarily underscores and reinvigorates the federal constitutional prohibition against taking private property for public use without just compensation and the state constitutional prohibitions against taking or damaging private property for public or private use.

(2) The general assembly further finds and declares that an individual private property owner should not be required, under the guise of police power regulation of the use and development of property, to bear burdens for the public good that should more properly be borne by the public at large.

(3) The general assembly intends, through the adoption of section 29-20-203, to codify certain constitutionally-based standards that have been established and applied by the courts. The fair, consistent, and expeditious adjudication of disputes over land use in state courts in accordance with constitutional standards is a matter of statewide concern.

Source: **L. 99:** Entire part added, p. 586, § 1, effective July 1.

ANNOTATION

Law reviews. For article, “Animus Over Animas?—Changes in Regulatory Takings Law in Colorado”, see 31 Colo. Law. 69 (April 2002).

Practical effects of this part 2 was to codify the test for regulatory takings announced by the United States supreme court in *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). These opinions established the presumption that a local government that conditions approval of a proposed development on an ex-

action of property effects a compensable taking. This presumption can be overcome only if the local government proves that (1) there is an “essential nexus” between the dedication or payment and a legitimate government interest; and (2) the dedication or payment is “roughly proportional” both in nature and extent to the impact of the proposed use or development of such property. Consequently, under this part 2, a local government that requires a landowner to “dedicate real property to the public or pay money or provide services to a public entity in

an amount that is determined on an individualized and discretionary basis” must first satisfy each prong of the Nollan/Dolan test. Wolf

Ranch, LLC v. City of Colo. Springs, 220 P.3d 559 (Colo. 2009).

29-20-202. Definitions. As used in this part 2, unless the context otherwise requires:

- (1) “Land-use approval” means any final action of a local government that has the effect of authorizing the use or development of a particular parcel of real property.
- (2) “Local government” has the same meaning as set forth in section 29-20-103 (1.5).

Source: L. 99: Entire part added, p. 587, § 1, effective July 1. L. 2001, 2nd Ex. Sess.: (2) amended, p. 30, § 5, effective November 6.

29-20-203. Conditions on land-use approvals. (1) In imposing conditions upon the granting of land-use approvals, no local government shall require an owner of private property to dedicate real property to the public, or pay money or provide services to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property. This section shall not apply to any legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners by a local government.

(2) No local government shall impose any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner.

Source: L. 99: Entire part added, p. 587, § 1, effective July 1. L. 2001, 2nd Ex. Sess.: (1) amended, p. 30, § 6, effective November 6.

ANNOTATION

Law reviews. For article, “Recent Developments in Regulatory Takings”, see 28 Colo. Law. 83 (November 1999).

Practical effects of this part 2 was to codify the test for regulatory takings announced by the United States supreme court in Nollan v. Cal. Coastal Comm’n, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994). These opinions established the presumption that a local government that conditions approval of a proposed development on an exaction of property effects a compensable taking. This presumption can be overcome only if the local government proves that (1) there is an “essential nexus” between the dedication or payment and a legitimate government interest; and (2) the dedication or payment is “roughly proportional” both in nature and extent to the impact of the proposed use or development of

such property. Consequently, under this section, a local government that requires a landowner to “dedicate real property to the public or pay money or provide services to a public entity in an amount that is determined on an individualized and discretionary basis” must first satisfy each prong of the Nollan/Dolan test. Wolf Ranch, LLC v. City of Colo. Springs, 220 P.3d 559 (Colo. 2009).

City’s decision to condition landowner’s land-use permit on the payment of drainage fees falls outside of ambit of this part 2. Drainage fee assessed upon landowner by city falls under the exception of subsection (1) for legislatively formulated fees that are imposed upon a broad class of property owners. Wolf Ranch, LLC v. City of Colo. Springs, 220 P.3d 559 (Colo. 2009).

29-20-204. Remedy for enforcement against a private property owner.

(1) (a) Within thirty days after the date of a decision or action of a local government imposing a condition in granting a land-use approval, the owner of such property may notify the local government in writing of an alleged violation of section 29-20-203.

(b) Upon the filing of such written notice, the local government shall inform each member of the governing body in writing that the notice has been filed. The local government shall respond to such notice within thirty days after the date of such notice by informing the property owner whether such application or enforcement will proceed as

proposed, will be modified, or will be discontinued. The filing of such notice shall be a condition precedent to the owner's right to proceed under subsection (2) of this section.

(2) (a) Within sixty days after the date the local government is required to respond under paragraph (b) of subsection (1) of this section, the property owner may file a petition in the district court for the judicial district in which the subject property is located seeking relief from the enforcement or application of the local law, regulation, policy, or requirement on the basis of an alleged violation of section 29-20-203. Failure to file such a petition within said sixty-day period shall bar relief under this section.

(b) (I) Within thirty days after service on the local government of a petition pursuant to paragraph (a) of this subsection (2), the local government shall assemble and file with the clerk of the district court all documents in its possession concerning the enforcement or application of the local law, regulation, policy, or requirement, including the record of any hearing or proceeding concerning such enforcement or application. If there are no contested factual issues and if the court determines that the facts as reflected by the documents and record filed are sufficient to determine the case, the court shall proceed to determine the case in the most expeditious manner and shall issue appropriate procedural orders to facilitate such determination.

(II) If there are contested issues of fact, or if the court determines that additional evidence is necessary to determine the case, the court may order the parties to provide such additional facts and information as the court may deem appropriate. The court shall order a hearing as soon as its docket permits to resolve such issues of fact or hear such additional evidence.

(c) When it has been established that a required dedication of real property or payment of money as described in section 29-20-203 (1) has been or will be imposed, the burden shall be upon the local government to establish, based upon substantial evidence appearing in the record, that such dedication or payment is roughly proportional to the impact of the proposed use of the subject property.

(d) In determining whether the property owner should be granted relief from the local government's enforcement or application of the local law, regulation, policy, or requirement, the court shall include the following considerations:

(I) Whether such enforcement or application has been accomplished pursuant to a duly adopted law, regulation, policy, or requirement;

(II) Whether such enforcement or application advances a legitimate local government interest;

(III) Whether any required dedication of real property or payment of money as described in section 29-20-203 (1) required by such enforcement or application is roughly proportional to the impact of the proposed use of the subject property;

(IV) Whether there are adequate legislative standards and criteria to ensure that the local law, regulation, policy, or requirement is rationally and consistently applied.

(e) (I) If the court determines that local government enforcement or application of the local law, regulation, policy, or requirement to a specific parcel does not comply with section 29-20-203, the court shall grant appropriate relief to the property owner under the facts presented. Such relief may include, but shall not be limited to, ordering the local government to modify any required dedication of real property or payment of money as described in section 29-20-203 (1) to make it roughly proportional to the impact of the proposed use of the subject property in a manner consistent with the court's order.

(II) If the court determines that such enforcement or application is not based on a duly adopted law, regulation, policy, or requirement or that there are not adequate standards and criteria to ensure that such enforcement or application is rational and consistent, the court shall invalidate the enforcement or application of the law, regulation, policy, or requirement as applied to the subject property.

(f) In any proceeding under this subsection (2), the court may in its discretion award the prevailing party its costs and reasonable attorney fees.

(3) Nothing in this section shall affect:

(a) The ability to bring an action under any state statute relating to eminent domain or the exercise of eminent domain powers by the state or any local governmental entity in furtherance of section 15 of article II of the state constitution, nor shall these provisions

limit any claim for compensation or other relief under any other provision of law prohibiting the taking or damaging of private property for public or private use.

(b) The right of an owner of private property to file an action for judicial review under rule 106 (a) (4) of the Colorado rules of civil procedure; except that, if a claim under this section is not included in such rule 106 (a) (4) action, it may be brought, if at all, only by amendment to the complaint in the rule 106 (a) (4) action. If the local government has answered the rule 106 (a) (4) complaint, the court may not deny amendment of the complaint to add a claim under this section unless the time requirements of paragraph (a) of subsection (2) of this section have not been met.

(4) An owner may proceed with development without prejudice to that owner's right to pursue the remedy provided by this section.

Source: L. 99: Entire part added, p. 587, § 1, effective July 1. **L. 2001, 2nd Ex. Sess.:** (4) added, p. 30, § 7, effective November 6.

ANNOTATION

Law reviews. For article, "Recent Developments in Regulatory Takings", see 28 Colo. Law. 83 (November 1999).

29-20-205. Limitation - scope of part. Nothing in this part 2 shall be construed to affect the expressly granted land-use authority of any local government.

Source: L. 99: Entire part added, p. 589, § 1, effective July 1.

PART 3

ADEQUATE WATER SUPPLY

29-20-301. Legislative declaration. (1) The general assembly:

(a) Finds that, due to the broad regional impact that securing an adequate supply of water to serve proposed land development can have both within and between river basins, it is imperative that local governments be provided with reliable information concerning the adequacy of proposed developments' water supply to inform local governments in the exercise of their discretion in the issuance of development permits; and

(b) To that end, declares that while land use and development approval decisions are matters of local concern, the enactment of this part 3, to help ensure the adequacy of water for new developments, is a matter of statewide concern and necessary for the preservation of public health, safety, and welfare and the environment of Colorado.

Source: L. 2008: Entire part added, p. 1559, § 2, effective May 29.

29-20-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Adequate" means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

(2) "Water supply entity" means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.

Source: L. 2008: Entire part added, p. 1560, § 2, effective May 29.

29-20-303. Adequate water supply for development. (1) A local government shall not approve an application for a development permit unless it determines in its sole

discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

(2) Nothing in this part 3 shall be construed to require that the applicant own or have acquired the proposed water supply or constructed the related infrastructure at the time of the application.

Source: L. 2008: Entire part added, p. 1560, § 2, effective May 29.

29-20-304. Water supply requirements. (1) Except as specified in subsections (2) and (3) of this section, an applicant for a development permit shall submit estimated water supply requirements for the proposed development in a report prepared by a registered professional engineer or water supply expert acceptable to the local government. The report shall include:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development;

(c) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(d) Water conservation measures, if any, that may be implemented within the development;

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Such other information as may be required by the local government.

(2) If the development is to be served by a water supply entity, the local government may allow the applicant to submit, in lieu of the report required by subsection (1) of this section, a letter prepared by a registered professional engineer or by a water supply expert from the water supply entity stating whether the water supply entity is willing to commit and its ability to provide an adequate water supply for the proposed development. The water supply entity's engineer or expert shall prepare the letter if so requested by the applicant. At a minimum, the letter shall include:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development;

(c) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(d) Water conservation measures, if any, that may be implemented within the proposed development;

(e) Water demand management measures, if any, that may be implemented to address hydrologic variations; and

(f) Such other information as may be required by the local government.

(3) In the alternative, an applicant shall not be required to provide a letter or report identified pursuant to subsections (1) and (2) of this section if the water for the proposed development is to be provided by a water supply entity that has a water supply plan that:

(a) Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the water supply entity;

(b) Has a minimum twenty-year planning horizon;

(c) Lists the water conservation measures, if any, that may be implemented within the service area;

(d) Lists the water demand management measures, if any, that may be implemented within the development;

- (e) Includes a general description of the water supply entity's water obligations;
- (f) Includes a general description of the water supply entity's water supplies; and
- (g) Is on file with the local government.

Source: L. 2008: Entire part added, p. 1560, § 2, effective May 29.

29-20-305. Determination of adequate water supply. (1) The local government's sole determination as to whether an applicant has a water supply that is adequate to meet the water supply requirements of a proposed development shall be based on consideration of the following information:

- (a) The documentation required by section 29-20-304;
- (b) If requested by the local government, a letter from the state engineer commenting on the documentation required pursuant to section 29-20-304;
- (c) Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development; and
- (d) Any other information deemed relevant by the local government to determine, in its sole discretion, whether the water supply for the proposed development is adequate, including, without limitation, any information required to be submitted by the applicant pursuant to applicable local government land use regulations or state statutes.

Source: L. 2008: Entire part added, p. 1562, § 2, effective May 29.

29-20-306. Cluster developments - inapplicability. Nothing in this part 3 shall be deemed to apply to a rural land use process regarding the approval of a cluster development pursuant to part 4 of article 28 of title 30, C.R.S.

Source: L. 2008: Entire part added, p. 1562, § 2, effective May 29.

ARTICLE 21

Conservation Trust Funds

29-21-101.	Conservation trust funds - definitions.	29-21-102.	Certification - monitoring - enforcement - rules.
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29-21-101. Conservation trust funds - definitions. (1) As used in this article, unless the context otherwise requires:

- (a) "County" includes a city and county.
- (a.5) "Division" means the division of local government in the department of local affairs.
- (b) "Eligible entity" means a county, municipality, or special district which has created a conservation trust fund pursuant to this section and which has certified to the department of local affairs that it has created such fund.
- (c) "Interests in land and water" means any and all rights and interests in land or water, or both, including fee interests and less than full fee interests such as future interests, developmental rights, easements, covenants, and contractual rights. Every interest in land or water may be in perpetuity or for a fixed term and shall be deemed to run with the land or water to which it pertains for the benefit of the citizens of this state.
- (d) "Municipality" means a statutory or home rule city or town or a territorial charter city.
- (e) "New conservation sites" means interests in land and water, acquired after establishment of a conservation trust fund pursuant to this section, for park or recreation purposes, for all types of open space, including but not limited to floodplains, greenbelts, agricultural lands, or scenic areas, or for any scientific, historic, scenic, recreational, aesthetic, or similar purpose.

(f) "Population" means the current population estimate prepared by the division of planning pursuant to section 24-32-204, C.R.S.

(g) "Special district" means:

(I) A special district organized under article 1 of title 32, C.R.S., which provides park or recreation facilities or programs pursuant to the district's service plan, which facilities or programs are open to public use; or

(II) A school district which owned or operated as a successor in interest to a previously established park and recreation district a system of public recreation and playgrounds prior to January 1, 1987, and who, prior to said date, collected moneys and separately accounted for and devoted such moneys exclusively to the operation of a system of public recreation and playgrounds.

(1.5) School districts which are special districts, as defined in paragraph (g) of subsection (1) of this section, are deemed to have been authorized to create conservation trust funds pursuant to this section, and any moneys, collected and separately accounted for and devoted exclusively to the operation of a system of public recreation and playgrounds prior to January 1, 1987, are deemed to be conservation trust funds. Nothing in this section shall be construed to entitle school districts which are special districts to the receipt of state conservation trust funds prior to April 22, 1987.

(2) (a) (I) There is hereby created in the division the conservation trust fund.

(II) Each county share shall be apportioned according to that percentage which the population of each county is to the total population of all counties, and, within each county, each municipality's share shall be apportioned according to the percentage which the population within each municipality is to the total population of the county in which such municipality is located. Each special district's share shall be determined as follows:

(A) The special district's share relating to the unincorporated area of the county in which all or part of such special district is located shall be apportioned according to one-half of the percentage which the population of the special district's unincorporated area is to the total population of the unincorporated area of the county.

(B) The special district's share relating to the incorporated area of the county in which all or part of such special district is located shall be one-half of the percentage which the population of the special district's incorporated area is to the total population of the municipality in which the special district's incorporated area is located. The population of any area which is located within a municipality or a city and county and has been excluded from a special district shall not be counted as part of the special district's population, even if the excluded area remains within the district for the purpose of paying outstanding debt.

(C) No special district which has been ordered dissolved shall receive any conservation trust fund money.

(b) (I) The division shall annually determine the eligible entities and shall distribute eligible entity shares as soon as possible after receiving distributions from the lottery fund pursuant to section 24-35-210 (10), C.R.S., in the following manner:

(A) To each eligible county, its share, less the share of all eligible municipalities and special districts located within the county;

(B) To each eligible municipality, its share of the county share, less the shares of any eligible special districts located within the municipality;

(C) To each eligible special district, its proportionate share of the county and municipal share; and

(D) To each eligible county, municipality, and special district, its proportionate share of any ineligible county share, less the shares of any eligible municipalities and special districts within the ineligible county.

(II) All moneys received from the state by any eligible entity pursuant to this section shall be accounted for separately from any other source of moneys available to the entity for the acquisition of new conservation sites or recreational facilities as defined in this article. No moneys received from the state by any eligible entity pursuant to this section shall be used to acquire real property through condemnation by eminent domain.

(c) In the event that an eligible municipality's share is less than twenty dollars, such amount shall be distributed to the eligible county for the benefit of such municipalities as determined by the board of county commissioners.

(3) The division may utilize the fund to recover its direct and indirect costs in the administration of moneys pursuant to this section.

(4) All moneys received from the state by each eligible entity pursuant to this section shall be deposited in its conservation trust fund and shall be expended only for the acquisition, development, and maintenance of new conservation sites or for capital improvements or maintenance for recreational purposes on any public site. An eligible entity shall not deposit any other moneys in its conservation trust fund. All interest earned on the investment of moneys in a local conservation trust fund shall be credited to the fund and shall be expended only for purposes authorized by this article.

(5) In the utilization of moneys received pursuant to this section, each eligible entity may cooperate or contract with any other government or political subdivision, including a conservation district established in accordance with the provisions of article 70 of title 35, C.R.S., or a local noxious weed control program, pursuant to part 2 of article 1 of this title. Subject to the separate accounting requirement of subparagraph (II) of paragraph (b) of subsection (2) of this section, such cooperation may include the sharing of moneys held by any such entities in their respective conservation trust funds for joint expenditures for the acquisition, development, and maintenance of new conservation sites, as defined in paragraph (e) of subsection (1) of this section, in accordance with the provisions of article XXVII of the state constitution.

(6) On forms supplied by the division, each eligible entity shall annually submit to the division a statement showing the total amount of state moneys in its local conservation trust fund, the amount of any state moneys encumbered or expended from such fund since the previous year's report, and the purpose of the encumbrance or expenditure.

Source: **L. 74:** Entire section added, p. 432, § 2, effective July 1. **L. 77:** (2)(a), (2)(b), (4), and (5) amended and (2)(c) and (6) added, pp. 1425, 1426, §§ 1, 3, 2, 4, effective June 19. **L. 82:** (1)(b), (2)(a), (2)(b), (4), (5), and (6) amended and (1)(g) added, pp. 385, 386, §§ 5, 6, 7, effective April 30. **L. 87:** (1)(g) amended and (1.5) added, p. 1200, § 1, effective April 22; (1)(g)(II) amended, p. 1589, § 68, effective July 10. **L. 89:** IP(2)(b) amended, p. 1053, § 2, effective April 7. **L. 2004:** (1)(a.5) added and (2)(a)(1), (2)(b), (3), (4), (5), and (6) amended, pp. 1886, 1887, §§ 3, 4, 2, effective July 1. **L. 2010:** (5) amended, (SB 10-098), ch. 183, p. 658, § 2, effective April 29.

Editor's note: Section 4 of chapter 384, Session Laws of Colorado 2004 (Senate Bill 04-176), specified that the introductory portion to subsection (6) was amended; however, subsection (6) does not contain an introductory portion, and for clarity of the legislative intent, the entire subsection is set out with the amendments made in said bill.

Cross references: (1) For the transfer of moneys from the state lottery fund to the conservation trust fund, see § 24-35-210 (4.1)(a).

(2) For the legislative declaration in the 2010 act amending subsection (5), see section 1 of chapter 183 and section 194 of chapter 419, Session Laws of Colorado 2010.

29-21-102. Certification - monitoring - enforcement - rules. (1) The treasurer of a municipality or special district, the chief financial officer, or the official custodian of the conservation trust fund of an eligible entity shall annually review and certify to the division that the eligible entity's self-reported conservation trust fund expenditures comply with the requirements of this article and of rules promulgated pursuant to this article.

(2) The division may require eligible entities to file such annual reports as it deems necessary, and shall review the annual reports submitted pursuant to this article. The review may be conducted by the division's own permanent staff, through a personal services contract, or by delegating responsibility to an independent third party. If the division determines that an eligible entity has violated this article, the division shall take such enforcement measures as it deems necessary to ensure compliance with this article.

(3) By September 1, 2004, the director of the division shall promulgate rules as necessary to carry out this article, including:

(a) Procedures necessary to allow the division or its agents to monitor eligible entities' compliance with the requirements of this article and of rules promulgated pursuant to this

article, including annual reporting and entry and inspection of records regarding accounting and expenditures of revenues from the conservation trust fund;

(b) Procedures necessary to allow the division to enforce eligible entities' compliance with this article, including penalties, forfeiture of shares previously distributed, issuance of an order after a hearing held pursuant to section 24-4-105, C.R.S., to repay to a state or local conservation trust fund specific revenues from a conservation trust fund that were expended for purposes that are not authorized by this article, and, if the eligible entity fails to timely comply with the order, issuance of an order to the treasurer holding moneys of the eligible entity that were generated pursuant to the taxing authority of the eligible entity to prohibit the release of any such moneys until the eligible entity complies with the order, and the ability to treat a noncompliant eligible entity as though it were an ineligible entity; and

(c) Guidance regarding allowable expenditures of conservation trust fund revenues to facilitate eligible entities' compliance with this article.

(4) The division shall afford to any eligible entity written notice and an opportunity for a hearing before taking any enforcement action pursuant to this article.

Source: L. 2004: Entire section added, p. 1885, § 1, effective July 1.

HAZARDOUS SUBSTANCE INCIDENTS

ARTICLE 22

Hazardous Substance Incidents

Editor's note: This article was added in 1980. This article was repealed and reenacted in 1983, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "Municipal Regulation of the Transportation of Hazardous Material", see 18 Colo. Law. 651 (1989); for article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995).

29-22-101.	Definitions.		ning and response assistance
29-22-102.	Hazardous substance incidents		fund - creation - acceptance
	- response authorities - designation.		of gifts, grants, and donations
29-22-103.	Emergency response authority		- grants to local government. (Repealed)
	may request assistance.	29-22-107.	Legislative finding - hazardous
29-22-104.	Right to claim reimbursement.		substance listing required.
29-22-105.	Additional reimbursement for	29-22-108.	Criminal penalties.
	costs of assistance - subrogation of rights - recovery of reimbursements by attorney general.	29-22-109.	Persons rendering assistance relating to hazardous substance incidents - legislative declaration - exemption from civil liability.
29-22-106.	Emergency response cash fund. (Repealed)	29-22-110.	Colorado state patrol to provide information.
29-22-106.5.	Hazardous substances plan-		

29-22-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Hazardous substance" means any substance, material, waste, or mixture designated as a hazardous material, waste, or substance according to 49 Code of Federal Regulations Part 172, as amended, or by section 18-13-112 (2) (b), C.R.S., or as designated pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (Pub.L. 96-510) as in effect July 1, 1983.

(2) (a) "Hazardous substance incident" means any emergency circumstance involving

the sudden discharge of a hazardous substance which threatens immediate and irreparable harm to the environment or the health and safety of any individual other than individuals exposed to the risks associated with hazardous substances in the normal course of their employment. "Hazardous substance incident" includes those incidents of spilling, dumping, or abandonment of a hazardous substance, whether or not such spilling, dumping, or abandonment is found to threaten immediate and irreparable harm, but such term does not include any discharge of a hazardous substance authorized pursuant to any federal, state, or local law or regulation. "Hazardous substance incident" includes those incidents which occur during transportation of a hazardous substance, in which a spill does not occur during the incident but is threatened prior to or during the cleanup period.

(b) As used in this section, "abandonment" means the act of leaving a thing with the intent not to retain possession of or assert ownership or control over it. The intent need not coincide with the act of leaving.

(3) "Person" means any individual, public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(4) "Private property" means any property under the control, management, or operation of any person other than a governmental agency.

Source: **L. 83:** Entire article R&RE, p. 1216, § 1, effective July 1. **L. 92:** (2)(a) amended, p. 1338, § 1, effective May 29. **L. 93:** (2)(a) amended, p. 1739, § 33, effective July 1.

Editor's note: This section is similar to former § 29-22-101 as it existed prior to 1983.

Cross references: For the legislative declaration contained in the act amending subsection (2)(a) in 1993, see section 41 of chapter 292, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Local Governments and the Environment: Part I, CERCLA", see 17 Colo. Law. 1997 (1988). For article,

"Local Governments and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988).

29-22-102. Hazardous substance incidents - response authorities - designation.

(1) It is the purpose of this section to provide for the designation of emergency response authorities for hazardous substance incidents. Every emergency response authority designated in or pursuant to this section shall be responsible for providing and maintaining the capability for emergency response to a hazardous substance incident occurring within its jurisdiction. An emergency response authority may provide and maintain the capability for such response directly or through mutual aid or other agreements. Subject to the provisions of local or regional response agreements for hazardous substance incidents, the first emergency response authority, or its public agency designee through mutual aid or otherwise, to arrive at the scene of the incident, regardless of whether the incident occurs within its jurisdiction, shall be responsible for the emergency response as incident commander until such time as the emergency response authority that has jurisdiction over the incident site has arrived, after which unified command shall be followed until the emergency response has concluded. As used in this section, "emergency response to a hazardous substance incident" means taking the initial emergency action necessary to minimize the effects of a hazardous substance incident.

(2) If a hazardous substance incident occurs on private property and is otherwise reportable to any federal, state, or local agency, the owner of the property or person or entity operating on the property shall promptly report the incident to and coordinate a response with the appropriate emergency response authority designated in or pursuant to this section. If the owner or operator does not undertake or coordinate an emergency response or if, in the judgment of the designated emergency response authority, there exists an imminent

danger to the public health and safety beyond such property, the designated emergency response authority may undertake the emergency response to such hazardous substance incident, as provided in this section. Nothing in this subsection (2) shall be construed to prohibit the owner of private property or a person or entity operating on such property from undertaking the emergency response to a hazardous substance incident occurring on the property.

(3) (a) The governing body of every town, city, and city and county shall designate by ordinance or resolution an emergency response authority or authorities for hazardous substance incidents occurring within the corporate limits of such town, city, and city and county. Unless otherwise designated by ordinance or resolution, the fire authority having responsibility for the corporate limits of such town, city, or city and county shall be the designated emergency response authority.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution the emergency response authority or authorities for hazardous substance incidents occurring within the unincorporated area of the county. Unless otherwise designated by ordinance or resolution, the county sheriff having responsibility for the unincorporated area of the county shall be the designated emergency response authority.

(c) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30, 1999.)

(d) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30, 1999.)

(5) (a) For the purposes of this section, if a hazardous substance incident occurs on any federal, state, or county highway located outside of municipal city limits, the Colorado state patrol shall be the emergency response authority for such hazardous substance incident.

(b) The Colorado state patrol may delegate such authority to the emergency response authority designated pursuant to subsection (3) of this section or to any public entity capable of performing the emergency response to a hazardous substance incident upon approval of the governing body of the entity receiving authority under such delegation.

(c) In performing its duties under this subsection (5), the Colorado state patrol shall, when practicable, locate its emergency response resources based upon its assessment of the hazardous substances emergency response needs of the different geographic areas of the state.

(d) The Colorado state patrol shall actively coordinate its emergency response capabilities and plans with local emergency response agencies.

(6) Each governing body identified in subsection (3) of this section and the Colorado state patrol shall, as necessary, exercise continuing supervisory authority in consultation with other federal, state, and local agencies having regulatory jurisdiction for the cleanup and removal of the hazardous substance involved in an incident.

Source: L. 83: Entire article R&RE, p. 1217, § 1, effective July 1. L. 99: Entire section amended, p. 432, § 1, effective April 30.

Editor's note: This section is similar to former § 29-22-102 as it existed prior to 1983.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

29-22-103. Emergency response authority may request assistance. (1) Any emergency response authority that, in its judgment, does not have the equipment, personnel, or expertise necessary to handle a particular hazardous substance incident may make a request to any public agency or private entity possessing such necessary equipment, personnel, or expertise to provide assistance to such emergency response authority.

(2) (a) Any emergency response authority designated in or pursuant to section 29-22-102 may request the department of public health and environment and the county or district public health agency to provide assistance. If there is no county or district public health agency for the area in which a hazardous substance incident occurs, such request may be

made to the board of county commissioners in its capacity as the county board of health or to the mayor and council or trustees in their capacity as the municipal board of health. In addition, any other state or local agency with useful expertise shall have the authority, upon request, to provide assistance to and cooperate with the emergency response authority designated in or pursuant to section 29-22-102.

(b) The department of public safety is hereby authorized to organize, through mutual aid or other agreements, a state emergency response team and regional emergency response teams. The state team may consist of any federal, state, local, or private entities that have the appropriately trained personnel and the necessary equipment to respond on a statewide basis to a hazardous substance incident. The regional teams may consist of any federal, state, local, or private entities that have the appropriately trained personnel and the necessary equipment to respond on a regional basis to a hazardous substance incident and to assist the state team in responding on a statewide basis to a hazardous substance incident. The state and regional teams shall be available to respond to hazardous substance incidents upon request made to the department of public safety by an emergency response authority. The emergency response authority that requests a response by the state emergency response team, a regional emergency response team, or both shall assure that the reasonable and documented costs of the team's or teams' response are included in any reimbursement for costs sought in accordance with this article. The emergency response authority shall distribute any such reimbursement that is made to it on a pro rata basis to each entity that made up the emergency response team or teams that responded to a hazardous substance incident.

(3) Any municipal or county governing body, any emergency response authority, any private entity, the Colorado state patrol, or the department of public safety may enter into mutual aid or other agreements for the purpose of enhancing the response to hazardous substance incidents. Such agreements may include, but are not limited to, procedures for utilizing equipment, personnel, and technical assistance.

Source: L. 83: Entire article R&RE, p. 1218, § 1, effective July 1. L. 94: (2)(a) amended, p. 2797, § 553, effective July 1. L. 99: (1), (2)(b), and (3) amended, p. 434, § 2, effective April 30. L. 2010: (2)(a) amended, (HB 10-1422), ch. 419, p. 2117, § 159, effective August 11.

Editor's note: This section is similar to former § 29-22-103 as it existed prior to 1983.

29-22-104. Right to claim reimbursement. (1) A public entity, political subdivision of the state, or unit of local government is hereby given the right to claim reimbursement from the person or persons who have care, custody, and control of the hazardous substance involved at the time of the incident for the reasonable, necessary, and documented costs resulting from action taken to remove, contain, or otherwise mitigate the effects of such incident. When the action to remove, contain, or otherwise mitigate the effects of such an incident also involves extinguishing a fire, the costs may only include the extraordinary expenses related to the hazardous substance and not any expense related to extinguishing the fire. If the property on which the hazardous substance incident occurred lies within an unincorporated area of a county and not otherwise within a fire protection district, then the costs may include any expense related to the hazardous substance incident or to extinguishing the fire. If any such person is the owner of property upon which the hazardous substance incident occurs, collection of such costs may be made pursuant to section 30-10-513.5 (1), C.R.S.

(2) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

(3) (a) The governing body of the emergency response authority designated in section 29-22-102 (3), or when the emergency response authority is the Colorado state patrol, the attorney general, shall be responsible for collecting any claims for reimbursement made pursuant to this section when more than one public entity, political subdivision of the state, or unit of local government has assisted in said removal, containment, or mitigation. Such responsibility shall include, when necessary, the filing of a civil action against the person

responsible for the abandonment or spill. Any such agency which rendered assistance may also join any civil action as a party plaintiff or may assign any rights to the appropriate emergency response authority.

(b) Any collections or recovery made by the emergency response authority shall be distributed on a pro rata basis among the agencies which rendered assistance.

(c) The emergency response authority is entitled to recover its reasonable costs in collecting any reimbursement, including any attorney fees. If such costs are not included in a judgment rendered in a civil action, they shall be deducted from any recovery prior to the distribution provided for in paragraph (b) of this subsection (3).

(d) All moneys collected or recovered pursuant to the provisions of this section on behalf of the Colorado state patrol, except for moneys distributed to assisting agencies pursuant to paragraph (b) of this subsection (3) or to pay legal fees or costs pursuant to paragraph (c) of this subsection (3), shall be transmitted to the state treasurer who shall credit the same to the highway users tax fund established in section 43-4-201, C.R.S.

(4) The provisions of this section shall apply to any claim for reimbursement for costs related to a hazardous substance which is authorized by other provisions of law.

(5) Repealed.

(6) (a) The executive director of the department of public safety shall adopt rules in accordance with article 4 of title 24, C.R.S., to create a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement pursuant to this section shall establish that the costs attributed to a hazardous substance incident are reasonable, necessary, and documented. Such rules shall provide for consideration of all appropriate cost factors including but not limited to acquisition and operation expenses for equipment, salaries and benefits, the cost of expendable supplies, the cost differences between rural and urban areas, and the cost differences between responding entities that utilize paid staff and entities that use volunteers.

(b) The executive director of the department of public safety shall create a list of qualified and knowledgeable persons who are willing to perform the role of voluntary ombudsman, mediator, or arbitrator to resolve disputes regarding claims for reimbursement made pursuant to this section and shall adopt rules in accordance with article 4 of title 24, C.R.S., to establish the process by which the parties involved in such a dispute may access and arrange for the assistance of persons on the list. Persons on the list shall not receive compensation for their services from the state and shall not be state employees. Persons on the list shall not be subject to civil liability for any actions taken in good faith pursuant to this paragraph (b) or any rule adopted by the executive director of the department of public safety in accordance with this section.

Source: **L. 83:** R&RE, p. 1218, § 1, July 1. **L. 89:** (1) amended, p. 1280, § 2, effective April 26. **L. 99:** (3)(d) added, p. 493, § 1, effective April 30; (5) added, p. 435, § 3, effective April 30. **L. 2000:** (1) amended and (6) added, p. 991, § 1, effective May 26. **L. 2001:** (5)(c) repealed, p. 1179, § 15, effective August 8. **L. 2012:** (5) repealed, (HB 12-1283), ch. 240, p. 1136, § 53, effective July 1.

Editor's note: This section is similar to former § 29-22-104 as it existed prior to 1983.

Cross references: For the legislative declaration in the 2012 act repealing subsection (5), see section 1 of chapter 240, Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "Local Governments and the Environment: Part I, CERCLA", see 17 Colo. Law. 1997 (1988). For article,

"Local Governments and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988).

29-22-105. Additional reimbursement for costs of assistance - subrogation of rights - recovery of reimbursements by attorney general. Whenever any fire department or other public agency provides assistance to a designated emergency response authority, as

provided in section 29-22-103 or 29-22-104, outside of the area of its jurisdiction, whenever assistance to a designated emergency response authority is provided pursuant to a mutual aid agreement, or whenever the department of public health and environment or the county, district, or municipal public health agency provides services such as laboratory analyses, waste removal, transportation, storage, or disposal, the reasonable documented costs of the equipment, supplies, analyses, and personnel provided by such fire department or public agency may be reimbursed, subject to guidelines by the executive director of the department of public safety. Reimbursement shall be for costs not recovered pursuant to section 29-22-104 and shall be out of any moneys made available by legislative appropriation therefor. In the event of such reimbursement, the state of Colorado shall be subrogated to any rights of such fire department or public agency with respect to the amounts so reimbursed. The attorney general shall pursue all available remedies to recover any moneys paid out pursuant to this section from the person responsible for said incident. Any moneys recovered by the attorney general shall be transmitted to the state treasurer. Nothing in this article shall be construed to enlarge or impair any right of recovery or subrogation arising under any other provision of law. The attorney general shall not attempt to recover any moneys from any person responding to a hazardous substance incident pursuant to a mutual aid agreement or to any provision of this article.

Source: **L. 83:** Entire article R&RE, p. 1219, § 1, effective July 1. **L. 91:** Entire section amended, p. 721, § 3, effective April 11. **L. 2010:** Entire section amended, (HB 10-1422), ch. 419, p. 2117, § 160, effective August 11.

Editor's note: This section is similar to former § 29-22-105 as it existed prior to 1983.

29-22-106. Emergency response cash fund. (Repealed)

Source: **L. 83:** Entire article R&RE, p. 1220, § 1, effective July 1. **L. 91:** Entire section repealed, p. 720, § 1, effective April 11.

29-22-106.5. Hazardous substances planning and response assistance fund - creation - acceptance of gifts, grants, and donations - grants to local government. (Repealed)

Source: **L. 99:** Entire section added, p. 1106, § 1, effective June 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 2005. (See L. 99, p. 1106.)

29-22-107. Legislative finding - hazardous substance listing required. (1) The general assembly finds, determines, and declares:

(a) That the protection of the public from the dangers of hazardous substance incidents occurring on private property, other than residential or agricultural property, is a matter of statewide concern;

(b) That, without the provisions of this section, such protection is inadequate; and

(c) That the provisions of this section are enacted in the exercise of the police powers of this state for the purpose of protecting the peace, health, safety, and welfare of the people of this state.

(2) (a) Upon the request of the designated emergency response authority, the department of public health and environment, or the local fire department, any person who, in accordance with the following table, possesses the specified quantity, or a quantity in excess of that specified, of any hazard type of hazardous substance on private property shall provide the designated emergency response authority and the waste management division of the department of public health and environment and, when requested, the local fire department with a listing of the maximum quantity of each such hazard type reasonably anticipated to be present on the property at any time:

Hazard type	Quantity
Class A or B explosive	Any quantity
Class C explosive	50 pounds
Etiological agent	Any quantity
Water reactive flammable solid	5 pounds
Pyrophoric material	5 pounds
Organic/inorganic peroxide	50 pounds
Poison A or poison B	100 pounds or 15 gallons
Flammable liquid other than a pyrophoric liquid	700 pounds or 120 gallons
Compressed flammable gas other than liquefied petroleum gases	3,000 cubic feet or more at one atmosphere at seventy degrees Fahrenheit
Liquefied petroleum gases	Any installation exceeding 18,000 gallon water capacity
Oxidizer	200 pounds or 120 gallons
Combustible liquid	
Class I	120 gallons
Class II	240 gallons
Class III	500 gallons
Corrosive material	200 pounds or 120 gallons (unless a lesser amount is specified in 49 Code of Federal Regulations Part 172.101)
Irritating material	200 pounds or 120 gallons

(b) With respect to the terms listed as hazard types in the table in paragraph (a) of this subsection (2):

(I) "Pyrophoric material" means any material which ignites spontaneously in dry or moist air at or below one hundred thirty degrees Fahrenheit.

(II) The remaining terms shall have the meanings ascribed to them in 49 Code of Federal Regulations Subchapter C as in effect on July 1, 1983.

(c) (I) Any person requested to list pursuant to this subsection (2) shall update such list annually unless the designated response authority, the department of public health and environment, or the local fire department requests an updated list prior to the annual update.

(II) Except as to those authorities designated in paragraph (a) of this subsection (2), all information required to be provided under this subsection (2) shall be deemed privileged and shall not be released to any person or organization without the express written consent of the person providing the information.

(III) The person who, without the express written consent required in subparagraph (II) of this paragraph (c), releases information required to be provided by this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(d) The requirements of this subsection (2) shall not apply to:

(I) Motor fuel products in quantities less than forty-two thousand gallons in underground storage or less than six hundred twenty gallons in one tank or less than one thousand three hundred forty gallons in combination in above ground storage;

(II) Hazardous substances located on residential, personal, or agricultural property;

(III) Any person who has specific arrangements with a designated emergency response authority for responding to hazardous substance incidents;

(IV) Hazardous materials in transportation which are subject to the provisions of parts 1, 2, and 3 of article 20 of title 42, C.R.S.;

(V) The armed forces of the United States or the state militia;

(VI) Explosives in forms prescribed by the official United States pharmacopoeia;

(VII) The sale, possession, or use of fireworks;

(VIII) The possession, transportation, and use of small arms ammunition;

(IX) The possession, storage, and transportation of not more than fifty pounds of black powder and two thousand small arms primers for hand-loading of small arms ammunition for personal use unless otherwise regulated by the local jurisdiction;

(X) The transportation and use of explosives or blasting agents by the United States bureau of mines, the federal bureau of investigation, the United States secret service, the United States department of the treasury, or a police or fire department acting in its official capacity;

(XI) Special industrial explosive devices which in the aggregate contain less than fifty pounds of explosives.

(3) On or after October 1, 1983, any person failing to comply with the provisions of subsection (2) of this section shall be subject to a civil penalty of not more than one hundred dollars per day for each day during which said violation occurs. Such penalty shall be determined and collected by a court of competent jurisdiction upon an action instituted by the district attorney. Civil penalties collected shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: **L. 83:** Entire article R&RE, p. 1220, § 1, effective July 1. **L. 84:** (2)(a) and (2)(c) amended, p. 811, § 1, effective July 1. **L. 85:** (2)(c)(II) amended, p. 1363, § 28, effective June 28. **L. 91:** (3) amended, p. 721, § 4, effective April 11. **L. 94:** (2)(a) and (2)(c)(I) amended, p. 2798, § 555, effective July 1. **L. 2002:** (2)(c)(III) amended, p. 1542, § 284, effective October 1. **L. 2003:** (2)(d)(IV) amended, p. 2001, § 61, effective May 22.

Editor's note: This section is similar to former § 29-22-107 as it existed prior to 1983.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(c)(III), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

29-22-108. Criminal penalties. (1) Any person who intentionally causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provision of this article commits a class 4 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully, recklessly, or with criminal negligence as defined in section 18-1-501, C.R.S., causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provisions of this article commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 83:** Entire article R&RE, p. 1222, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1542, § 285, effective October 1.

Editor's note: This section is similar to former § 29-22-108 as it existed prior to 1983.

Cross references: (1) For the penalty for abandonment of a vehicle containing hazardous waste or the intentional spilling of hazardous waste on streets or highways, see § 18-13-112; for the penalty for hazardous waste violations, see § 25-15-310; for the penalty for abandonment of a vehicle containing hazardous materials or the intentional spilling of hazardous materials on streets or highways, see § 42-20-113; for penalties for violations of the "Hazardous Materials Transportation Act of 1987", see §§ 42-20-106, 42-20-109, 42-20-111, 42-20-113, 42-20-204, and 42-20-305.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

29-22-109. Persons rendering assistance relating to hazardous substance incidents - legislative declaration - exemption from civil liability. (1) The general assembly hereby finds and declares that knowledgeable individuals and organizations should be encouraged to lend expert assistance in the event of a hazardous substance incident. The purpose of this section is to so encourage such individuals and organizations to lend assistance by providing them with limited immunity from civil liability.

(2) As used in this section, "person" means individual, government or governmental subdivision or agency, corporation, partnership, or association or any other legal entity.

(3) (a) Notwithstanding any provision of law to the contrary, any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous substance incident, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up, or dispose of any such incident, shall not be subject to civil liability for such assistance or advice, except as provided in subsection (4) of this section.

(b) Notwithstanding any provision of law to the contrary, any person who provides assistance upon request of any emergency response authority, police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of hazardous substance, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance, except as provided in subsection (4) of this section.

(4) The exemption from civil liability provided for in this section shall not apply to:

(a) Any person whose act or omission caused in whole or in part such discharge and who would otherwise be liable therefor;

(b) Any person, other than the employee of a governmental subdivision or agency, who receives compensation other than reimbursement for out-of-pocket expenses for his assistance or advice;

(c) Any person's gross negligence or reckless, wanton, or intentional misconduct.

(5) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to article 10 of title 24, C.R.S., the "Colorado Governmental Immunity Act".

Source: L. 83: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 29-22-109 as it existed prior to 1983.

29-22-110. Colorado state patrol to provide information. The Colorado state patrol shall compile and maintain information on the emergency response capabilities of public and private agencies throughout the state to enable the state patrol to answer any inquiry concerning the nearest agencies or entities available to contribute equipment and personnel to aid in the emergency response to any hazardous substance incident. The state patrol shall also compile and maintain information regarding which local, state, or federal agencies or entities should be notified of any hazardous substance incident. The state patrol shall establish, maintain, and publicize a telephone service to make such information available to the public twenty-four hours each day and shall notify each emergency response authority designated in or pursuant to section 29-22-102 as responsible for the emergency response to a hazardous substance incident of such service. With respect to the powers and duties specified in this section, the state patrol shall have no rule-making authority and shall avail itself of all available private resources. The state patrol shall coordinate its activities pursuant to this section with the department of public health and environment and the department of local affairs.

Source: L. 99: Entire section added, p. 437, § 6, effective April 30.

WILDLAND FIRE PLANNING

ARTICLE 22.5

Wildland Fire Planning

29-22.5-101.	Legislative declaration.		thority and responsibilities.
29-22.5-102.	Definitions.	29-22.5-104.	County wildfire preparedness
29-22.5-103.	Wild land fires - general au-		plan.

29-22.5-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Wildland fires, especially fires occurring in wildland-urban interface areas, pose a serious threat to life, property, critical infrastructure, and the environment;

(b) A systematic, proactive approach to the management of wildland fire incidents, regardless of cause, size, location, or complexity, is needed in order to protect life, property, critical infrastructure, and the environment;

(c) The national incident management system provides a consistent, nationwide template enabling federal, state, tribal, and local governments, the private sector, and nongovernmental organizations to work together to prepare for, prevent, respond to, recover from, and mitigate the effects of all incidents regardless of type, cause, size, location, or complexity, and should be the foundation for the management of wildland fire incidents;

(d) The development of a county wildland fire plan, in cooperation among the sheriff, the fire chiefs, and the board of county commissioners of the county and based on the resource capabilities specific to the county, will assist in clarifying the roles and responsibilities of local emergency response agencies, in the management of wildland fire incidents and, for these reasons, the development of such a plan is encouraged;

(e) Many of the elements of a county wildland fire plan may already exist in community wildfire protection plans, other county fire plans, county all-hazards preparedness plans, or annual operating plans, and these elements should be brought together, in cooperation between the sheriff and the fire chiefs of the county, into a county wildland fire plan; and

(f) The provisions of this article are intended to clarify and identify specific state and local roles, responsibilities, and authorities for managing prairie, forest, or wildland fire incidents that range from the small scale local to large scale multi-jurisdictional or catastrophic fires in order to protect life, property, critical infrastructure, and the environment.

Source: L. 2009: Entire article added, (SB 09-020), ch. 189, p. 824, § 1, effective April 30.

29-22.5-102. Definitions. As used in this article, unless the context otherwise requires: (1) “Forest service” means the Colorado state forest service identified in section 23-31-302, C.R.S.

(2) “Incident commander” means the individual responsible for the overall management of the incident including developing incident objectives and managing all incident operations, by virtue of explicit legal, agency, or delegated authority.

(3) “Incident command system” means a standardized, on-scene, all-hazard incident management concept that is an integral part of the national incident management system.

(4) “Local incident management team” means a single or multi-agency team of capable individuals formed and managed at the local or county level and created or activated when necessary to provide the command and control infrastructure required to manage a major or complex incident requiring a significant number of local and mutual aid resources.

(5) “Mutual aid agreement” means a written agreement between or among federal, state, and local agencies in which the agencies agree to assist one another upon request by furnishing such resources as personnel and equipment.

(6) “National incident management system” or “NIMS” means the national command and management system developed by the U.S. department of homeland security. NIMS

provides a unified approach to incident management; standard command and management structures; and emphasis on preparedness, mutual aid, and resource management.

(7) “Prescribed fire” means any fire ignited by federal, state, or local forest or land managers or private property owners to meet specific fire protection or mitigation objectives.

(8) “Unified command” means the incident commanders representing agencies or jurisdictions that share responsibility for the incident manage the response from a single incident command post, allowing agencies with different legal, geographic, and functional authorities and responsibilities to work together effectively without affecting individual agency authority, responsibility, or accountability.

(9) “Wildland area” means an area in which development is essentially nonexistent, except for roads, railroads, power lines, and similar infrastructure, and in which structures, if present, are widely scattered.

(10) “Wildland fire” means an unplanned or unwanted fire in a wildland area, including unauthorized human-caused fires, out-of-control prescribed fires, and all other fires in wildland areas where the objective is to extinguish the fire.

Source: L. 2009: Entire article added, (SB 09-020), ch. 189, p. 825, § 1, effective April 30. L. 2010: (2) and (3) amended, (HB 10-1422), ch. 419, p. 2118, § 161, effective August 11.

29-22.5-103. Wildland fires - general authority and responsibilities. (1) (a) The chief of the fire department in each fire protection district in the state is responsible for the management of wildland fires that occur within the boundaries of his or her district and that are within the capability of the fire district to control or extinguish in accordance with the provisions of section 32-1-1002 (3) (a), C.R.S.

(b) The fire chief may utilize mutual aid agreements and unified command with neighboring fire protection districts to suppress and control fires that cross or threaten to cross the boundaries of the district.

(c) The fire chief may transfer any duty or responsibility the fire chief may assume under this section to the county sheriff with the concurrence of the sheriff.

(d) The fire chief shall not seek reimbursement from the county for expenses incurred by the district for their own apparatus, equipment, and personnel used in containing or suppressing a wildfire occurring on private property within the boundaries of the district.

(2) (a) The sheriff is the fire warden of the county and is responsible for the planning for, and the coordination of, efforts to suppress wildfires occurring in the unincorporated area of the county outside the boundaries of a fire protection district or that exceed the capabilities of the fire protection district to control or extinguish in accordance with the provisions of section 30-10-513, C.R.S.

(b) In the case of a wildfire that exceeds the capabilities of the fire protection district to control or extinguish and that requires mutual aid and outside resources, the sheriff shall appoint a local incident management team to provide the command and control infrastructure required to manage the fire. The sheriff shall assume financial responsibility for fire fighting efforts on behalf of the county and the authority for the ordering and monitoring of resources.

(c) In the case of a wildfire that exceeds the capability of the county to control or extinguish, the sheriff shall be responsible for seeking the assistance of the state, by requesting assistance from the forest service. The sheriff and the state forester shall enter into an agreement concerning the transfer of authority and responsibility for fire suppression and the retention of responsibilities under a unified command structure.

(3) (a) The forest service shall be the lead state agency for wildland fire suppression as identified in the Colorado state emergency operations plan and in accordance with the provisions of section 23-31-301, C.R.S.

(b) The forest service may provide land management and wildland fire management services to other state agencies by means of memoranda of understanding or related forms of cooperative agreements.

(c) In case of a wildland fire that exceeds the capability of the county to control or extinguish, the forest service may assist the sheriff in controlling or extinguishing such fires, and may assume command of such incidents with the concurrence of the sheriff under a unified command structure.

(d) At the request of the sheriff, the forest service may assist in the development or modification of the county wildfire preparedness plan.

(4) Notwithstanding any other provision of law, and subject to the provisions of any local or regional mutual aid agreements or plans for wildland fire response, the first emergency response agency to arrive at the scene of a wildland fire, regardless of whether the incident occurs within its jurisdiction, shall act as incident commander and be responsible for the initial emergency action necessary to control the wildland fire or to protect life or property until the emergency response agency that has jurisdiction over the incident site arrives.

Source: L. 2009: Entire article added, (SB 09-020), ch. 189, p. 826, § 1, effective April 30.

29-22.5-104. County wildfire preparedness plan. (1) The sheriff of each county may develop and update as necessary a wildfire preparedness plan for the unincorporated area of the county in cooperation with any fire district with jurisdiction over such unincorporated area. Any such plan shall:

(a) Identify all participants in the plan and their wildland fire roles and responsibilities, including their jurisdictional boundaries, their fiscal and operational authority and responsibilities, a general description of their wildland fire response capabilities, and incident command structure;

(b) Describe available emergency response resources and mutual aid and other agreements related to the plan;

(c) Describe the procedures for cooperation and coordination between or among federal, state, county, and local emergency response authorities; and

(d) Specify reimbursement and billing procedures.

(2) It is recognized that many of the elements described in subsection (1) of this section may already exist in community wildfire protection plans, other county fire plans, county all-hazards preparedness plans, or annual operating plans, and these elements could be integrated, in cooperation among the sheriff, the fire chiefs, and the board of county commissioners of the county, into a county wildland fire plan.

(3) The plan developed pursuant to subsection (1) of this section shall be agreed to by all participants in the plan to the extent practicable.

(4) The authorization to develop a wildfire preparedness plan pursuant to subsection (1) of this section shall not be construed to require the sheriff to provide and maintain the capability for the response. The sheriff may provide and maintain response capability as described in the plan directly or through mutual aid or other agreements.

(5) At the request of the sheriff, the forest service may assist in the development or updating of the county wildfire preparedness plan pursuant to subsection (1) of this section.

(6) Nothing in this section shall be construed to affect the provisions of section 30-15-401.7, C.R.S., or the community wildfire protection plan developed pursuant to such section.

Source: L. 2009: Entire article added, (SB 09-020), ch. 189, p. 827, § 1, effective April 30.

SPECIAL STATUTORY AUTHORITIES**ARTICLE 23****Pueblo Depot Activity Development Authority**

29-23-101.	Short title.	29-23-109.	and duties.
29-23-102.	Legislative declaration.	29-23-110.	Annual report.
29-23-103.	Definitions.	29-23-111.	Bonds.
29-23-104.	Authority - creation.		Agreement of the state not to
29-23-105.	Boundaries of the authority -		limit or alter rights of obli-
	inclusion - exclusion.		gees.
29-23-106.	Board of directors - member-	29-23-112.	Investments.
	ship.	29-23-113.	Bonds eligible for investment.
29-23-107.	Board of directors - organiza-	29-23-114.	Exemption from taxation -
	tion.		securities laws.
29-23-108.	Board of directors - powers	29-23-115.	Limitation of actions.

29-23-101. Short title. This article shall be known and may be cited as the “Pueblo Depot Activity Development Authority Act”.

Source: L. 94: Entire article added, p. 954, § 1, effective April 28.

29-23-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Changes in the world’s political, social, and economic policies have resulted in changes in the military needs of the United States;

(b) Congress has ordered that certain military installations be closed or realigned pursuant to the “Defense Authorization and Base Realignment and Closure Act”, 26 U.S.C. sec. 2687, as amended;

(c) Base closure or realignment has a severe and adverse impact on the economy of the community, region, and state where the installation is located;

(d) The installations ordered closed or realigned represent an investment of millions of dollars in the land, improvements, and equipment located on the installation by the taxpayers of the community, region, state, and nation; and

(e) The land, improvements, and equipment represent a potential economic resource to promote new employment opportunities and, thereby, enhance the state and local tax base.

(2) The general assembly further finds and declares that:

(a) Congress has ordered the Pueblo depot activity to be realigned, then closed, pursuant to the “Defense Authorization and Base Realignment and Closure Act”, 26 U.S.C. sec. 2687, as amended;

(b) The Pueblo depot activity encompasses some thirty-four and three-tenths square miles of land in Pueblo county and contains more than one thousand two hundred buildings; and

(c) The creation of a Pueblo depot activity development authority is necessary to provide a public entity which can secure from the Army of the United States the excess and surplus land, buildings, and equipment; enter into cooperative agreements; and acquire, construct, reconstruct, repair, alter, improve, extend, own, lease, operate, and dispose of properties, in an attempt to promote the development of the Pueblo depot activity for the people of this state.

(3) The general assembly further finds and declares that the Pueblo depot activity development authority is created for the benefit and advantage of and to promote the health, safety, and welfare of the people of the state of Colorado and that, as such, it is the intent of the general assembly that this article shall be liberally constructed to effect its purpose.

Source: L. 94: Entire article added, p. 954, § 1, effective April 28.

29-23-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Pueblo depot activity development authority created by this article.

(2) "Board" means the board of directors of the Pueblo depot activity development authority.

(3) "Bond" means any bond, note, interim certificate, contract, or other evidence of indebtedness of the authority authorized by this article.

(4) "Revenues" means any fees, rates, charges, assessments, grants, contributions, or other income and revenues received by the authority.

Source: L. 94: Entire article added, p. 955, § 1, effective April 28.

29-23-104. Authority - creation. There is hereby created the Pueblo depot activity development authority which shall be a body corporate and politic and a political subdivision of the state. The authority shall not be an agency of state government. The authority shall have perpetual existence and succession.

Source: L. 94: Entire article added, p. 956, § 1, effective April 28.

Cross references: For the provisions that designate the Pueblo depot activity development authority as a "special purpose authority" for the purposes of section 20 of article X of the Colorado constitution, see § 24-77-102 (15).

29-23-105. Boundaries of the authority - inclusion - exclusion. (1) The area comprising the authority shall consist of:

Township 19 South, Range 62 West of the 6th P.M., Pueblo County

Section 32 through 36: All

Section 31: Lots 1, 2, 3, and 4, E1/2 NW1/4 and S1/2

Township 20 South, Range 62 West of the 6th P.M., Pueblo County

Section 1 through 17

and 19 through 29: All

Section 18: All except the following described land:

Beginning at a point which is 244.2 feet North of the Southwest corner of said Section 18; thence East 1,320 feet, thence North 660 feet; thence West 1,320 feet; thence South 660 feet to point of beginning; and except SE1/4 SE1/4

Section 30: E1/2

Section 31: Portion NE1/4 lying North of the North right-of-way line of A.T. & S.F. Railroad; and all of the E1/2 E1/2 except the NE1/4 NE1/4 lying North of the North right-of-way of the A.T. & S.F. Railroad

Section 32: Portion beginning at the Northeast corner of Section 32; thence South to the Southeast corner of the NE1/4 of said Section; thence west along the East-West center line of said Section to a point which is 1,377.6 feet East of the center of said Section; thence North 990 feet; thence West 1,817.5 feet; thence South 990 feet to a point, which point is 425 feet West of the center of said Section; thence Southeasterly 711 feet to a point on the North-South center line of said Section, which point is South a distance of 570 feet from the center of said Section; thence Southeasterly 1,046.5 feet to a point on the Northerly right-of-way line of the A.T. & S.F. Railroad, which point is East a distance of 853.2 feet from the point of intersection of said right-of-way with the North-South center line

of said section; thence Westerly along said right-of-way line to its point of intersection with the West line of said section; thence North to the Northwest corner of said Section; thence East to the point of beginning

Section 33: N1/2
Section 34: N1/2
Section 35: N1/2

(2) (a) Property may be included in the area comprising the authority upon satisfying the following requirements:

(I) The owner of the property considered for inclusion must file a written petition to include property with the board; and

(II) The Pueblo county board of county commissioners and the city council of the city of Pueblo must recommend to the board that the property be included; and

(III) There must be a public hearing on the petition, preceded by at least ten days' notice of the hearing published in a newspaper of general circulation in Pueblo county.

(b) Subject to the provisions of this section, the board may approve, modify, or deny the petition and may impose such terms and conditions as it deems appropriate to further its duties and responsibilities.

(c) To approve or modify the petition, the board must take all of the following actions:

(I) Five members of the board must vote in favor of the petition or modification.

(II) The board must find that the requirements of subparagraphs (I) to (III) of paragraph (a) of this subsection (2) have been met.

(III) The board must find that there exists or will exist in the foreseeable future an interrelationship between the authority and the property contained in the petition and that the inclusion of the property in the authority will contribute to the fulfillment of the authority's duties.

(3) Property may be excluded from the boundaries of the authority in the same manner as provided in subsection (2) of this section for the inclusion of property in the boundaries; except that, to approve a petition for exclusion, the board must find there does not exist or will not exist in the foreseeable future an interrelationship between the authority and the property contained in the petition for exclusion and that the exclusion of the property will not significantly adversely impact the authority's operating and bond retirement revenue.

Source: L. 94: Entire article added, p. 956, § 1, effective April 28.

29-23-106. Board of directors - membership. (1) The authority shall be governed by a board of directors which shall consist of seven members. Three members shall be appointed by the Pueblo county board of county commissioners, three members shall be appointed by the city council of the city of Pueblo, and one shall be jointly appointed by the Pueblo county board of county commissioners and the Pueblo city council. The members shall serve for terms of four years; except that the members first appointed shall serve terms as follows:

(a) Of the members appointed by the Pueblo county board of county commissioners, one shall serve a term of one year, one shall serve a term of two years, and one shall serve a term of three years.

(b) Of the members first appointed by the city council of the city of Pueblo, one shall serve a term of one year, one shall serve a term of two years, and one shall serve a term of three years.

(c) The member first appointed jointly shall serve a term of four years.

(2) A member may be reappointed upon expiration of a term. The governing body making the original appointment shall fill any vacancy by appointment for the remainder of the unexpired term.

(3) The board may establish a citizens' commission whose members reflect the economic, racial, social, ethnic, and governmental diversity of Pueblo county and one or more technical committees. Any commission or committee established by the board shall serve solely in an advisory capacity to the board.

(4) The board may appoint such additional nonvoting members to the board as it deems necessary. Additional members shall not be included in determining whether a quorum is present.

Source: L. 94: Entire article added, p. 958, § 1, effective April 28.

29-23-107. Board of directors - organization. (1) The member appointed jointly by the Pueblo county board of county commissioners and the city council of the city of Pueblo shall call and convene the initial organizational meeting of the board and shall serve as the initial chair. At such meeting, the board shall adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business.

(2) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of a majority of its members present. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(3) Members of the board shall receive no compensation but shall be reimbursed for reasonable and necessary actual expenses incurred in the performance of their official duties as members of the board.

Source: L. 94: Entire article added, p. 959, § 1, effective April 28.

29-23-108. Board of directors - powers and duties. (1) The board shall have the power to promote the reuse and development of the Pueblo depot activity for the benefit of the community and the state.

(2) In addition to any other powers specifically granted to the board in this article, the board has the following powers and duties:

(a) To have and to use a seal and to alter the same at pleasure;

(b) To maintain an office at such place as it may designate;

(c) To borrow money and contract to borrow money for the purpose of issuing bonds, notes, bond anticipation notes, or other obligations for any of the authority's corporate purposes and to fund or refund such obligations as provided in this article;

(d) To sue and be a party to suits, actions, and proceedings;

(e) To enter into contracts and agreements affecting the affairs of the authority including, but not limited to, contracts with the United States and the state of Colorado and any of their agencies or instrumentalities, political subdivisions of the state of Colorado, corporations, limited liability companies, partnerships, limited partnerships, associations, organizations, or other legal entities and individuals;

(f) To acquire, hold, lease, and otherwise dispose of and encumber real and personal property and equipment;

(g) To acquire, lease, rent, manage, operate, construct, and maintain facilities and improvements of the Pueblo depot activity;

(h) To operate transportation systems, including but not limited to rail switching, van pools, and commuter shuttles for the direct benefit of the businesses, employees, and visitors of the Pueblo depot activity;

(i) To provide for utilities and related services for the Pueblo depot activity, including but not limited to potable water, wastewater, gas, electricity, fire protection, and security;

(j) To make and pass resolutions and orders which are necessary for the governance and management of the affairs of the authority, for the execution of the powers vested in the authority, and for carrying out the provisions of this article;

(k) To prescribe by resolution a system of business administration, to create any and all necessary offices, to establish the powers, duties, and compensation of all employees, and to require and set the amount of all official bonds necessary for the protection of the funds and property of the authority;

(l) To appoint and retain employees, agents, and consultants to make recommendations, coordinate authority activities, conduct routine business of the authority, and act on behalf of the authority under such conditions and restrictions as shall be fixed by the board;

(m) To adopt plans as guidance for the development and redevelopment of the Pueblo depot activity;

(n) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(o) To procure insurance against any loss in connection with its property and other assets including loans and loan notes in such amounts and from such insurers as it may determine;

(p) To procure insurance or guarantees from any public or private entity, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority, including the power to pay premiums on any such insurance;

(q) To receive and accept from any source gifts or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this article;

(r) To operate transportation systems, utilities, and other services directly related to the purposes of the authority and property outside the boundaries of the authority as are necessary to serve directly the Pueblo depot activity and promote its reuse and development; except that the authority shall not operate transportation systems, utilities, services, and properties in any territory located outside the boundaries of the authority and within the boundaries of a municipality without the consent of the governing body of such municipality or within the unincorporated boundaries of a county without the consent of the governing body of such county; and

(s) To have and exercise all rights and powers necessary to carry out the purposes and intent of this article, including any rights and powers incidental to or implied from the specific powers granted to the authority by this article.

Source: L. 94: Entire article added, p. 959, § 1, effective April 28.

29-23-109. Annual report. The authority shall, in addition to any other required audit or reporting requirements, present an annual written program and financial report to the Pueblo county board of county commissioners and the city council of the city of Pueblo no later than ninety days after the close of the authority's fiscal year.

Source: L. 94: Entire article added, p. 961, § 1, effective April 28.

29-23-110. Bonds. (1) The authority may, from time to time, issue bonds for any of its corporate purposes. The bonds shall be issued pursuant to resolution of the board and shall be payable solely out of all or a specified portion of the revenues of the authority as designated by the board.

(2) Bonds of the authority, as provided in the resolution of the authority under which the bonds are authorized or as provided in a trust indenture between the authority and any commercial or trust company having full trust powers, may:

(a) Be executed and delivered by the authority in the form, in denominations, upon the terms and maturities, and at the times established by the board;

(b) Be subject to optional or mandatory redemption prior to maturity with or without a premium;

(c) Be in fully registered form or bearer form registrable as to principal or interest or both;

(d) Bear such conversion privileges and be payable in such installments and at such times not exceeding forty years from the date of issuance as established by the board;

(e) Be payable at such place or places whether within or without the state as established by the board;

(f) Bear interest at such rate or rates per annum, which may be fixed or vary according to index, procedure, or formula or as determined by the authority or its agents without regard to any interest rate limitation appearing in any other law of the state;

- (g) Be subject to purchase at the option of the holder or the board;
 - (h) Be evidenced in the manner established by the board, and executed by the officers of the authority, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either of an officer of the authority or of an agent authenticating the same;
 - (i) Be in the form of coupon bonds which have attached interest coupons bearing a manual of a facsimile signature of an officer of the authority; and
 - (j) Contain any other provisions not inconsistent with this article.
- (3) The bonds may be sold at public or private sale at the price or prices, in the manner, and at the times as determined by the board, and the board may pay all fees, expenses, and commissions which it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the authority. Any outstanding bonds may be refunded by the authority pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments.
- (4) The resolution or trust indenture authorizing the issuance of the bonds may pledge all or a portion of the property or revenues of the authority, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds as the authority deems appropriate, may set forth the rights and remedies of the holders of any of the bonds, and may contain provisions which the authority deems appropriate for the security of the holders of the bonds, including but not limited to provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds, including the redemption price or the purchase price.
- (5) Any pledge of revenues or property made by the authority or by any person or governmental unit with which the authority contracts shall be valid and binding from the time the pledge is made. The revenues or property so pledged shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party, regardless of whether the party has notice of such lien. The instrument by which the pledge is created need not be recorded or filed.
- (6) Neither the members of the board, employees of the authority, nor any person executing the bonds shall be liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.
- (7) The authority may purchase its bonds out of any available funds and may hold, pledge, cancel, or resell such bonds subject to and in accordance with agreements with the holders thereof.

Source: L. 94: Entire article added, p. 961, § 1, effective April 28.

29-23-111. Agreement of the state not to limit or alter rights of obligees. The state hereby pledges and agrees with the holders of any bonds issued under this article and with those parties who enter into contract with the authority that the state will not limit, alter, restrict, or impair the rights vested in the authority or the rights or obligations of any person with which it contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of any bonds of the authority until such bonds have been paid or until adequate provision for payment has been made. The authority may include this provision and undertaking for the state in such bonds.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-112. Investments. The authority may invest or deposit any funds in the manner provided by part 6 of article 75 of title 24, C.R.S. In addition, the authority may direct a corporate trustee which holds funds of the authority to invest or deposit such funds in investments or deposits other than those specified by such part 6 if the board determines,

by resolution, that such investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits specified by such part 6, and such investment will assist the authority in the financing, construction, maintenance, or operation of the Pueblo depot activity.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-113. Bonds eligible for investment. All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardian trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued under this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if such bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-114. Exemption from taxation - securities laws. The income or other revenues of the authority, all property interests of the authority, any bonds issued by the authority, and the transfer of and the income from any bonds issued by the authority shall be exempt from all taxation and assessments of the state. Bonds issued by the authority shall be exempt from the provisions of article 51 of title 11, C.R.S.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-115. Limitation of actions. An action or proceeding, at law or in equity, to question the validity or enjoin the performance of any act or proceeding relating to the issuance of any bond of the authority shall be barred unless commenced within thirty days after the performance of the act or the effective date thereof, whichever is later.

Source: L. 94: Entire article added, p. 964, § 1, effective April 28.

ARTICLE 24

Colorado Travel and Tourism Authority

29-24-101 to 29-24-121. (Repealed)

Editor’s note: (1) This article was added in 1994. For amendments to this article prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 29-24-121 provided for the repeal of this article, effective August 1, 2000. (See L. 2000, p. 669.)

ARTICLE 24.5

Consolidated Communications System Authority

29-24.5-101.	Legislative declaration.	29-24.5-104.	Exemption from taxation.
29-24.5-102.	Definitions.	29-24.5-105.	Consolidated communications
29-24.5-103.	Authority - creation - pur- poses.		system authority - subject to termination - repeal.

29-24.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Wireless communication is a critical component of public safety and emergency services;

(b) Partnerships between the state, local, tribal, and federal governments are an effective way to provide improved communication services, avoid costly duplication, and reduce overall costs;

(c) The program to create a statewide digital trunked radio system has significantly improved wireless communication for state agencies where the system is in operation;

(d) The state, local, tribal, and federal governments, in partnership, have contributed significant infrastructure and investments to create the system; and

(e) Moneys to fund the expansion, improvement, and maintenance of the statewide digital trunked radio system are available to political subdivisions of the state.

(2) The general assembly further finds and declares that the consolidated communications system authority is created for the benefit of and to promote the health and safety of the people of Colorado, and it is the intent of the general assembly that this article shall be liberally construed to effect its purpose.

Source: L. 2012: Entire article added, (HB 12-1224), ch. 168, p. 587, § 1, effective May 9.

29-24.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Authority” means the consolidated communications system authority created in this article.

(2) “Board” means the board of directors of the authority as described in section 29-24.5-103 (5) and in the bylaws of the authority.

(3) “Member” means one of the following entities that uses the statewide digital trunked radio system as a means of public safety wireless communication in the performance of its duties:

(a) A law enforcement agency or fire department;

(b) A licensed ambulance or emergency medical service using the network for dispatching 9-1-1 or emergency calls or for communicating with a licensed hospital or trauma center;

(c) A school district or school;

(d) An agency of a city, county, city and county, special district, or other political subdivision of the state;

(e) An agency of an Indian tribe;

(f) An agency of the state or federal government; or

(g) A person or entity eligible to hold an authorization in the public safety radio pool pursuant to rule 47 CFR 90.20 of the federal communications commission or a successor rule.

(4) “System” means the statewide digital trunked radio system.

Source: L. 2012: Entire article added, (HB 12-1224), ch. 168, p. 588, § 1, effective May 9.

29-24.5-103. Authority - creation - purposes. (1) There is hereby created the consolidated communications system authority, which shall be a body corporate and politic and a political subdivision of the state. The authority is not an agency of state government. The authority shall have perpetual existence and succession. The authority is a public entity for purposes of the “Colorado Governmental Immunity Act”, article 10 of title 24, C.R.S. The authority is a political subdivision of the state for purposes of sections 24-6-402 (1) (c) and 24-72-202 (5), C.R.S. The authority is not a local government for purposes of the “Colorado Local Government Audit Law”, part 6 of article 1 of this title; except that the state auditor may order the authority to comply with the requirements of section 29-1-603 for any fiscal year.

(2) The purposes of the authority are:

(a) To solicit and accept appropriations, grants, and other moneys to be used for the purpose of expanding, upgrading, and operating the system;

(b) To represent the members in matters concerning network growth, maintenance, upgrade, operation, technology, rules, spectrum allocations, and radio frequency licensing; and

(c) To advise the governor and the general assembly on the development, maintenance, upgrade, and operation of the system.

(3) The duties of the authority are to present an annual report to the joint budget committee in writing no later than October 15 that includes:

(a) Operational and capital infrastructure needs to maintain the system; and

(b) Potential funding options to meet the operational and capital infrastructure needs of the system.

(4) The authority shall not:

(a) Levy any taxes;

(b) Assess any fee on its members; or

(c) Take any assets owned by a member without prior agreement.

(5) The board consists of the following twenty members:

(a) (I) Twelve members representing local government as follows:

(A) One member representing the five statewide digital trunked radio system mutual aid channel regions, who is appointed as specified in subparagraph (II) of this paragraph (a);

(B) Two members representing the four zone switch users, who are appointed as specified in subparagraph (II) of this paragraph (a);

(C) One member representing the licensed ambulance or emergency medical service and the licensed hospital or trauma center, who is selected by the state emergency medical and trauma services advisory council created in section 25-3.5-104, C.R.S.;

(D) Five members representing the nine all-hazard regions, who are appointed as specified in subparagraph (II) of this paragraph (a);

(E) One member representing the statewide fire departments, who is selected by the Colorado state fire chiefs' association; and

(F) Two members representing the law enforcement agencies, one who is selected by the Colorado association of chiefs of police and one who is selected by the county sheriffs of Colorado.

(II) For the members representing the entities described in sub-subparagraphs (A), (B), and (D) of subparagraph (I) of this paragraph (a), each entity may nominate one or more persons to the governor for appointment to the positions. The governor shall consider geographic representation and technical expertise in choosing which nominees to appoint. The governor shall notify the entities in writing regarding the appointments made. Each appointee serves at the pleasure of the governor. Such appointments are not subject to the consent of the senate.

(b) Six members representing state government, with one each from:

(I) The chief information officer of the governor's office of information technology, or his or her designee;

(II) The chief of the Colorado state patrol, or his or her designee;

(III) The director of the Colorado department of corrections, or the director's designee;

(IV) The director of the Colorado department of transportation, or the director's designee;

(V) The director of the Colorado department of natural resources, or the director's designee; and

(VI) The director of the Colorado department of local affairs, or the director's designee.

(c) Two members representing the two tribal nations in the state, one selected by each of the two tribal nations.

(6) (a) The board shall elect from its membership a chair, a vice-chair, a secretary, and other appropriate officers. Officers are elected for terms of two years, taking office on January 1 of the year directly following the election.

(b) The members of the board appointed or selected pursuant to paragraphs (a) and (c) of subsection (5) of this section serve at the pleasure of the appointing or selecting authority.

- (7) On May 9, 2012, every agency that is currently a member of the Colorado corporation created to provide the governance structure for managing the statewide digital trunked radio system and that qualifies to cooperate with other governments according to section 29-1-203 becomes a member of the authority unless the governing body of such agency specifically excludes itself from the authority. Any agency wishing to be excluded from the authority must notify the secretary of the authority in writing.
- (8) After May 9, 2012, new members of the authority shall be admitted in accordance with any bylaws or policies established by the authority.

Source: L. 2012: Entire article added, (HB 12-1224), ch. 168, p. 588, § 1, effective May 9.

29-24.5-104. Exemption from taxation. The income and other revenue of the authority and all property interests of the authority are exempt from all state and local taxes and assessments.

Source: L. 2012: Entire article added, (HB 12-1224), ch. 168, p. 591, § 1, effective May 9.

29-24.5-105. Consolidated communications system authority - subject to termination - repeal. (1) The provisions of section 24-34-104, C.R.S., concerning the termination of regulatory agencies of the state unless extended as provided in said section, are applicable to the consolidated communications system authority created in this article. In the event the authority is extended as provided in section 24-34-104, C.R.S., the general assembly hereby finds, determines, and declares that the authority should be subject to review pursuant to said section at least every five years.

(2) This article is repealed, effective July 1, 2018. Prior to such repeal, the functions of the consolidated communications system authority shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2012: Entire article added, (HB 12-1224), ch. 168, p. 591, § 1, effective May 9.

MARKETING DISTRICTS

ARTICLE 25

Local Marketing Districts

29-25-101.	Short title.	29-25-111.	General powers of district.
29-25-102.	Legislative declaration.	29-25-112.	Power to levy marketing and promotion tax.
29-25-103.	Definitions.	29-25-113.	Inclusion or exclusion - petition - notice - hearing.
29-25-104.	Authority of governing body.	29-25-114.	Confirmation of contract proceedings.
29-25-105.	Organization and creation - notice of hearing.	29-25-115.	Dissolution procedure.
29-25-106.	Hearing - findings - when action barred.	29-25-116.	Correction of faulty notices.
29-25-107.	Boundaries - exclusion proviso.	29-25-117.	Department of transportation and local jurisdiction unimpaired.
29-25-108.	Board of directors - duties.	29-25-118.	Method not exclusive.
29-25-109.	Meetings.		
29-25-110.	Approval of actions by local government or members of combination.		

29-25-101. Short title. This article shall be known and may be cited as the “Local Marketing District Act”.

Source: L. 98: Entire article added, p. 1079, § 1, effective September 1.

29-25-102. Legislative declaration. (1) The general assembly declares that the organization of local marketing districts having the purposes and powers provided in this article will serve a public purpose; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof, the property owners therein, and all the people of the state; will promote the continued vitality of commercial business areas within local governments; and will be of special benefit to the property within the boundaries of any district created pursuant to this article.

(2) The general assembly further declares that the creation of local marketing districts pursuant to this article implements section 18 (1) (d) of article XIV of the state constitution and is essential to the continued economic growth of the state.

Source: L. 98: Entire article added, p. 1079, § 1, effective September 1.

29-25-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Board” means the board of directors of a local marketing district.
- (2) “Combination” means any two or more local governments.
- (3) “District” means a local marketing district formed under the provisions of this article.
- (4) “Local government” means any county, city and county, or municipality.
- (5) “Operating plan” means the operating plan approved under section 29-25-110.
- (6) “Publication” has the same meaning as that set forth in section 32-1-103 (15), C.R.S.
- (7) “Service area” means the area described in the ordinance, resolution, or contract creating a district pursuant to this article. Such area may not include territory outside of the boundaries of the members of the combination, may not include territory within the boundaries of a municipality that is not a member of the combination, as the boundaries of the municipality exist on the date the district is created, without the consent of the governing body of such municipality, and may not include territory within the unincorporated boundaries of a county that is not a member of the combination as the unincorporated boundaries of the county exist on the date the district is created without the consent of the governing body of such county.
- (8) “Services” means the services described in section 29-25-111 (1) (e).

Source: L. 98: Entire article added, p. 1080, § 1, effective September 1.

29-25-104. Authority of governing body. The governing body of each local government is hereby vested with jurisdiction to create and establish one or more districts pursuant to the provisions of this article, and such districts shall have all the powers provided in this article that are authorized by the ordinance, resolution, or contract creating the district, or any amendment thereto.

Source: L. 98: Entire article added, p. 1080, § 1, effective September 1.

29-25-105. Organization and creation - notice of hearing. (1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the governing body. If such petition is to initiate the organization of a district by a combination, such petition shall be filed in the office of the clerk of each governing body to be included in the combination.

(2) The petition shall be signed by persons who own commercial real property in the service area of the proposed district having a valuation for assessment of not less than fifty

percent of the valuation for assessment of all commercial real property in the service area of the proposed district. The petition shall set forth:

(a) The name of the proposed district, which shall include a descriptive name and the words "local marketing district";

(b) A general description of the boundaries and service area of the proposed district;

(c) A general description of the types of services to be provided by the proposed district;

(d) The names of three persons to represent the petitioners, who have the power to enter into agreements relating to the organization of the district; and

(e) A request for the organization of the district.

(3) After receipt of a petition under this section, any local government by ordinance or resolution, or any combination by contract, may create a district that is authorized to exercise the functions conferred by the provisions of this article. Upon creation, the district shall constitute a separate political subdivision and body corporate of the state and shall have all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.

(4) Any contract, ordinance, or resolution establishing a district shall specify:

(a) The name and purpose of the district;

(b) Voting requirements for district elections;

(c) Subject to the provisions of section 29-25-108, if a governing body of a single local government is not creating the district, the establishment and organization of the board of directors in which all legislative power of the district is vested, including:

(I) The number of directors, which shall be at least five;

(II) The manner of the election or appointment, the qualifications, and the compensation, if any, of the directors and the procedure for filling vacancies;

(III) The officers of the district, the manner of their appointment, and their duties; and

(IV) The voting requirements for action by the board; except that, unless specifically provided otherwise in the contract, a majority of the directors of the board constitutes a quorum and a majority of the board is necessary for action by the board;

(d) The provisions for the distribution, disposition, or division of the assets of the district;

(e) The boundaries of the district, which may not include territory outside of the boundaries of the local government that creates the district. If created by a combination, such a district may not include territory within the boundaries of a municipality that is not a member of the combination, as the boundaries of the municipality exist on the date the district is created, without the consent of the governing body of such municipality and may not include territory within the unincorporated boundaries of a county that is not a member of the combination as the unincorporated boundaries of the county exist on the date the district is created without the consent of the governing body of such county.

(f) The term of the district, which may be for a definite term or until repealed, rescinded, or terminated, and the method, if any, by which it may be repealed, rescinded, or terminated; except that the district or any ordinance, resolution, or contract under which it was organized may not be repealed, terminated, or rescinded so long as the district has bonds outstanding;

(g) If created pursuant to contract, the provisions for amendment of the contract;

(h) The limitations, if any, on the powers granted by this article that may be exercised by the district pursuant to this article; and

(i) If created pursuant to contract, the conditions required when adding or deleting parties to the contract.

(5) No local government shall adopt an ordinance or resolution or enter into a contract establishing a district without holding at least two public hearings thereon in addition to other requirements imposed by law for public notice. The local government shall give notice of the time, place, and purpose of the public hearing by publication in a newspaper of general circulation in the local government at least ten days prior to the date of the public hearing.

(6) No ordinance, resolution, or contract establishing a district pursuant to this section shall take effect unless first submitted to a vote of the registered electors residing within the

boundaries of the proposed district. The question of establishing the district shall be submitted to such registered electors at a general election or a special election called for such purpose. Such question may also be proposed to such registered electors at the same time and in the same or a separate question as an election required under section 29-25-112. The district shall not be established unless a majority of the registered electors voting on the establishment of a district at the election vote in favor of the establishment. The election shall be conducted in substantially the same manner as municipal and county elections, and the municipal or county clerk and recorder of each local government in which the election is conducted shall assist the members of the combination of the proposed district in conducting the election.

(7) The petition for organization and creation of the district shall be accompanied by a bond with security approved by the governing body or governing bodies of the members of the combination or a cash deposit sufficient to cover all expenses connected with the proceedings, including any elections, for the organization and creation of the district. If, at any time during the organization proceedings, the governing body or governing bodies determine that the bond first executed or the amount of the cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days thereafter, and, upon failure of the petitioners to file or deposit the bond or cash, the petition shall be dismissed.

Source: L. 98: Entire article added, p. 1080, § 1, effective September 1.

29-25-106. Hearing - findings - when action barred. (1) On the date fixed for any hearing or at any adjournment thereof, the governing body or governing bodies of each member of the combination shall ascertain, from the tax rolls of where the district is located, the total valuation for assessment of the taxable real and personal property in the service area. If it appears that said petition is not signed in conformity with this article, the petition shall be dismissed and the cost adjudged against those executing the bond or depositing the cash filed to pay such costs. Nothing in this section shall prevent the filing of a subsequent petition for a similar district.

(2) The findings of the governing body or governing bodies upon the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive.

(3) Prior to the organization of the district, the governing body or governing bodies may exclude property from the service area or boundaries of the district if deemed to be in the best interests of the district.

(4) If it appears that an organization petition has been duly signed and presented in conformity with this article, that the allegations of the organization petition are true, and that the types of services to be provided by the proposed district are those services that best satisfy the purposes set forth in this article, the governing body or bodies, upon the completion of the hearings, shall by ordinance, resolution, or contract adjudicate all questions of jurisdiction and may, exercising discretion, declare the district organized, describe the boundaries and service area of the district, and give it the corporate name specified in the petition by which, in all subsequent proceedings, it shall thereafter be known.

(5) Such resolution, ordinance, or contract shall finally and conclusively establish the regular organization of the district against all persons unless an action, including an action for certiorari review, attacking the validity of the district is commenced in a court of competent jurisdiction within sixty days after the effective date of such resolution, ordinance, or contract. Thereafter, any such action shall be perpetually barred. The organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding, except as provided in this subsection (5).

Source: L. 98: Entire article added, p. 1083, § 1, effective September 1.

29-25-107. Boundaries - exclusion proviso. The boundaries of a district may consist of contiguous or noncontiguous tracts or parcels of property.

Source: L. 98: Entire article added, p. 1084, § 1, effective September 1.

29-25-108. Board of directors - duties. (1) (a) Except as otherwise provided in this subsection (1), if the governing body of a single local government creates the district, such governing body shall constitute ex officio the board of directors of the district. In such event, the presiding officer of the governing body shall be ex officio the presiding officer of the board, the clerk of the governing body shall be ex officio the secretary of the board, and the treasurer of the local government shall be ex officio the treasurer of the board. A quorum of the governing body shall constitute a quorum of the board.

(b) The governing body of the local government may, at any time, provide by resolution or ordinance for the creation of a board of directors of the district consisting of not fewer than five members. Each member shall be an elector of the district appointed by the governing body or, if designated by the governing body, by the mayor of a city and county; except that, if possible, no more than one-half of the members of the board may be affiliated with one owner or lessee of taxable real or personal property in the district. Each member shall serve at the pleasure of the local government. Within thirty days after a vacancy occurs, a successor shall be appointed in the same manner as the original appointment. Within thirty days after a member's appointment, except for good cause shown, each member shall appear before an officer authorized to administer oaths and take an oath that such member will faithfully perform the duties of office as required by law and will support the constitution of the United States, the state constitution, and laws made pursuant thereto. A majority of the members shall constitute a quorum of the board. The board shall elect one of its members as presiding officer, one of its members as secretary, and one of its members as treasurer. The office of both secretary and treasurer may be filled by one person.

(c) If more than one-half of the property located within the district is also located within an urban renewal area, a downtown development authority, or a general improvement district, the governing body may, at any time, provide by ordinance that the governing body of the urban renewal authority, downtown development authority, or general improvement district shall constitute ex officio the board of directors of the district. In such event, the officers of such entity shall be ex officio the officers of the board. A quorum of the board of directors of such entity shall constitute a quorum of the board.

(d) If the petition initiating the organization of the district or any subsequent petition signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, and who own at least fifty percent of the acreage in the proposed district so specifies, the members of the board of the district shall be elected by the electors of the district. If such a petition is approved, the terms of members of the board shall be specified by resolution or ordinance of the governing body. The initial election for members of the board shall be held within sixty days after approval of the resolution or ordinance organizing the district or the filing of any subsequent petition. All subsequent elections for members of the board shall be on the date specified in the resolution or ordinance. The number of directors, the quorum requirements, and the oaths of office shall be the same as those provided for directors of special districts pursuant to article 1 of title 32, C.R.S. Any vacancy on the board shall be filled in the same manner as provided in paragraph (b) of this subsection (1). Until the members of the board are elected and qualified, the governing body shall serve as the board of the district. Elections pursuant to this paragraph (d) shall be held in accordance with the provisions specified in the resolution or ordinance providing for the election of directors. The cost of any election held pursuant to this paragraph (d) shall be borne by the district.

(e) The governing body of the local government may remove a member of the board of a district or the entire board thereof for inefficiency or neglect of duty or misconduct in office, but only after the member or the board has been given a copy of the charges made by the governing body against such member or such board and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of any member of the board or of the board pursuant to this paragraph (e), the governing body

shall file in the office of the clerk of the local government a record of the proceedings, together with the charges made against the member or the board and the findings thereon.

(f) Ten percent of the electors of a district may petition the governing body for the removal of a member of the board of the district or of the entire board thereof for inefficiency or neglect of duty or misconduct in office, and the governing body may remove the member or the board, but only after the member or the board has been given a copy of the charges made against such member or such board and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of the member or of the board pursuant to this paragraph (f), the governing body shall file in the office of the clerk of local government a record of the proceedings, together with the charges made against the member or the board and the findings thereon.

(2) The board shall adopt a seal. The secretary shall keep in a visual text format that may be transmitted electronically a record of all proceedings, minutes of meetings, certificates, contracts, and corporate acts of the board, which shall be open to inspection by the electors of the district and other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the district and shall make such annual or other reports to the local government as it may require. All budgets and financial records of the district, whether governed by a separate board or by the governing body of the local government, shall be kept in compliance with parts 1 and 5 of article 1 of this title.

(3) Each member of the board of a district or the governing body or other entity acting ex officio as the board of a district is required to disclose any potential conflicting interest in any transaction of the district pursuant to section 18-8-308, C.R.S. A board member with a potential conflicting interest in a district transaction may not participate in the considerations of and vote on the transaction, may not attempt to influence any of the contracting parties, and may not act directly or indirectly for the board in the inspection, operation, administration, or performance of any contract related to the transaction. Ownership, in and of itself, by a board member of property within the district shall not be considered a potential conflicting interest.

(4) When the governing body of a local government establishes a board of directors pursuant to paragraph (b), (c), or (d) of subsection (1) of this section, it may set such conditions, limitations, procedures, duties, and powers under which the board shall conduct its business. Such conditions and limitations may be in the form of a binding contract on both the governing body and the board and may include provisions requiring the dissolution of the board after a specified length of time, at which time the governing body of the municipality shall assume all powers and duties of the district, including the payment of any outstanding indebtedness.

Source: L. 98: Entire article added, p. 1084, § 1, effective September 1. **L. 2009:** (2) amended, (HB 09-1118), ch. 130, p. 561, § 4, effective August 5.

29-25-109. Meetings. Upon notice to each member of the board, the board shall hold meetings which shall be held in a place to be designated by the board as often as the needs of the district require. The meetings of the board shall be subject to the provisions of part 4 of article 6 of title 24, C.R.S. The board shall act by resolution or motion.

Source: L. 98: Entire article added, p. 1086, § 1, effective September 1.

29-25-110. Approval of actions by local government or members of combination. No district created under the provisions of this article shall levy a marketing and promotion tax or provide services unless the local government or each member of the combination has approved an operating plan for the district. The operating plan shall specifically identify the services to be provided by the district, any marketing and promotion tax to be imposed by the district, and such additional information as required. The district shall file an operating plan and its proposed budget for the next fiscal year with the clerk of the local government or each member of the combination no later than September 30 of each year. All of the

business records of the district shall be considered public records, as defined in section 24-72-202 (6), C.R.S., and shall promptly be made available upon request. For the purposes of this section, the business records of the district shall not include the business records of the owners of property in the district. The local government or the members of the combination may require the district to supplement the district's operating plan or budget where necessary. The local government or each member of the combination shall approve or disapprove the operating plan within thirty days after receipt of such operating plan and all requested documentation relating thereto, but not later than December 5 of the year in which such documents are filed. Thereafter, the services and financial arrangements of the district shall conform so far as practicable to the operating plan. The operating plan may, from time to time, be amended by the district with the approval of the local government or each member of the combination in substantially the same manner as the process for formulating the operating plan for each year. Any material departure from the operating plan, as originally approved or amended from time to time, may be enjoined by an order of the local government filed with the board.

Source: L. 98: Entire article added, p. 1086, § 1, effective September 1.

29-25-111. General powers of district. (1) The district has the following powers, except as limited by the operating plan:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued and be a party to suits, actions, and proceedings;
- (d) To enter into contracts and agreements, except as otherwise provided in this article, affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities;

(e) (I) To provide any of the following services within the district:

- (A) Organization, promotion, marketing, and management of public events;
- (B) Activities in support of business recruitment, management, and development;
- (C) Coordinating tourism promotion activities.

(II) No revenue collected from the marketing and promotion tax levied under section 29-25-112 may be used for any capital expenditures, with the exception of tourist information centers.

(f) To have the management, control, and supervision of all the business and affairs of the district and of the operation of district services therein;

(g) To appoint an advisory board of owners of property within the boundaries of the district and provide for the duties and functions thereof;

(h) To hire employees or retain agents, engineers, consultants, attorneys, and accountants;

(i) To adopt and amend bylaws not in conflict with the constitution and laws of the state or with the ordinances of the local government affected for carrying on the business, objectives, and affairs of the board and of the district; and

(j) To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

Source: L. 98: Entire article added, p. 1087, § 1, effective September 1.

29-25-112. Power to levy marketing and promotion tax. (1) (a) In addition to any other means of providing revenue for a district, the board has the power within the district to levy a marketing and promotion tax on the purchase price paid or charged to persons for rooms or accommodations as included in the definition of "sale" in section 39-26-102 (11), C.R.S. Such tax shall be specified in the petition organizing the district under section 29-25-105. No such tax shall take effect unless approved by a majority of the eligible electors voting thereon at a general election or a special election called for such purpose.

Elections held pursuant to this section shall be conducted in substantially the same manner as municipal or county elections and in accordance with the provisions of section 20 of article X of the state constitution. The municipal or county clerk and recorder of each local government in which the election is conducted shall assist the district in conducting the election. The district shall pay the costs incurred by each local government in conducting such an election. No moneys of the district may be used to urge or oppose passage of an election required under this section.

(b) (I) The marketing and promotion tax shall be collected, administered, and enforced, to the extent feasible, pursuant to section 29-2-106.

(II) The department of revenue shall perform, on an annual basis, an analysis to determine the net incremental cost of such collection, administration, and enforcement. The department of revenue shall retain only the amount determined to be necessary by the cost analysis, and in no event shall that amount exceed three and one-third percent of the amount collected. Such amount retained shall be transmitted to the state treasurer who shall credit the same to the general fund and such amount shall be subject to appropriation by the general assembly for the net incremental cost of such collection, administration, and enforcement.

(c) A marketing and promotion tax levied in accordance with this section is in addition to any other sales or use tax imposed pursuant to law.

(2) Any person or entity providing rooms or accommodations as included in the definition of "sale" referred to in paragraph (a) of subsection (1) of this section shall be liable and responsible for the payment of an amount equivalent to a percentage rate set by the board of all such sales made and shall quarterly, unless otherwise provided by law, make a return to the executive director of the department of revenue for the preceding tax-reporting period and remit an amount equivalent to such percentage rate on such sales to said executive director.

Source: L. 98: Entire article added, p. 1088, § 1, effective September 1. **L. 2007:** (1)(c) added, p. 584, § 2, effective April 19. **L. 2008:** (1)(c) amended, p. 992, § 10, effective August 5.

29-25-113. Inclusion or exclusion - petition - notice - hearing. (1) The boundaries of any district organized under the provisions of this article may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made. The owners of property proposed to be included or excluded may file with the board a petition, in writing, requesting that such property be included in or excluded from the district. The petition shall describe the property owned by the petitioners and shall be verified. The petition shall be accompanied by a deposit of moneys sufficient to pay all costs of the inclusion or exclusion proceedings. The clerk of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition, the names of the petitioners, descriptions of the property sought to be included or excluded, and the request of said petitioners.

(2) The notice of the filing of a petition shall inform all persons having objections to appear at the time and place stated in said notice and show cause why the petition should not be granted. The board, at the time and place mentioned or at any time to which the hearing may be adjourned, shall proceed to hear the petition and all objections thereto that may be presented by any person showing cause why said petition should not be granted. The failure of any interested person to show cause shall be deemed as an assent on that person's part to the inclusion or exclusion of such property as requested in the petition. If the change of boundaries of the district does not adversely affect the district and if the petition is granted, the granting of which shall not be unreasonably withheld, the governing body shall

adopt a resolution to that effect and file a certified copy of the same with the county clerk and recorder of each county in which the property is located. After a certified copy of the ordinance is filed, the property shall be included or excluded from the district.

Source: L. 98: Entire article added, p. 1089, § 1, effective September 1.

29-25-114. Confirmation of contract proceedings. (1) In its discretion, the board may file a petition at any time in the district court in and for any county in which the district is located praying for a judicial examination and determination of any power conferred, or of any taxes or service charges levied or otherwise made or contracted to be levied or otherwise made, or of any other act, proceeding, or contract of the district, whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any services and the proposed acquisition of any property pertaining to such services, or any combination thereof.

(2) Such petition shall:

(a) Set forth the facts whereon the validity of such power, taxes, charges, act, proceeding, or contract is founded; and

(b) Be verified by the presiding officer of the district.

(3) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this article.

(4) Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any proceeding or contract mentioned in such outline may be examined.

(5) The notice shall be served:

(a) By publication at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the geographic area where the district is located;

(b) By posting in the office of the district at least thirty days prior to the date fixed in the notice for the hearing on the petition.

(6) Jurisdiction shall be complete after such publication and posting.

(7) Any owner of property within the boundaries of the district or any other person interested in the proceeding or contract or proposed proceeding or proposed contract or in the premises may appear and move to dismiss or answer the petition no less than five days prior to the date fixed for the hearing or within such further time as may be allowed by the court. The petition shall be taken as confessed by all persons who fail so to appear.

(8) The petition and notice shall be sufficient to give the court jurisdiction, and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference to the question submitted, and shall render such judgment and decree on the question submitted as the case warrants.

(9) Costs may be divided or apportioned among any contesting parties in the discretion of the trial court.

(10) Review of the judgment of the court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days.

(11) The Colorado rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this article.

(12) The court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

(13) All cases in which there may arise a question of the validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 98: Entire article added, p. 1090, § 1, effective September 1.

29-25-115. Dissolution procedure. Any district organized pursuant to this article may be dissolved pursuant to the resolution, ordinance, or contract creating the district or pursuant to the provisions of this section. Under this section, any such district may be dissolved after notice is given, publication is made, and a hearing is held in the manner prescribed by sections 29-25-105 and 29-25-106. The dissolution of the district may be initiated by filing in the office of the clerk of the governing body or bodies either a petition signed by the persons described in section 29-25-105 (2) or, in the case of a district that has not filed an operating plan as required by section 29-25-110 for two years, a resolution of the governing body or bodies. After hearing any protests against or objections to dissolution and if the governing body or bodies determines that it is for the best interests of all concerned to dissolve the district, the body or bodies shall so provide by an effective resolution or ordinance, a certified copy of which shall be filed in the office of the county clerk and recorder in each of the counties in which the district or any part of the district is located. Upon such filing, the dissolution shall be complete. Notwithstanding any other provision of this section, upon petition of persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent of the acreage in the proposed district, the district shall impose its existing taxes solely to meet any existing financial obligations, and shall be dissolved as soon as the district has no outstanding financial obligations.

Source: L. 98: Entire article added, p. 1091, § 1, effective September 1.

29-25-116. Correction of faulty notices. In any case that a notice is provided for in this article in which the governing body or bodies find for any reason that due notice was not given, the governing body or bodies shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated; however, the governing body or bodies, in that case, shall order due notice given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 98: Entire article added, p. 1092, § 1, effective September 1.

29-25-117. Department of transportation and local jurisdiction unimpaired. Nothing in this article shall affect or impair the control and jurisdiction that the department of transportation has over streets and highways that are part of the state highway system or that a county, city and county, or municipality has over all property within its boundaries. All powers granted by this article shall be subject to such control and jurisdiction.

Source: L. 98: Entire article added, p. 1092, § 1, effective September 1.

29-25-118. Method not exclusive. Nothing in this article shall repeal or affect any other law or any part thereof, it being intended that this article shall provide a separate method of accomplishing its objectives and not an exclusive one.

Source: L. 98: Entire article added, p. 1092, § 1, effective September 1.

AFFORDABLE HOUSING DWELLING UNIT ADVISORY BOARDS

ARTICLE 26

Affordable Housing Dwelling Unit Advisory Boards

29-26-101.	Legislative declaration.		unit advisory boards.
29-26-102.	Definitions.	29-26-104.	No effect upon local housing
29-26-103.	Affordable housing dwelling		agency.

29-26-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the public interest to maintain a diverse housing stock in order to preserve some diversity of housing opportunities for the state's residents and people of low- and moderate-income.

(b) A housing shortage for persons of low- and moderate-income is detrimental to the public health, safety, and welfare. In particular, the inability of such persons to reside near where they work negatively affects the balance between jobs and housing in many regions of the state and has serious detrimental transportation and environmental consequences.

(c) As an initial step in fostering the establishment of affordable housing dwelling unit programs that will satisfy the housing needs of all the residents of a particular jurisdiction, it is appropriate for the general assembly to authorize local governments to establish affordable housing dwelling unit advisory boards.

(d) In selecting members of the advisory boards, the governing bodies of local government shall give preference to residents of the jurisdiction who have demonstrated experience in housing matters, preferably within the territorial boundaries of the jurisdiction, as a result of their current or former experience, without limitation, as a:

- (I) Registered or certified civil engineer or architect;
- (II) Planner;
- (III) Real estate broker licensed in accordance with part 1 of article 61 of title 12, C.R.S.;
- (IV) Representative of a lending institution that finances residential development within the territorial boundaries of the local government;
- (V) Representative of the local housing authority;
- (VI) Residential builder with extensive experience in producing single-family or multiple-family dwelling units;
- (VII) Representative of either the public works or planning department of the local government; or
- (VIII) Representative of a nonprofit housing organization that provides services within the territorial boundaries of the local government.

(e) In addition, one or more members of the board, in the discretion of the local government, shall be a resident of the jurisdiction without demonstrated experience in housing matters.

(2) In creating this article, the general assembly intends that affordable housing dwelling unit advisory boards shall address the housing needs of low- and moderate-income persons, promote a full range of housing choices, and develop effective policies to encourage the construction and continued existence of affordable housing.

Source: L. 2001: Entire article added, p. 974, § 1, effective August 8. **L. 2008:** (1)(d)(III) amended, p. 511, § 31, effective April 17.

29-26-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affordable housing dwelling unit" means a residential structure that is purchased or rented by and is occupied as a primary residence by one or more income eligible

households, or a comparable definition as established by a local government that is consistent with the purposes of this article.

(2) "Board" means an affordable housing dwelling unit advisory board established pursuant to this article.

(3) "Local government" means a county, home rule or statutory city, territorial charter city, town, or city and county.

(4) "Local housing authority" means the housing authority of a local government.

(5) "Ordinance" means any ordinance, resolution, statute, regulation, or rule promulgated by a local government pursuant to this article.

Source: L. 2001: Entire article added, p. 975, § 1, effective August 8.

29-26-103. Affordable housing dwelling unit advisory boards. (1) To further the purposes of this article, as specified in section 29-26-101, the governing body of any local government may, by ordinance, establish an affordable housing dwelling unit advisory board. Any such board or similar entity in effect prior to July 1, 2001, shall continue to be in full force and effect after that date.

(2) An ordinance promulgated under this article may authorize the board to make recommendations to the local government or the local housing authority as to one or more of the following:

(a) A jurisdiction-wide definition of affordable housing and affordable housing dwelling unit;

(b) Quantifying jurisdiction-wide affordable housing dwelling unit sales prices and rental rates. In developing its recommendations as to the sales prices and rental rates, the board shall consider all ordinary, necessary, and reasonable costs required to construct and market the required number of affordable housing dwelling units by private industry in the jurisdiction and other relevant information, such as the jurisdiction's general market and economic conditions.

(c) Jurisdiction-wide affordable housing dwelling unit qualifying income guidelines;

(d) Changes in density requirements contained in the jurisdiction's zoning or planning ordinances to encourage the provision of affordable housing;

(e) Policies for the modification of requirements adopted in connection with an affordable housing dwelling unit program established by the local government; and

(f) Any other matters that, in the discretion of the board, shall affect the construction and continued existence of affordable housing dwelling units or shall otherwise further the purposes of this article.

(3) (a) Members of a board for any given jurisdiction shall be appointed by the governing body of the local government. Selection of the chair and other organizational matters shall be addressed either by the board itself or by the local government through ordinance in the discretion of the governing body of the local government establishing the board pursuant to this paragraph (a).

(b) The number of members of a board and their terms shall be established by the governing body of the local government through ordinance. To the greatest extent practicable, membership on such boards shall reflect the intent of this article as expressed in section 29-26-101 (1).

Source: L. 2001: Entire article added, p. 976, § 1, effective August 8.

29-26-104. No effect upon local housing agency. Nothing in this article shall be construed to affect the operation of a local housing authority and any board created by this article is encouraged to cooperate with a local housing authority in the establishment and implementation of policies that shall further the intent of this article.

Source: L. 2001: Entire article added, p. 977, § 1, effective August 8.

**COMPETITION IN UTILITY AND
ENTERTAINMENT SERVICES**

ARTICLE 27

**Competition in Utility
and Entertainment Services**

PART 1

29-27-202. Exemption for unserved areas.

**COMPETITION IN UTILITY AND
ENTERTAINMENT SERVICES**

PART 3

**COMPLIANCE WITH LOCAL, STATE, AND
FEDERAL REGULATIONS**

- 29-27-101. Legislative declaration.
- 29-27-102. Definitions.
- 29-27-103. Limitations on providing cable television, telecommunications, and advanced services.

- 29-27-301. General operating limitations.
- 29-27-302. Scope of article.
- 29-27-303. Enforcement and appeal.
- 29-27-304. Applicability.

PART 2

CONDITIONS FOR PROVIDING SERVICES

- 29-27-201. Vote - referendum.

PART 1

**COMPETITION IN UTILITY
AND ENTERTAINMENT SERVICES**

29-27-101. Legislative declaration. (1) The general assembly hereby finds and declares that it is the policy of this state to ensure that cable television service, telecommunications service, and high speed internet access, otherwise known as advanced service, are each provided within a consistent, comprehensive, and nondiscriminatory federal, state, and local government framework.

(2) The general assembly further finds and declares that:

(a) There is a need for statewide uniformity in the regulation of all public and private entities that provide cable television service, telecommunications service, and advanced service.

(b) Municipal ordinances, rules, and other regulations governing the provision of cable television service, telecommunications service, and advanced service by a local government impact persons living outside the municipality.

(c) Regulating the provision of cable television service, telecommunications service, and advanced service by a local government is a matter of statewide concern.

Source: L. 2005: Entire article added, p. 1280, § 1, effective June 3.

29-27-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Advanced service” means high-speed internet access capability in excess of two hundred fifty-six kilobits per second both upstream and downstream.

(2) “Cable television service” means the one-way transmission to subscribers of video programming or other programming service, as well as subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

(3) “Local government” means any city, county, city and county, special district, or other political subdivision of this state.

(4) “Private provider” means a private entity that provides cable television service, telecommunications service, or advanced service.

(5) “Subscriber” means a person that lawfully receives cable television service, telecommunications service, or advanced service. A person that utilizes cable television

service, telecommunications service, or advanced service provided by a local government for local governmental or intergovernmental purposes and is used by persons accessing government services is not a subscriber for purposes of this article.

(6) "Telecommunications service" has the same meaning as set forth in section 40-15-102 (29), C.R.S.

Source: L. 2005: Entire article added, p. 1281, § 1, effective June 3.

29-27-103. Limitations on providing cable television, telecommunications, and advanced services. (1) Except as provided in this article, a local government shall not:

(a) Provide to one or more subscribers cable television service, telecommunications service, or advanced service; or

(b) Purchase, lease, construct, maintain, or operate any facility for the purpose of providing cable television service, telecommunications service, or advanced service to one or more subscribers.

(2) For purposes of this article, a local government provides cable television service, telecommunications service, or advanced service if the local government provides the cable television service, telecommunications service, or advanced service to one or more subscribers:

(a) Directly;

(b) Indirectly by means that include but are not limited to the following:

(I) Through an authority or instrumentality acting on behalf of the local government or for the benefit of the local government by itself;

(II) Through a partnership or joint venture;

(III) Through a sale and leaseback arrangement;

(c) By contract, including a contract whereby the local government leases, sells capacity in, or grants other similar rights to a private provider to use local governmental facilities designed or constructed to provide cable television service, telecommunications service, or advanced service for internal local government purposes in connection with a private provider's offering of cable television service, telecommunications service, or advanced service; or

(d) Through sale or purchase of resale or wholesale cable television service, telecommunications service, or advanced service for the purpose of providing cable television service, telecommunications service, or advanced service to one or more subscribers.

(3) Nothing in this article shall be construed to limit the authority of a local government to lease to a private provider physical space in or on its property for the placement of equipment or facilities the private provider uses to provide cable television, telecommunications, or advanced services.

Source: L. 2005: Entire article added, p. 1281, § 1, effective June 3.

PART 2

CONDITIONS FOR PROVIDING SERVICES

29-27-201. Vote - referendum. (1) Before a local government may engage or offer to engage in providing cable television service, telecommunications service, or advanced service, an election shall be called on whether or not the local government shall provide the proposed cable television service, telecommunications service, or advanced service.

(2) The ballot at an election conducted pursuant to this section shall pose the question as a single subject and shall include a description of the nature of the proposed service, the role that the local government will have in provision of the service, and the intended subscribers of such service. The ballot proposition shall not take effect until submitted to the electors and approved by the majority of those voting on the ballot.

Source: L. 2005: Entire article added, p. 1282, § 1, effective June 3.

29-27-202. Exemption for unserved areas. (1) A local government shall be exempt from the requirements of this part 2 and may engage or offer to engage in providing cable television service, telecommunications service, or advance service if:

(a) No private provider of cable television service, telecommunications service, or advanced service provides the service anywhere within the boundaries of the local government;

(b) The governing body of the local government has submitted a written request to provide the service to any incumbent provider of cable television service, telecommunications service, or advanced service within the boundaries of the local government; and

(c) The incumbent provider has not agreed within sixty days of the receipt of a request submitted pursuant to paragraph (b) of this subsection (1) to provide the service or, if the provider has agreed, it has not commenced providing the service within fourteen months of the receipt of the request.

Source: L. 2005: Entire article added, p. 1282, § 1, effective June 3.

PART 3

COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS

29-27-301. General operating limitations. (1) A local government that provides cable television service, telecommunications service, or advanced service under this article shall comply with all state and federal laws, rules, and regulations governing provision of such service by a private provider; except that nothing herein shall be construed to affect the jurisdiction of the public utilities commission with respect to municipal utilities.

(2) (a) A local government shall not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of cable television services, telecommunications services, or advanced services.

(b) A local government shall apply without discrimination as to itself and to any private provider the local government's ordinances, rules, and policies, including those relating to:

- (I) Obligation to serve;
- (II) Access to public rights-of-way;
- (III) Permitting;
- (IV) Performance bonding where an entity other than the local government is performing the work;
- (V) Reporting; and
- (VI) Quality of service.

Source: L. 2005: Entire article added, p. 1283, § 1, effective June 3.

29-27-302. Scope of article. (1) Nothing in this article shall be construed to authorize any local government to:

(a) Provide, directly or indirectly, cable television service, telecommunications service, or advanced service; or

(b) Purchase, lease, construct, maintain, or operate a facility for the purpose of providing, directly or indirectly, cable television service, telecommunications service, or advanced service.

(2) Nothing in this article shall be construed to apply to a local government purchasing, leasing, constructing, maintaining, or operating facilities that are designed to provide cable television service, telecommunications service, or advanced service that the local government uses for internal or intergovernmental purposes.

(3) Nothing in this article shall be construed to apply to the sale or lease by a local government to private providers of excess capacity, if:

(a) Such excess capacity is insubstantial in relation to the capacity utilized by the local government for its own purposes; and

(b) The opportunity to purchase and the opportunity to use such excess capacity is made available to any private provider in a nondiscriminatory, nonexclusive, and competitively neutral manner.

(4) Nothing in this article shall be construed to limit either the authority of the statewide internet portal authority created in section 24-37.7-102, C.R.S., to carry out its mission or to integrate the electronic information delivery systems of local governments into the statewide internet portal as defined in article 37.7 of title 24, C.R.S.

Source: L. 2005: Entire article added, p. 1284, § 1, effective June 3.

29-27-303. Enforcement and appeal. (1) Before an individual subscriber or a private provider that competes with a local government in the geographic boundaries of the local government may file an action in district court for violation of this article, that person shall file a written complaint with the local government. The failure by the local government to issue a final decision regarding the complaint within forty-five days shall be treated as an adverse decision for purposes of appeal.

(2) An appeal of an adverse decision from the local government may be taken to the district court for a de novo proceeding.

Source: L. 2005: Entire article added, p. 1284, § 1, effective June 3.

29-27-304. Applicability. This article shall apply to cable television service, telecommunications service, and advanced service and to the purchase, lease, construction, maintenance, or operation of any facility for the purpose of providing such service, for which a local government has not entered into an agreement or otherwise taken any substantial action prior to March 1, 2005, to provide such service or purchase, lease, construct, maintain, or operate such facilities.

Source: L. 2005: Entire article added, p. 1284, § 1, effective June 3.

MEDICAL PROVIDER FEES

ARTICLE 28

Medical Provider Fees

29-28-101.	Legislative declaration.	29-28-103.	Powers of governing body -
29-28-102.	Definitions.		medicaid provider fee authorization.

29-28-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) Medicaid reimbursement rates cover only approximately sixty-five percent of the actual costs incurred by service providers rendering services to medicaid recipients;

(b) Low medicaid reimbursement rates and increased caseloads have caused the costs to shift within the health care delivery system, resulting in higher medical costs for the general population;

(c) The medicaid caseload continues to expand and, therefore, the need for providers to serve these medicaid recipients continues to increase;

(d) Rising health care costs are a primary concern for Colorado citizens and businesses;

(e) It is therefore in the best interest of the state of Colorado to authorize local governments to impose a fee on certain medical providers to assist in financing medicaid costs and the disproportionate share hospital payments for providing medical services to low-income populations.

Source: L. 2006: Entire article added, p. 885, § 1, effective May 5. **L. 2008:** (1)(e) amended, p. 928, § 2, effective May 20.

29-28-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Department" means the department of health care policy and financing.
- (2) "Local government" means a county, home rule county, home rule or statutory city, town, territorial charter city, or city and county.
- (2.5) "Provider fee" means a licensing fee, assessment, or other mandatory payment that is related to health care items or services as specified under 42 CFR 433.55.
- (3) "Qualified provider" means a hospital licensed pursuant to section 25-3-101, C.R.S., or a certified home health care agency within the territorial boundaries of a local government.
- (4) (Deleted by amendment, L. 2008, p. 929, § 3, effective May 20, 2008.)

Source: **L. 2006:** Entire article added, p. 886, § 1, effective May 5. **L. 2008:** (2.5) added and (3) and (4) amended, p. 929, § 3, effective May 20.

29-28-103. Powers of governing body - medicaid provider fee authorization.

(1) (a) The governing body of a local government may impose a provider fee on health services provided by qualified providers for the purpose of obtaining federal financial participation under the state's medical assistance program, articles 4 to 6 of title 25.5, C.R.S., and the Colorado indigent care program, article 3 of title 25.5, C.R.S. The provider fee shall be used only to sustain or increase reimbursements for providing medical care under the state's medical assistance program and to low-income populations.

(b) (I) The amount of the provider fee may be based upon the aggregate gross or net revenue, as prescribed by the state department, or any other method allowable under federal law, of all qualified providers subject to the provider fee, and the amount of the provider fee shall not exceed the maximum amount allowed under federal law. The local government may exempt revenue categories from the gross or net revenue calculation and the collection of the provider fee from qualified providers, as authorized by state and federal medicaid rules and regulations.

(II) Subject to state and federal medicaid rules and regulations, in any given year, a local government may elect to not assess the provider fee imposed on qualified providers pursuant to this subsection (1) and not make the reimbursements to qualified providers within its territorial boundaries for that year.

(c) Prior to the imposition and collection of the provider fee, the governing body of the local government shall:

(I) Approve the provider fee by ordinance or resolution; and

(II) Notify the department that the local government has authorized the imposition of a provider fee pursuant to this subsection (1).

(2) (a) The local government shall either:

(I) Collect the provider fee imposed on qualified providers pursuant to subsection (1) of this section; or

(II) Direct the qualified providers within its jurisdiction to pay the provider fee imposed pursuant to subsection (1) of this section directly to the department.

(b) If the local government elects to collect the provider fee imposed pursuant to subsection (1) of this section, the local government shall either:

(I) Transfer the amount that the local government collects from the provider fee to the department, in which case the department shall distribute the provider fee and all federal financial participation received to the qualified providers within the territorial boundaries of the local government pursuant to section 25.5-4-417, C.R.S.; or

(II) Distribute all moneys from the provider fee collected pursuant to this section and certify to the department the amount that the local government reimburses the qualified providers for providing medical care under the state's medical assistance program and to low-income populations, which shall include the distribution of moneys collected from the provider fee collected pursuant to this section. The local government may distribute any additional moneys eligible for federal financial participation to qualified providers within the territorial boundaries of the local government pursuant to section 25.5-4-417, C.R.S.

(c) If the local government elects to direct the qualified providers to pay the provider fee imposed pursuant to subsection (1) of this section directly to the department, the

department shall distribute the provider fee and all federal financial participation received to the qualified providers within the territorial boundaries of the local government pursuant to section 25.5-4-417, C.R.S.

(d) All moneys received by the department pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the local government provider fee cash fund, which fund is hereby created and referred to in this paragraph (d) as the "fund". The general assembly may make appropriations from the fund to the department for the department's administrative costs incurred in implementing this section. The department shall distribute the remaining moneys in the fund pursuant to this subsection (2). Any moneys in the fund not expended for the purpose of this section shall be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(3) Except for administrative costs of the department, provider fees imposed and distributed pursuant to this section from certified home health care agencies and licensed hospitals within the territorial boundaries of a local government shall be kept separate to ensure that the provider fees collected from certified home health care agencies within the territorial boundaries of the local government are distributed only to certified home health care agencies and the provider fees collected from licensed hospitals within the territorial boundaries of the local government are distributed only to licensed hospitals.

(4) A local government that elects to impose and collect a provider fee from qualified providers pursuant to this section shall follow all applicable state and federal medicaid rules and regulations regarding provider fees.

Source: L. 2006: Entire article added, p. 886, § 1, effective May 5. **L. 2008:** Entire section amended, p. 929, § 4, effective May 20. **L. 2010:** (2)(b)(II) amended, (HB 10-1422), ch. 419, p. 2118, § 162, effective August 11.

IMMIGRATION STATUS - COOPERATION WITH FEDERAL OFFICIALS

ARTICLE 29

Immigration Status - Cooperation with Federal Officials

Law reviews: For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

29-29-101.	Legislative declaration.	29-29-103.	Cooperation with federal officials
29-29-102.	Definitions.		regarding immigration status.

29-29-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Sanctuary policies are local government ordinances or policies that prohibit local officials, including peace officers, from communicating or cooperating with federal officials with regard to the immigration status of any person within the state;

(b) The matters contained in this article have important statewide ramifications for compliance with and enforcement of federal immigration laws;

(c) Sanctuary policies allow illegal immigrants to reside within Colorado and to undermine federal immigration law.

(2) The general assembly therefore declares that the matters addressed in this article are matters of statewide concern.

Source: L. 2006: Entire article added, p. 721, § 1, effective May 1.

29-29-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Local government" means a town, city, city and county, or county.

Source: L. 2006: Entire article added, p. 722, § 1, effective May 1.

29-29-103. Cooperation with federal officials regarding immigration status.

(1) No local government, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a peace officer, local official, or local government employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state.

(2) (a) (I) A peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the United States shall report such arrestee to the United States immigration and customs enforcement office if the arrestee is not held at a detention facility. If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff shall report such arrestee to the federal immigration and customs enforcement office.

(II) This subsection (2) shall not apply to arrestees who are arrested for a suspected act of domestic violence as defined by section 18-6-800.3, C.R.S., until such time as the arrestee is convicted of a domestic violence offense.

(b) The governing body of each local government shall provide notice in writing to peace officers of the duty to cooperate with state and federal officials with regards to enforcement of state and federal laws regarding immigration and comply with paragraph (a) of this subsection (2). Each governing body shall provide written confirmation to the general assembly that it has provided such notice and shall annually, on or before March 1 of each year, report to the legislative council of the general assembly the number of reports made to the United States immigration and customs enforcement office pursuant to this article.

(c) The general assembly finds and declares that the state attorney general and all appropriate state and local law enforcement agencies should vigorously pursue all federal moneys to which the state may be entitled for the reimbursement of moneys spent to enforce federal immigration laws.

(3) A local government that violates subsection (1) of this section or paragraph (b) of subsection (2) of this section shall not be eligible to receive local government financial assistance through grants administered by the department of local affairs until such time as the ordinance or policy is no longer in effect.

Source: L. 2006: Entire article added, p. 722, § 1, effective May 1.

TITLE 30
GOVERNMENT - COUNTY

TITLE 30

GOVERNMENT - COUNTY

COMPENSATION - FEES

- Art. 1. Fees - General, 30-1-101 to 30-1-119.
- Art. 2. Compensation of County and Other Officers, 30-2-101 to 30-2-108.

COUNTY ELECTED OFFICIALS' SALARY COMMISSION

- Art. 3. County Elected Officials' Salary Commission, 30-3-101 to 30-3-106.

LOCATION AND BOUNDARIES

- Art. 5. County Boundaries, 30-5-101 to 30-5-172.
- Art. 6. Location, Change, and Settlement of Boundaries, 30-6-100.3 to 30-6-113.
- Art. 7. County Seats Designated, 30-7-101 and 30-7-102.
- Art. 8. Location and Removal of County Seats, 30-8-101 to 30-8-109.

COUNTY OFFICERS

- Art. 10. County Officers, 30-10-101 to 30-10-1011.

COUNTY POWERS AND FUNCTIONS

General

- Art. 11. County Powers and Functions, 30-11-101 to 30-11-605.
- Art. 12. Local Access to Health Care Pilot Program, 30-12-101 to 30-12-107.
- Art. 15. Regulation Under Police Power, 30-15-101 to 30-15-411.
- Art. 17. County Assistance for the Poor, 30-17-101 to 30-17-403.
- Art. 20. Public Improvements, 30-20-100.5 to 30-20-1307.
- Art. 24. County Agricultural Research, 30-24-101 to 30-24-104.

County Finance

- Art. 25. Administration, 30-25-101 to 30-25-302.
- Art. 26. Bonds, 30-26-101 to 30-26-513.

COUNTY PLANNING AND BUILDING CODES

- Art. 28. County Planning and Building Codes, 30-28-101 to 30-28-404.

APPORTIONMENT OF FEDERAL MONEYS

- Art. 29. Apportionment of Federal Moneys from Public Lands, 30-29-101 and 30-29-102.

FLOOD CONTROL

- Art. 30. Control of Stream Flow, 30-30-101 to 30-30-105.

HOME RULE

- Art. 35. Home Rule Counties, 30-35-101 to 30-35-906.

COMPENSATION - FEES**ARTICLE 1****Fees - General**

Cross references: For fees of county officers, see § 15 of art. XIV, Colo. Const.

30-1-101.	Classification of counties - fixing fees.	30-1-109.	Fee bill.
30-1-102.	Fees of county treasurer.	30-1-110.	Penalty for failure to serve.
30-1-103.	Fees of county clerk and recorders.	30-1-111.	Unauthorized fees - penalty.
30-1-104.	Fees of sheriff.	30-1-112.	Fees paid monthly.
30-1-105.	Constructive mileage not allowed. (Repealed)	30-1-113.	Officers to keep account of fees.
30-1-105.5.	Two or more papers served on same person or different persons at same time and place in same action.	30-1-114.	Monthly report of officers.
30-1-106.	Service must be made upon offer or tender of fees.	30-1-115.	Commissioners to audit accounts.
30-1-107.	Penalty for violation - duties.	30-1-116.	Officers shall collect fees in advance.
30-1-108.	Schedule of fees posted.	30-1-117.	Refusal to pay fees to treasurer - penalty.
		30-1-118.	Mileage allowances. (Repealed)
		30-1-119.	Separate fee funds kept.

30-1-101. Classification of counties - fixing fees. (1) For the purpose of fixing fees, chargeable and to be collected by county and other officers, and for no other purpose, the several counties of this state are divided into five classes, which classes shall be known as the first, second, third, fourth, and fifth, as follows:

- (a) The city and county of Denver is a county of the first class;
- (b) The counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Pueblo, and Weld are counties of the second class;
- (c) The counties of Delta, Garfield, Larimer, Las Animas, Logan, Mesa, Montezuma, Montrose, Morgan, and Otero are counties of the third class;
- (d) The counties of Alamosa, Archuleta, Bent, city and county of Broomfield, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Eagle, Elbert, Fremont, Gilpin, Gunnison, Huerfano, Kit Carson, Lake, La Plata, Lincoln, Ouray, Park, Phillips, Prowers, Rio Grande, Routt, Saguache, San Miguel, Sedgwick, Teller, Washington, and Yuma are counties of the fourth class;
- (e) The counties of Baca, Custer, Dolores, Grand, Hinsdale, Jackson, Kiowa, Mineral, Moffat, Pitkin, Rio Blanco, San Juan, and Summit are counties of the fifth class.

Source: L. 1891: p. 200, § 1. R.S. 08: § 2521. L. 13: p. 276, § 1. C.L. § 7869. L. 25: p. 243, § 1. CSA: C. 66, § 3. CRS 53: § 56-4-1. C.R.S. 1963: § 56-4-1. L. 69: p. 385, § 1. L. 2001: Entire section amended, p. 330, § 1, effective April 12; (1)(d) amended, p. 256, § 2, effective November 15. L. 2009: (1)(c) and (1)(d) amended, (HB 09-1203), ch. 102, p. 377, § 1, effective August 5.

Editor's note: Amendments to subsection (1)(d) by Senate Bill 01-102 and Senate Bill 01-130 were harmonized.

ANNOTATION

Section 15 of art. XIV, Colo. Const., empowers the general assembly to classify counties according to population for the purpose of fixing fees. Frost v. Pfeiffer, 26 Colo. 338, 58 P. 147 (1899).

Assumed to be classified by population. The assignment of a new county by the act creating it to a certain class for the purpose of fixing the fees of its officers is not special legislation in the meaning of the constitution, and it will be as-

sumed that the general assembly classified the county according to its population. *Frost v. Pfeiffer*, 26 Colo. 338, 58 P. 147 (1899).

By the Session Laws of 1891 all the counties of the state were divided into five classes, according to population as ascertained by the

federal census of the year 1890, and the fees prescribed under each class are different from the fees under any of the others, and a material reduction in the amount of charges was made from that which theretofore prevailed. *Airy v. People*, 21 Colo. 144, 40 P. 362 (1895).

30-1-102. Fees of county treasurer. (1) The county treasurer shall charge and receive the following fees:

(a) Upon all moneys received by him for town and city taxes, whether such towns or cities are incorporated under the general laws or by special charter, and anything in said charter to the contrary notwithstanding, and upon all school taxes in counties of the first class, one percent; in counties of the second class, one percent; in counties of every other class, one percent on school taxes and two percent on town and city taxes; except that a collection fee not exceeding one-quarter of one percent shall be charged as provided in section 22-54-119, C.R.S., and no collection fee shall be charged on other school taxes exempt by law from said collection fees;

(b) Upon all moneys received by him for taxes of every other kind in counties of the first class, one percent; second class, one and one-half percent; third class, two percent; fourth class, three percent; fifth class, five percent;

(c) For receiving all moneys other than taxes, one percent, except moneys received from all federal funds derived from any and all sources. No collection fees shall be charged upon any moneys collected and distributed under the provisions of sections 22-54-106 and 22-54-115, C.R.S., or upon other school moneys exempt by law from said collection fees;

(d) For each copy of a receipt issued for current year taxes, two dollars; and for each copy of a receipt issued covering taxes for a prior year, five dollars;

(e) For advertising delinquent personal property taxes, ten dollars or the cost of advertising, whichever is greater;

(f) For certifying the amount of taxes due on any parcel of real estate, and for certifying outstanding sales for unpaid taxes with the amount required for redemption, ten dollars for each certificate;

(g) In connection with a sale for delinquent taxes, for advertising each property description that is separately identified by its own parcel number for general property tax purposes, the estimated cost of advertising but not less than ten dollars;

(h) Repealed.

(i) For each certificate of purchase delivered, four dollars;

(j) For endorsing the amount of subsequent taxes paid on tax certificates and the date of payment in the book of tax sales, five dollars for each certificate;

(k) For processing an application for treasurer's deed, thirty-five dollars if the application is not advertised and seventy-five dollars if the application is advertised;

(l) For the assignment of a certificate of purchase, made to the county, city, town, or city and county at any tax sale, to a person desiring to purchase land covered by such certificate, four dollars;

(m) For each notice of purchase required by section 39-11-128 (1), C.R.S., to be served before a treasurer's deed may be issued, the cost of publication in a newspaper where such publication is required;

(n) For each certificate of redemption delivered, seven dollars;

(o) For services in collecting drainage district assessments, such amount as the board of directors of the district may allow, but not less than twenty-five dollars nor more than one hundred dollars per annum;

(p) For services in collecting irrigation district assessments, such amount as the board of directors of the district may allow, but not less than twenty-five dollars nor more than one hundred dollars per annum;

(q) For services rendered in handling the payment of principal and interest on bonds of a school district, such amount as the county treasurer and the board of education shall agree upon, which shall be determined in accordance with the prevailing rate charged for similar services rendered by commercial banks in the state of Colorado;

- (r) For preparation of a distraint warrant, fifteen dollars;
- (s) For research, fifteen dollars per hour or portion thereof, one hour minimum;
- (t) For the notice, computation, and recording provided in section 32-1-1604, C.R.S., thirty dollars.

(2) None of the provisions of this section shall be applicable to any moneys received or collected by any county treasurer for any hospital established under the provisions of part 3 of article 3 of title 25, C.R.S., or for any health service district embracing only an entire county established under the provisions of article 1 of title 32, C.R.S.

(3) In addition to any other fees to which the county treasurer is entitled and notwithstanding the provisions of subsection (2) of this section, the county treasurer may charge an administrative fee of five dollars when the payment of any real property tax statement, exclusive of any license fees collected pursuant to sections 35-40-205 and 35-57.5-116, C.R.S., is less than ten dollars. The fee shall be credited to the county general fund, pursuant to section 30-25-105, to cover the cost of processing such tax statement.

Source: L. 1891: p. 211, § 6. L. 1897: p. 159, § 1. R.S. 08: § 2537. C.L. § 7887. CSA: C. 66, § 25. CRS 53: § 56-4-2. L. 55: p. 385, § 1. L. 56: p. 147, §§ 1, 2. L. 59: p. 441, § 1. L. 63: p. 490, § 1. C.R.S. 1963: § 56-4-2. L. 71: p. 325, § 2. L. 73: p. 1433, § 1. L. 75: (1)(i), (1)(k), and (1)(n) amended, p. 1478, § 1, effective June 26. L. 79: (1)(q) added, p. 792, § 2, effective May 22. L. 81: (2) amended, p. 1612, § 9, effective July 1. L. 84: (3) added, p. 813, § 1, effective March 29. L. 87: (3) amended, p. 1202, § 1, effective April 30. L. 88: (1)(a) and (1)(c) amended, p. 823, § 35, effective May 24; (1)(d), (1)(f), (1)(g), and (1)(i) to (1)(n) amended and (1)(r) and (1)(s) added, p. 1105, § 1, effective January 1, 1989. L. 90: (1)(e) amended, p. 1695, § 15, effective June 9. L. 91: (1)(h) repealed, p. 1972, § 1, effective March 27; (1)(t) added, p. 2426, § 7, effective June 8. L. 94: (1)(a) and (1)(c) amended, p. 824, § 53, effective April 27. L. 95: (3) amended, p. 1105, § 45, effective May 31. L. 96: (2) amended, p. 472, § 7, effective July 1. L. 97: (3) amended, p. 182, § 13, effective March 31. L. 99: (1)(a) amended, p. 177, § 5, effective January 1, 2000.

ANNOTATION

Only statutory fees collected. Since the compensation of any public official for services rendered in his official capacity is regulated by statute, he is entitled only to demand and receive fees for those services concerning which compensation by law attaches, because it is an inflexible rule that an official can demand only such fees or compensation as the law has definitely fixed and authorized for the performance of his official duties. *Adams-Arapahoe County Sch. Dist. No. 28J v. Wolf*, 30 Colo. App. 117, 489 P.2d 348 (1971).

Fees enter fund from which treasurer is compensated. The fees and commissions are to be collected by the treasurer, not as his compensation for the particular work for which the fee may be prescribed, but for the purpose of creating a fund out of which his salary or compensation is to be paid. The annual salary is what the treasurer gets for all the work that he does, it is compensation for his services. *Bd. of County Comm'rs v. Otero Irrigation Dist.*, 56 Colo. 515, 139 P. 546 (1914).

The word "collect" is used to define the power of the county treasurers to gather in or receive money for taxes theretofore assessed, and since the fees provided for in this section are

charged upon "all moneys received" by the treasurer, they fall within the above definition and are fees charged for the collection of taxes and are therefore collection fees. *Adams-Arapahoe County Sch. Dist. No. 28J v. Wolf*, 30 Colo. App. 117, 489 P.2d 348 (1971).

Taxing agencies, other than the state, pay the treasurer for collecting and remitting taxes by them levied. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

Commission on collection of irrigation district taxes. The moneys collected by the county treasurer for irrigation district taxes, whether the district was in one or more counties, came clearly within the description of money upon which the county treasurer by virtue of this section was required to charge and receive a commission. *Bd. of County Comm'rs v. Otero Irrigation Dist.*, 56 Colo. 515, 139 P. 546 (1914).

Moneys on account of redemptions from tax sales exempt. The commission of one percent allowed by this section does not apply to moneys paid on account of redemptions from tax sales, but is intended to apply to moneys received by the treasurer on account of licenses, and from other sources of revenue. *Mitchell v. Wheeler*, 20 Colo. App. 159, 77 P. 361 (1904).

As is entry of assignment of certificate of purchase. This section did not authorize the treasurer to charge any fee whatever for entering on his books an assignment of a certificate of purchase, or for making any charge against a party who was entitled to redemption money on account of such assignment. *Mitchell v. Wheeler*, 20 Colo. App. 159, 77 P. 361 (1904).

And public school foundation taxes. A county treasurer does not have the right and duty to charge and receive a fee of one percent on

taxes paid into his office pursuant to levies made by school districts under the terms of the "Public School Foundation Act of 1969". *Adams-Arapahoe County Sch. Dist. No. 28J v. Wolf*, 30 Colo. App. 117, 489 P.2d 348 (1971).

The public school foundation act creates an exception to, or amends, the general fees law by exempting the taxes collected under the foundation act from the provisions of this section. *Adams-Arapahoe County Sch. Dist. No. 28J v. Wolf*, 30 Colo. App. 117, 489 P.2d 348 (1971).

30-1-103. Fees of county clerk and recorders. (1) Fees collected by county clerk and recorders shall be as follows: For filing or recording each document for which a fee is not specifically provided, except tax schedules and claims against the county, for which no fee shall be allowed, in cities and counties and in counties of every class, the clerk shall receive ten dollars for the first page and five dollars for each additional page.

(2) In cities and counties and in every county, the following fees shall apply:

(a) For taking and certifying each affidavit, two dollars;

(b) For each certificate and seal, one dollar;

(c) For filing each bond and license, five dollars;

(d) For certificate of magistracy under seal, two dollars;

(e) For taking acknowledgments, two dollars;

(f) For recording town plats, subdivision plats, and all other plats, and for recording all documents in excess of eight and one-half inches in width or fourteen inches in length, ten dollars per sheet;

(g) For entering subsequent taxes paid in tax sale record, five dollars for each certificate;

(h) For entering certificate of redemption in tax sale record, five dollars for each certificate;

(i) Repealed.

(j) For copies of records, a fee in an amount determined pursuant to section 24-72-205 (5), C.R.S.;

(k) and (l) Repealed.

(m) For recording all certificates, affidavits, deeds, or other documents containing the name of one or more mining claims and for indexing the same under the name of each such mining claim, five dollars per page, plus twenty-five cents for each mining claim named therein.

(3) County governments shall be exempt from all fees authorized to be collected under the provisions of this section whenever the county or any agency thereof is the grantor or grantee of the document being recorded or whenever a delegate child support enforcement unit files or records documents for the purpose of collecting child support, child support arrears, maintenance, maintenance when combined with child support, retroactive support, or child support debt.

(4) (Deleted by amendment, L. 2010, (HB 10-1007), ch. 71, p. 243, § 1, effective April 5, 2010.)

(5) The fee described in subsection (1) of this section shall not be collected on any filing received by the county clerk and recorder as an authorized agent of the executive director of the department of revenue pursuant to section 38-29-128 or 42-6-121, C.R.S., in which case the fee collected shall be five dollars per page.

Source: L. 1891: p. 212, § 7. L. 07: p. 404, § 1. R.S. 08: § 2538. C.L. § 7888. L. 21: p. 321, § 2. CSA: C. 66, § 26. L. 51: p. 382, § 1. CRS 53: § 56-4-3. L. 57: p. 376, § 1. L. 58: p. 239, § 1. L. 63: p. 928, § 2. C.R.S. 1963: § 56-4-3. L. 65: p. 624, § 1. L. 73: pp. 631, 633, §§ 2, 7. L. 77: (2)(k) repealed, p. 1427, § 1, effective May 26; (3) added, p. 1428, § 1, effective May 26. L. 81: (1), (2)(c), (2)(g), (2)(h), (2)(l), and (2)(m) amended, p. 383, § 3, effective May 21. L. 83: (2)(a) and (2)(e) amended and (2)(i) and (2)(l) repealed, pp. 1226, 1231, §§ 4, 22, effective July 1. L. 88: (2)(m) amended, p. 1107, § 1,

effective January 1, 1989. **L. 89:** (1) amended, p. 1271, § 1, effective July 1. **L. 91:** (2)(b) to (2)(d), (2)(g), (2)(h), and (2)(m) amended, p. 708, § 4, effective July 1. **L. 92:** (2)(m.1) added, p. 1106, § 8, effective July 1. **L. 96:** (1), (2)(m), and (3) amended and (4) added, p. 1555, § 2, effective July 1. **L. 97:** (3) amended, p. 565, § 19, effective July 1. **L. 2007:** (2)(j) amended, p. 579, § 2, effective August 3. **L. 2010:** (1) and (4) amended and (5) added, (HB 10-1007), ch. 71, p. 243, § 1, effective April 5.

ANNOTATION

The county clerk's compensation for official acts is regulated by this section, and he is only entitled to charge for those services to which compensation by law attaches, for the rule is inflexible, that an official can only demand such fees or compensation as the law has fixed and authorized for the performance of his official duties. *Bd. of Comm'rs v. Leonard*, 26 Colo. 145, 57 P. 693 (1899).

Duties separately defined. By this section the charges for recording instruments, making abstracts of title, making copies of records, making tax lists, serving as clerk of the board of county commissioners, and for the performance of other services required of the clerk, are separately defined. *Henderson v. Bd. of Comm'rs*, 4 Colo. App. 301, 35 P. 880 (1894).

Per diem is unconscionable salary. The sum allowed by law per diem to the county clerk for his services as clerk of the board of commissioners is a fee within the meaning of the salary act, and it is payable to him absolutely, and the board is without authority to annex to its payment any condition whatever. *Henderson v. Bd. of Comm'rs*, 4 Colo. App. 301, 35 P. 880 (1894).

For required clerical duties. A county clerk, in his capacity as clerk of the board of county

commissioners, is required to perform all services clerical in their nature, in connection with matters within the scope of the authority of the board, which are necessary to enable it to perform its duties with respect to such matters, and he is not entitled to fees for such services outside of his compensation as clerk of the board. *Bd. of Comm'rs v. Leonard*, 26 Colo. 145, 57 P. 693 (1899).

No compensation for services as to matters outside board's authority. A county clerk as clerk of the board of county commissioners is not entitled to compensation for services in relation to matters over which the board attempted to exercise a control, but which were not within the legitimate scope of its authority. *Bd. of Comm'rs v. Leonard*, 26 Colo. 145, 57 P. 693 (1899).

No fee is provided for the clerk for signing or attesting county warrants. Such work falls within that class of services for which, under the act of 1885, reasonable compensation was allowed by the board of commissioners. *Leonard v. Bd. of Comm'rs*, 8 Colo. App. 338, 46 P. 216 (1896).

30-1-104. Fees of sheriff. (1) Fees collected by sheriffs shall be as follows:

(a) For serving and returning summons or other writ of process in a criminal action not specified in this section, with or without complaint attached, on each party served, in counties of every class, actual expenses, but not more than fifteen dollars;

(a.5) For serving and returning a summons or other writ of process in other than a criminal action not specified in this section, with or without complaint attached, on each party served, in counties of every class, actual expenses, but not more than thirty-five dollars;

(b) For making a return on a summons in a criminal action not served, for each party, in counties of every class, actual expenses, but not more than five dollars;

(b.5) For making a return on a summons in other than a criminal action not served, for each party, in counties of every class, actual expenses, but not more than twenty dollars;

(c) For serving and returning each subpoena in a criminal action on each witness, in counties of every class, actual expenses, but not more than seven dollars and fifty cents;

(c.5) For serving and returning each subpoena in other than a criminal action on each witness, in counties of every class, actual expenses, but not more than sixty dollars;

(d) For making return on a subpoena in a criminal action not served, in counties of every class, five dollars;

(d.5) For making a return on a subpoena in other than a criminal action not served, in counties of every class, actual expenses, but not more than twenty dollars;

(e) For serving each juror in counties of every class, ten dollars;

(f) For serving and returning writ of attachment or replevin on each party, in counties

of every class, mileage, as described in paragraph (h.5) of this subsection (1), and actual expenses;

(g) For serving garnishee summons on each party, in counties of every class, actual expenses, but not more than twenty dollars;

(h) Mileage for each mile actually and necessarily traveled in serving each writ, subpoena, or other process in a criminal action, not less than twelve cents nor more than the maximum mileage allowance provided for state officers and employees under section 24-9-104, C.R.S., as determined by resolution of the board of county commissioners of each county or as provided by the charter of a home rule county; except that actual and not constructive mileage shall be allowed in all cases; and, where more than one warrant is served by any officer on one trip, the actual mileage only shall be allowed such officer, and the actual mileage shall be apportioned among the several warrants served on the trip;

(h.5) For mileage:

(I) Not to exceed the mileage rate authorized for county officials and employees pursuant to section 30-11-107 (1) (t), for each mile actually and necessarily traveled in serving each writ, subpoena, or other process in an action other than a criminal action; or

(II) A sheriff may establish a zone- or zip code-based mileage fee structure. The zone- or zip code-based mileage fee structure shall establish a single mileage fee for the service of any writ, subpoena, or other process in an action, other than a criminal action, in each separate zone or zip code, as applicable, in the county. The applicable single mileage fee for a zone or zip code shall be charged for all papers served in the zone or zip code regardless of the number of attempts or actual mileage traveled by a sheriff within the zone or zip code during a sheriff's operational period. The single mileage fees for each zone or zip code shall be set by resolution of the board of county commissioners for the county and posted pursuant to section 30-1-108.

(i) In making demand for payment on executions when payment is not made, in counties of every class, one dollar;

(j) For levying execution or writ of attachment, besides actual custodial and transportation costs necessarily incurred in counties of every class, mileage, as described in paragraph (h.5) of this subsection (1), and actual expenses;

(k) For levying writ of replevin, besides actual custodial and transportation costs necessarily incurred in counties of every class, mileage, as described in paragraph (h.5) of this subsection (1), and actual expenses;

(l) No custodian shall be appointed by the sheriff to take custody of goods by him or her attached, nor shall any deputy be placed in charge thereof, unless the plaintiff or his or her attorney shall request the appointment of such custodian in writing; such custodian or deputy shall receive twelve dollars per diem of twelve hours, or fraction thereof, which shall be taxed as costs in the case;

(m) For making and filing for record a certificate of levy on attachment or other cases, in counties of every class, actual expenses, but not more than thirty dollars;

(n) For committing and discharging convicted prisoners to and from the county jail, in counties of every class, a reasonable fee, not to exceed thirty dollars, which fee shall be collected directly from prisoners at the time of commitment, but shall be refunded to any prisoner who is not convicted;

(o) For serving writ with aid of posse comitatus with actual expenses necessarily incurred in executing said writ, in counties of every class, actual expenses, but not more than sixty dollars; for serving same without aid in counties of every class, actual expenses, but not more than four dollars;

(p) For attending before any judge, court not being in session, with prisoners with writ of habeas corpus for each day of twelve hours, or fraction thereof, in counties of every class, twelve dollars;

(q) For attending courts of record when in session, per diem of twelve hours, or fraction thereof, in counties of every class, twelve dollars; but the attendance upon the county court shall be certified by the judge of said court at the close of each month;

(r) For advertising property for sale, besides the actual cost of the advertising, in counties of every class, actual expenses, but not more than thirty dollars;

- (s) For making certificates of sale previous to execution of deed, or on sales of personal property, in counties of every class, actual expenses, but not more than thirty dollars;
- (t) For executing and acknowledging deed of sale of real estate, in counties of every class, actual expenses, but not more than forty dollars;
- (u) For taking, approving, and returning bond in any case, in counties of every class, a reasonable fee, not to exceed ten dollars;
- (v) For executing capias or warrant in criminal cases, on each prisoner named therein, in counties of every class, two dollars;
- (w) For transporting insane or other prisoners, besides the actual expenses necessarily incurred, in counties of every class, not less than twelve cents per mile nor more than the maximum mileage allowance provided for state officers and employees under section 24-9-104, C.R.S., as determined by resolution of the board of county commissioners of each county or as provided by the charter of a home rule county, and for the service of mittimus or other process order, whether written or otherwise, in transporting prisoners, in counties of every class, not less than twelve cents per mile nor more than the maximum mileage allowance provided for state officers and employees under section 24-9-104, C.R.S., as determined by resolution of the board of county commissioners of each county or as provided by the charter of a home rule county; except that such mileage shall be only by one officer and no mileage shall be charged upon the guards attending the officer having custody of the prisoner and further except that the guards attending the officer in charge of the prisoner shall receive, besides the expenses necessarily incurred, the sum of twelve dollars per diem of twelve hours, or fraction thereof, to be paid out of the county treasury;
- (x) For his or her services in sales of real estate on an execution or decree, order of court, or other court process, besides actual expenses, in counties of every class on all bids under three thousand dollars, twenty dollars; and on all sums bid over three thousand dollars, one percent; but such commission shall in no case exceed the sum of one hundred dollars;
- (y) For money collected by sale of personal property, in counties of every class, on all sums bid under five hundred dollars, five percent; on all sums bid over five hundred dollars and under one thousand dollars, six percent; and on all sums bid over one thousand dollars, seven percent; but no fee shall be charged for an auctioneer or other person for making sales of personal property; and in no case shall such commission exceed the sum of one hundred dollars;
- (z) For money collected or settlements made without sale, after writ of execution, attachment, or replevin has been placed in his or her hands and levy or demand for payment has been made on the proper party, in counties of every class, on all amounts under five hundred dollars, three percent; on all amounts over five hundred dollars and under one thousand dollars, two percent; and on all amounts over one thousand dollars, one and one-half percent; but the fee in no case shall exceed the sum of one hundred and fifty dollars; and the plaintiff or any person making any settlement shall be liable to the sheriff for such fees;
- (aa) For pursuing and capturing, or pursuit without capture, when previously authorized by the board of county commissioners, each prisoner charged with the commission of any crime denominated a felony, beyond the limits of said county, in counties of every class, all necessary expenses of such pursuit, upon a verified, itemized account being presented for the same, together with twelve dollars per diem of twelve hours for the time occupied in such pursuit;
- (bb) For serving and returning writ of ne exeat or body attachment, in counties of every class, actual expenses, but not more than twenty dollars;
- (cc) For serving copy of execution when making levy on shares of stock under execution, on each party served, in counties of every class, actual expenses, but not more than sixty dollars;
- (dd) For making certificates of levy on shares, or otherwise, in counties of every class, actual expenses, but not more than thirty dollars;
- (ee) For making return on execution, in counties of every class, actual expenses, but not more than sixty dollars;

(ff) For executing certificate of redemption, in counties of every class, actual expenses, but not more than thirty dollars;

(gg) For service and execution of any writ of restitution or order of possession of premises, besides actual transportation costs necessarily incurred in counties of every class, actual expenses not to exceed two hundred dollars; except that a sheriff may charge for actual expenses in excess of two hundred dollars if the work performed exceeds two hours in duration. A sheriff may charge a fee under this paragraph (gg) after the sheriff has provided a detailed accounting of his or her actual expenses to the person requesting such service. Actual transportation costs assessed pursuant to this paragraph (gg) shall only be charged once per location for each service or execution.

(1.5) If the cost of serving any writ of restitution or order of possession of premises may be provided at a lower cost to a county by a private provider, such county shall contract with a private provider pursuant to a competitive bidding system in which a contract to provide the service of such writs is awarded to the lowest bidder. The provisions of this subsection (1.5) shall not be deemed to authorize that services related to the execution of any writ of restitution or order of possession of premises be provided through private contracting.

(2) As used in this section, "actual expenses" means those personnel and processing costs incurred in typing, processing, filing, and serving said process papers but does not include mileage. Subject to the limitations contained in this section, the fee for each type of service shall be fixed by ordinance or resolution.

Source: L. 1891: p. 205, § 4. R.S. 08: § 2532. L. 21: p. 312, § 1. C.L. § 7882. CSA: C. 66, § 16. CRS 53: § 56-4-7. L. 55: p. 390, § 1; C.R.S. 1963: § 56-4-8. L. 69: p. 386, § 1. L. 77: (1)(a), (1)(c), (1)(f), (1)(g), (1)(j), (1)(k), (1)(m) to (1)(t), and (1)(cc) to (1)(ff) amended and (2) added, p. 1429, § 1, effective July 1. L. 78: (1)(n) and (1)(w) amended, p. 442, § 1, effective March 3. L. 84: (1)(a), (1)(b), (1)(d), (1)(e), and (1)(w) to (1)(z) amended, p. 814, § 1, effective March 16. L. 88: (1)(j) and (1)(k) amended and (1)(gg) and (1.5) added, p. 1109, §§ 1, 2, effective July 1. L. 94: (1)(u) amended, p. 1238, § 8, effective May 22. L. 96: (1) amended, p. 747, § 1, effective July 1. L. 2001: (1)(a.5), (1)(b.5), (1)(c.5), (1)(d.5), (1)(e), (1)(f), (1)(g), (1)(h.5), (1)(j), (1)(k), (1)(m), (1)(o), (1)(r), (1)(s), (1)(t), (1)(bb), (1)(cc), (1)(dd), (1)(ee), (1)(ff), and (1)(gg) amended, p. 436, § 1, effective July 1. L. 2004: (1)(n) amended, p. 631, § 1, effective July 1. L. 2005: (1)(f), (1)(j), (1)(k), and (1)(gg) amended, p. 263, § 2, effective August 8. L. 2010: (1)(b.5), (1)(d.5), and (1)(h.5) amended, (HB 10-1057), ch. 118, p. 396, § 1, effective August 11.

ANNOTATION

Law reviews. For article, "Obtaining Costs for Clients — Part 1", see 14 Colo. Law. 1974 (1985).

The provisions of this section are mandatory. Farmers Union Milling & Elevator Co. v. Smith, 79 Colo. 277, 245 P. 346 (1926).

The compensation given a sheriff by this section for serving a special venire for jurors in a court of record is for the service, whether performed by him or by deputy. Sargent v. Bd. of Comm'rs, 21 Colo. 158, 40 P. 366 (1895).

The mileage fee prescribed for the sheriff in this section for serving any process is intended solely as a part of the compensation for such services, all of which is to be applied to the payment of his salary. Sargent v. Bd. of Comm'rs, 21 Colo. 158, 40 P. 366 (1895).

And the evident intent of the general assembly was to create by the fee act a mileage fee, all of which belongs to the officer as part of his compensation for services actually rendered,

and no part of which should be applied to the officer's necessary traveling expenses. Sargent v. Bd. of Comm'rs, 21 Colo. 158, 40 P. 366 (1895).

Because by the salary act another mileage fee was provided for, separate and distinct from that in the fee act, out of which the officer was to be repaid his actual traveling expenses, and no more. Sargent v. Bd. of Comm'rs, 21 Colo. 158, 40 P. 366 (1895).

And under this section an officer who serves a number of writs in the same case upon a single journey is entitled to receive but one mileage fee. Bd. of County Comm'rs v. Love, 15 Colo. 430, 25 P. 557 (1890).

Under this section the sheriff conveying several prisoners to the penitentiary or other place of detention is entitled to but one mileage for the service of the mittimus, no matter what may be the number of his prisoners. Bd. of County Comm'rs v. Campbell, 52 Colo. 440, 123 P. 317 (1912).

This section inhibits the appointment of a custodian without request in writing of the plaintiff or his attorney in an attachment suit, and there is no reason apparent why the rule under the statute of frauds, that a subsequent written admission of a previous parol agreement generally takes the case out of the statute, should not be applied to this section regarding appointment of custodians. *Farmers Union Milling & Elevator Co. v. Smith*, 79 Colo. 277, 245 P. 346 (1926).

But it was held under the facts disclosed that there was a sufficient written recognition of a previous oral request for a custodian at a compensation of one dollar a day. *Farmers Union Milling & Elevator Co. v. Smith*, 79 Colo. 277, 245 P. 346 (1926).

The mileage fee set in subsection (1)(w) does not place a cap on transportation fees that may be charged to a defendant. *People v. Fogarty*, 126 P.3d 238 (Colo. App. 2005).

30-1-105. Constructive mileage not allowed. (Repealed)

Source: L. 1891: p. 324, § 2. R.S. 08: § 2533. C.L. § 7883. CSA: C. 66, § 17. CRS 53: § 56-4-8. C.R.S. 1963: § 56-4-9. L. 64: p. 384, § 11. L. 2010: Entire section repealed, (HB 10-1057), ch. 118, p. 397, § 2, effective August 11.

30-1-105.5. Two or more papers served on same person or different persons at same time and place in same action. (1) Except as provided in subsection (2) of this section, when any sheriff serves two or more papers on the same person, or serves papers on different persons at the same time and place in the same action, the sheriff shall charge the highest individual fee allowable pursuant to section 30-1-104 for the first process and an additional ten dollars for each subsequent process served.

(2) If a county has adopted a zone- or zip code-based mileage fee structure, as that term is described in section 30-1-104 (1) (h.5) (II), when any sheriff serves two or more papers on the same person, or serves papers on different persons at the same time and place in the same action, the sheriff shall charge the single zone- or zip code-based mileage fee for the first process and an additional ten dollars for each subsequent process served.

Source: L. 2010: Entire section added, (HB 10-1057), ch. 118, p. 397, § 3, effective August 11.

30-1-106. Service must be made upon offer or tender of fees. (1) No sheriff shall refuse to serve any writ, summons, or notice requested by any person entitled to such service, when offered or tendered the fees allowed by law for such service; nor shall he or she charge, demand, or receive any greater sum or compensation or allowance.

(2) A sheriff shall have the authority to establish billing accounts for licensed attorneys and licensed collection agencies that have a principal office located in the state.

(3) A sheriff shall have the authority to develop and publish standardized procedures for billing the accounts authorized by subsection (2) of this section. Such procedures may include the ability to suspend the billing privileges of any entity for nonpayment of a fee upon demand or other good cause shown.

Source: L. 1891: p. 324, § 3. R.S. 08: § 2534. C.L. § 7884. CSA: C. 66, § 18. CRS 53: § 56-4-9. C.R.S. 1963: § 56-4-10. L. 64: p. 384, § 12. L. 2010: Entire section amended, (HB 10-1057), ch. 118, p. 397, § 4, effective August 11.

30-1-107. Penalty for violation - duties. Any sheriff who violates section 30-1-106 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five nor more than fifty dollars for each offense and is liable to any person aggrieved to pay all loss, damage, and expenses, including attorney fees in prosecuting or suing such officer, which such aggrieved person may sustain by reason of such violation. The sheriff and the sheriff's deputies shall be subject to section 30-1-106.

Source: L. 1891: p. 324, § 4. R.S. 08: § 2535. C.L. § 7885. CSA: C. 66, § 19. CRS 53: § 56-4-10. C.R.S. 1963: § 56-4-11. L. 64: p. 384, § 13. L. 2010: Entire section amended, (HB 10-1057), ch. 118, p. 398, § 5, effective August 11.

30-1-108. Schedule of fees posted. All officers of this state who are required to collect fees for their services are required to make fair tables of their respective fees, and keep the same posted in their respective offices in some conspicuous place for the inspection of all persons who have business in such office; and, if any such officer neglects to keep a table of fees posted in his office, such officer, for each day of such neglect, shall forfeit and pay the sum of five dollars, to be recovered by action at law before the county court for the use of the county in which the offense has been committed.

Source: L. 1891: p. 220, § 15. R.S. 08: § 2545. C.L. § 7893. CSA: C. 66, § 32. CRS 53: § 56-4-11. C.R.S. 1963: § 56-4-12. L. 64: p. 384, § 14.

30-1-109. Fee bill. Any person liable for any costs or fees shall be entitled to receive on demand a certified bill of the same in which the items of service and the charges therefor shall be specifically stated.

Source: L. 1891: p. 220, § 16. R.S. 08: § 2546. C.L. § 7894. CSA: C. 66, § 33. CRS 53: § 56-4-12. C.R.S. 1963: § 56-4-13.

30-1-110. Penalty for failure to serve. When any clerk, sheriff, or other officer is required by any person, in good faith, to do any official act, or perform any official duty for which he is entitled to demand and receive a fee established by law, and if required to do so, he shall state to such person the amount which he is allowed by law to collect, and if, upon a tender to him of such amount, such officer willfully neglects or refuses to perform such act or duty, he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten nor more than two hundred dollars.

Source: L. 1885: p. 208, § 2. R.S. 08: § 2548. C.L. § 7896. CSA: C. 66, § 35. CRS 53: § 56-4-13. C.R.S. 1963: § 56-4-14. L. 64: p. 385, § 15.

30-1-111. Unauthorized fees - penalty. If any officer whose fees are expressed and limited in this article takes or demands greater fees than prescribed for any service, or charges for said services and neglects or refuses to enter the same of record, or to perform the same, he shall forfeit to the party injured thereby the sum of fifty dollars to be recovered as actions of debt of the same amount are recoverable by law.

Source: L. 1891: p. 220, § 17. L. 21: p. 230, § 4. C.L. § 7876. L. 23: p. 252, § 2. CSA: C. 66, § 36. CRS 53: § 56-4-14. C.R.S. 1963: § 56-4-15.

ANNOTATION

This section is penal and must be strictly construed. *Mitchell v. Wheeler*, 20 Colo. App. 159, 77 P. 361 (1904).

And it denounces a penalty of 50 dollars against any officer who shall take greater fees for any services to be done by him than those provided by the statute, and a like penalty against any officer who shall charge, demand, or take any of the fees provided by the statute where the services shall not be actually done or performed. *Mitchell v. Wheeler*, 20 Colo. App. 159, 77 P. 361 (1904).

A treasurer is not liable under this section for taking fees or commissions to which he is not entitled; such acts are not covered by the terms of this section. *Mitchell v. Wheeler*, 20 Colo. App. 159, 77 P. 361 (1904).

And a complaint was held not sufficient to constitute a cause of action under the provisions of this section, for the reason that there was no allegation that the treasurer had charged a greater fee than was provided for, or that he had charged, demanded, or taken a fee for a service which was not rendered. *Mitchell v. Wheeler*, 20 Colo. App. 159, 77 P. 361 (1904).

Section not assumed basis of action. In a suit to recover from a police magistrate excess fees collected, the reviewing court will not assume that the action is based on this section where the record does not so indicate. *Cummings v. Aiken*, 82 Colo. 391, 260 P. 524 (1927).

30-1-112. Fees paid monthly. (1) It is the duty of county sheriffs, county clerks and recorders, and all county officials to collect all fees of their respective offices and to pay the same to the county treasurer of their respective counties monthly; also to file monthly with the county treasurer an itemized statement of all fees so collected.

(2) Commencing January 1, 1970, it is the duty of the clerks of district, juvenile, probate, and county courts to transmit monthly all fees to the state treasurer, who shall deposit the same in the state general fund.

Source: L. 19: p. 378, § 10. C.L. § 7904. CSA: C. 66, § 43. CRS 53: § 56-4-15. L. 58: pp. 247, 249, §§ 13, 19, 20. L. 63: p. 492, §§ 1, 2. C.R.S. 1963: § 56-4-16. L. 64: p. 462, § 3. L. 69: p. 256, § 31. L. 87: (2) amended, p. 1582, § 39, effective July 10.

ANNOTATION

Applied in *Bd. of County Comm'rs v. Bullcock*, 122 Colo. 218, 220 P.2d 877 (1950).

30-1-113. Officers to keep account of fees. Each such officer, in a book provided for the purpose, shall keep a full, true, accurate, and minute account of all fees of his office, designating in corresponding columns the amount of all fees, and all payments received on account thereof, and shall also keep an account of all expenditures made by him on account of clerk hire and other necessary expenses. Such accounts shall always be open to the inspection and examination of the board of county commissioners, and the accounts of the clerks of the district court shall always be open to the inspection and examination of the state treasurer.

Source: L. 1891: p. 313, § 19. R.S. 08: § 2551. C.L. § 7899. CSA: C. 66, § 38. CRS 53: § 56-4-16. L. 58: pp. 248, 249, §§ 16, 19, 20. C.R.S. 1963: § 56-4-17. L. 69: p. 386, § 2.

ANNOTATION

Officers required to keep accounts. All of the various officers who collect fees which they are bound to pay into the county treasury, and which make up the fee funds out of which their salaries are to be paid, must keep an account of all fees earned, payments received, and expenditures made on account of clerk hire. *Bd. of Comm'rs v. Clapp*, 9 Colo. App. 161, 48 P. 157 (1897).

This record is at all times subject to inspection by the board of county commissioners. *Frost v. Bd. of Comm'rs*, 43 Colo. 43, 95 P. 289 (1908).

A complaint under this section should allege that the officer failed or neglected to keep this book of account, or that the county commissioners were prevented from examining the same. *Frost v. Bd. of Comm'rs*, 43 Colo. 43, 95 P. 289 (1908).

This section did not authorize a justice to appoint a clerk and compel the county to pay the salary which he should agree to pay him. *Bd. of Comm'rs v. Clapp*, 9 Colo. App. 161, 48 P. 157 (1897).

30-1-114. Monthly report of officers. If required by the board of county commissioners, the county treasurer, sheriff, and county clerk and recorder, on the first Monday of each month during the officer's term of office, shall make to the chairman of the board of county commissioners a report in writing under oath of all the fees of the officer's office, of every name and description, and of all necessary expenses of clerk hire and other expenses for the month ending at the time of said report. If required, such report shall state fully the manner in which such fees accrued.

Source: L. 1891: p. 313, § 20. R.S. 08: § 2552. C.L. § 7900. CSA: C. 66, § 39. CRS 53: § 56-4-17. C.R.S. 1963: § 56-4-18. L. 64: p. 385, § 16. L. 69: p. 256, § 32. L. 92: Entire section amended, p. 964, § 2, effective June 1.

ANNOTATION

The phraseology of this section did not necessarily imply that a justice had authority to appoint a clerk, or if that authority could be therefrom deduced, the court was unable to conclude the clerk's compensation was payable out of any other fund than that which was made up of the fees and emoluments of the office, and since several of the officers named were accorded the right to appoint assistants, deputies

and clerks, rebutted the contention that it was the evident intention of the general assembly to confer on the justice the power to appoint a clerk. *Bd. of Comm'rs v. Clapp*, 9 Colo. App. 161, 48 P. 157 (1897).

Applied in *Henderson v. Bd. of Comm'rs*, 4 Colo. App. 302, 35 P. 880 (1894); *Hamma v. People*, 42 Colo. 401, 94 P. 326 (1908).

30-1-115. Commissioners to audit accounts. It is the duty of the board of county commissioners to audit such accounts as soon as may be, and correct and adjust the same in accordance with the facts.

Source: L. 1891: p. 314, § 21. **R.S. 08:** § 2553. **C.L.** § 7901. **CSA:** C. 66, § 40. **CRS 53:** § 56-4-18. **C.R.S. 1963:** § 56-4-19.

ANNOTATION

Express duty. This section expressly charges the county commissioners with the duty of auditing the accounts of county officers, and correcting and adjusting the same. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

The board had no control of the public examiner, no authority to direct an audit by him of the books of a county officer, and was not charged with notice of his report when made. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

The purpose and vital importance of an efficient audit were manifest from the statutory requirement that all prescribed fees had to be collected in advance by county officers, and when collected had to be paid to the county treasurer, and that any balance left to the credit of the several funds in any year after the salaries

and compensation provided for had been paid therefrom, would be placed to the credit of the general county fund. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

The board is not limited by this section to any specific means or agencies for making the required audit. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

The board had the implied power to employ an accountant. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

The expense of an examination of the books of the county officers, required by this section, not contemplated at the date of the annual appropriation, may properly be discharged from the contingent fund. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

30-1-116. Officers shall collect fees in advance. (1) Except as provided in section 30-1-106, every officer shall collect every fee, as prescribed, for services performed by him or her in advance, if the same can be ascertained, and when any officer negligently or willfully fails to collect any such fee, the same shall be charged against his or her salary.

(2) In proceedings where a public administrator, special administrator, receiver, or other person is appointed by the court to take possession of assets of an estate in which there are no funds immediately available to pay fees, the fees need not be paid in advance, but shall be paid as soon as funds become available.

(3) No officer shall collect fees in advance in any collection action initiated pursuant to section 18-1.3-506, C.R.S.

Source: L. 1891: p. 314, § 23. **R.S. 08:** § 2550. **C.L.** § 7898. **CSA:** C. 66, § 37. **CRS 53:** § 56-4-19. **L. 61:** p. 383, § 1. **C.R.S. 1963:** § 56-4-20. **L. 89:** (3) added, p. 887, § 2, effective April 6. **L. 2002:** (3) amended, p. 1542, § 286, effective October 1. **L. 2010:** (1) amended, (HB 10-1057), ch. 118, p. 398, § 6, effective August 11.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Justice Courts", see 24 Dicta 184 (1947).

This section imposing a liability in the nature of a penalty is strictly construed; and the penalty is not to be extended to cases not within the terms of the statute, or increased beyond the limit prescribed. Bd. of Comm'rs v. Law, 3 Colo. App. 328, 33 P. 143 (1893); Colo. Fuel & Iron Co. v. Lenhart, 6 Colo. App. 511, 41 P. 834 (1895); Hazelton v. Porter, 17 Colo. App. 1, 67 P. 170 (1902); Price v. Bd. of County Comm'rs, 22 Colo. App. 315, 124 P. 353 (1912).

By this section the duty of collecting fees in advance is imposed upon the officer where the same can be ascertained. Frost v. Bd. of County Comm'rs, 43 Colo. 43, 95 P. 289 (1908).

This section makes the officers responsible for the collection of their fees. Bransom v. Bd. of County Comm'rs, 5 Colo. App. 231, 37 P. 957 (1894).

Penalty stimulates collection. The fact is recognized that sometimes such prior ascertainment may be impossible, and therefore the fees may not be so collected, and in order to stimulate or coerce the collection of the fees earned and belonging to the county, to wit, the excess above the sums necessary to make up the officer's salary, the penalty of charging the uncollected portion thereof against his salary is provided. Frost v. Bd. of County Comm'rs, 43 Colo. 43, 95 P. 289 (1908).

Negligent or wilful failure results in forfeiture. This section makes it the duty of the clerk to collect every fee for services performed by him, and provides a forfeiture if he shall wilfully or negligently fail to do so. Henderson v. Bd. of Comm'rs, 4 Colo. App. 301, 35 P. 880 (1894).

This penalty is not to be enforced unless the failure to make such collection is due to the negligence or wilfulness of the delinquent offi-

cial. Frost v. Bd. of County Comm'rs, 43 Colo. 43, 95 P. 289 (1908).

As to uncollected fees, a county judge was only liable for the negligent or wilful failure to collect. Price v. Bd. of County Comm'rs, 22 Colo. App. 315, 124 P. 353 (1912).

In a literal sense, the uncollected fees cannot be charged against the officer's salary, since the county is only entitled to fees collected above the amount necessary to make up the salary. Price v. Bd. of County Comm'rs, 22 Colo. App. 315, 124 P. 353 (1912).

But salary is maximum limit of penalty. The amount of the salary received by the officer must be taken as the maximum limit of the penalty for the negligent or wilful failure to collect. Price v. Bd. of County Comm'rs, 22 Colo. App. 315, 124 P. 353 (1912).

Negligent or wilful failure must be alleged. Under this section a complaint against a county judge for surplus fees uncollected had to allege that his failure to collect the same was negligent or wilful. Frost v. Bd. of County Comm'rs, 43 Colo. 43, 95 P. 289 (1908).

Burden of proof. In a suit against a county judge to recover the surplus uncollected fees of his office, the burden of proof was on the county commissioners to show that the fees were negligently or wilfully left uncollected. Frost v. Bd. of County Comm'rs, 43 Colo. 43, 95 P. 289 (1908).

Slight evidence was sufficient to shift the burden of proof on the officer to establish the exercise of reasonable diligence in endeavoring to collect such unpaid fees. Frost v. Bd. of County Comm'rs, 43 Colo. 43, 95 P. 289 (1908).

Lack of record only affects proof. The alleged neglect to make a record of such fees, as in this case, could only affect the matter of proof. Price v. Bd. of County Comm'rs, 22 Colo. App. 315, 124 P. 353 (1912).

30-1-117. Refusal to pay fees to treasurer - penalty. Any officer failing or refusing to pay over to the county treasurer or to the state treasurer the fees of his office, as provided in section 30-1-112, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and may be removed from office by the court before which the conviction is had.

Source: L. 1891: p. 314, § 24. R.S. 08: § 2555. C.L. § 7903. CSA: C. 66, § 42. CRS 53: § 56-4-20. L. 58: pp. 248, 249, §§ 17, 19, 20. C.R.S. 1963: § 56-4-21. L. 69: p. 386, § 2.

ANNOTATION

This section attaches severe penalties to the failure of the officers to pay over the fees. Bd. of Comm'rs v. Davis, 27 Colo. App. 501, 150 P. 324 (1915).

It provides a penalty of imprisonment in the county jail, or fine, or both such fine and imprisonment, for failure of the district clerk to pay over to the county treasurer the fees of his

office. *Adams v. People*, 25 Colo. 532, 55 P. 806 (1898).

disbursed. *Adams v. People*, 25 Colo. 532, 55 P. 806 (1898).

It had no application whatever to jury fees and witness fees which the clerk collected and

30-1-118. Mileage allowances. (Repealed)

Source: L. 33: p. 788, § 1. CSA: C. 66, § 44. CRS 53: § 56-4-21. C.R.S. 1963: § 56-4-22. L. 69: p. 391, § 1. L. 73: p. 628, § 3. L. 75: (1) repealed, p. 218, § 60, effective July 16. L. 78: Entire section amended, p. 443, § 2, effective March 3. L. 80: Entire section repealed, p. 657, effective July 1.

30-1-119. Separate fee funds kept. (1) Except as otherwise provided in subsection (2) of this section, all fees collected by county officers except those collected pursuant to section 30-1-102 (3) shall be paid over to the county treasurer and shall be kept by him in separate funds to be known as:

- (a) The “sheriff’s fee fund”;
- (b) The “county clerk’s fee fund”;
- (c) The “county treasurer’s commission and fee fund”.

(2) The revenues generated annually from the fee for committing and discharging prisoners authorized pursuant to section 30-1-104 (1) (n) shall be distributed as follows:

(a) (I) The county shall expend an amount equal to twenty percent of the revenues generated annually from the fee to administer a community-based treatment program for the treatment of offenders with mental illness or addiction committed or discharged by the county if the county has established, or the board of county commissioners chooses to establish, such a community-based treatment program.

(II) For purposes of this paragraph (a), “community-based treatment program” means a community-based program that provides management and treatment services to persons with mental illness or addiction in the criminal or juvenile justice system, designed, at a minimum, to reduce recidivism and hospitalization of these persons.

(b) The county shall expend an amount equal to twenty percent of the revenues generated annually from the fee for training of the sheriff and deputy sheriffs and other local law enforcement officers, which training may include a crisis intervention training component to meet the needs of offenders with mental illness; and

(c) The county shall expend the balance of the revenues generated annually from the fee for law-enforcement-related expenditures to defray the costs of processing prisoners into and out of custody.

Source: L. 45: p. 337, § 16. CSA: C. 66, § 58(16). CRS 53: § 56-4-22. L. 58: pp. 248, 249, §§ 18-20. C.R.S. 1963: § 56-4-23. L. 64: p. 385, § 17. L. 69: p. 256, § 33. L. 87: IP(1) amended, p. 1202, § 2, effective April 30. L. 2004: Entire section amended, p. 631, § 2, effective July 1.

ANNOTATION

Legislative intent. By enacting this section the general assembly evinced a legislative intent to require all fees, emoluments, perquisites and commissions collected by a county clerk and recorder to be accounted for and placed in the proper fund in the office of the county treasurer,

to be withdrawn therefrom only on warrants properly issued in payment of the salaries of such deputies and assistants as are necessary in the performance of their statutory duties. *Flanders v. Kochenberger*, 118 Colo. 104, 193 P.2d 281 (1948).

ARTICLE 2

Compensation of County and Other Officers

Cross references: For salaries and compensation of county officers, see §§ 8 and 15 of art. XIV, Colo. Const.; for the text of H.C.R. 85-1003, see L. 85, p. 1521.

30-2-101.	Classification of counties for salaries.	30-2-105.	assistants. Superintendent of schools - mileage. (Repealed)
30-2-102.	Categorization of counties for fixing salaries of county officers.	30-2-106.	Undersheriffs and deputies - salaries - report of fees.
30-2-103.	County commissioners - expenses.	30-2-107.	Traveling expenses of sheriff.
30-2-104.	Compensation of deputies and	30-2-108.	Coroner - compensation - mileage.

30-2-101. Classification of counties for salaries. For the purpose of providing for and regulating the compensation of county and other officers, the counties of this state, other than home rule counties or home rule cities and counties, are classified as provided in this article.

Source: L. 52: p. 111, § 1. CRS 53: § 56-2-1. L. 62: p. 162, § 1. C.R.S. 1963: 56-2-1. L. 81: Entire section amended, p. 2028, § 32, effective July 14.

30-2-102. Categorization of counties for fixing salaries of county officers. (1) For the purpose of establishing the salaries of county officers:

- (a) Category I counties shall consist of the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, Pueblo, and Weld;
- (b) Category II counties shall consist of the counties of Eagle, Fremont, Garfield, La Plata, Mesa, Pitkin, and Summit;
- (c) Category III counties shall consist of the counties of Alamosa, Archuleta, Chaffee, Clear Creek, Delta, Gilpin, Grand, Gunnison, Las Animas, Moffat, Montezuma, Montrose, Morgan, Otero, Park, Rio Blanco, San Miguel, Routt, Logan, and Teller;
- (d) Category IV counties shall consist of the counties of Custer, Elbert, Huerfano, Kit Carson, Lake, Ouray, Prowers, Rio Grande, Washington, and Yuma;
- (e) Category V counties shall consist of the counties of Baca, Bent, Cheyenne, Conejos, Costilla, Crowley, Hinsdale, Lincoln, Phillips, Saguache, and San Juan;
- (f) Category VI counties shall consist of the counties of Dolores, Jackson, Kiowa, Mineral, and Sedgwick.

(2) The annual salaries of county officers whose term of office begins prior to January 1, 2002, shall be as follows:

	County Commissioners	County Sheriffs	County Treasurers, Assessors, and Clerks
(a) Category I	63,203	71,293	63,203
(b) Category II	51,827	57,768	51,827
(c) Category III	41,714	53,091	41,714
(d) Category IV	35,394	47,782	35,394
(e) Category V	32,613	36,405	32,613

(2.1) On and after January 1, 2002, but prior to January 1, 2007, the annual salaries of county officers whose term of office begins on or after January 1, 2002, but prior to January 1, 2007, shall be as follows:

	County Commissioners	County Sheriffs	County Treasurers, Assessors, and Clerks	County Coroners
(a) Category I	63,203	95,000	75,500	75,500
(b) Category II	51,827	75,000	62,000	32,000

(c) Category III	41,714	65,000	50,000	25,000
(d) Category IV	35,394	57,000	42,500	17,000
(e) Category V	32,613	42,000	37,500	6,500

(2.2) On and after January 1, 2007, the annual salary of a county officer whose term of office begins on or after such date shall be as follows:

	County Commissioners	County Sheriffs	County Treasurers, Assessors, and Clerks	County Coroners	County Surveyors
(a) Category I	87,300	111,100	87,300	87,300	5,500
(b) Category II	72,500	87,700	72,500	44,200	4,400
(c) Category III	58,500	76,000	58,500	33,100	3,300
(d) Category IV	49,700	66,600	49,700	22,100	2,200
(e) Category V	43,800	49,100	43,800	9,900	1,100
(f) Category VI	39,700	46,500	39,700	9,000	1,000

(2.3) and (2.5) Repealed.

(2.7) (Deleted by amendment, L. 97, p. 308, § 1, effective August 6, 1997.)

(2.8) The general assembly hereby finds and declares that:

(a) The rate of compensation of elected county officers shall be provided in accordance with the provisions set forth in section 15 of article XIV of the state constitution;

(b) The salaries of county commissioners, sheriffs, treasurers, assessors, clerk and recorders, coroners, and surveyors have been fixed by law through the enactment of this section.

(c) (Deleted by amendment, L. 98, p. 409, § 1, effective April 21, 1998.)

(3) (a) to (d) Repealed.

(e) No elected officer shall have his compensation increased or decreased during the term of office to which he has been elected or appointed. All actual and necessary expenses of an elected officer incurred while engaged in business on behalf of the county may be allowed by the board of county commissioners and paid out of the county treasury.

(4) The board of county commissioners may adjust the salaries established in this section pro rata for county officers working part-time.

(5) The salaries established pursuant to this section shall remain in effect until such time that section 15 of article XIV of the constitution of the state of Colorado is amended to authorize or direct the board of county commissioners in each county to fix the compensation of county officers.

(6) If any provision of this section is found to be unconstitutional by a court of competent jurisdiction, the remaining provisions of this section are valid, unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed.

Source: L. 52: p. 111, § 3. CSA: C. 66, § 58(7f). L. 53: p. 297, § 3. CRS 53: § 56-2-4. L. 57: p. 372, § 1. L. 58: p. 233, § 1. L. 61: p. 379, §§1, 2. L. 62: p. 163, § 3. L. 70: R&RE, p. 192, § 1. C.R.S. 1963: § 30-2-102. L. 73: p. 624, § 1. L. 77: Entire section amended, p. 1432, § 1, effective July 1. L. 81: Entire section R&RE, p. 1423, § 1, effective June 6. L. 86: (1)(a) to (1)(c), (1)(e), and (1)(f) amended, (2.5) added, and (3)(a) to (3)(d) repealed, pp. 1032, 1033, §§ 1, 2, effective May 5. L. 87: (2.5)(b) repealed, p. 1582, § 40, effective July 10. L. 88: (3)(e) amended, p. 917, § 3, effective April 14. L. 89: (2) R&RE, (2.3) added, and (2.5)(a) amended, p. 1272, §§ 1, 2, effective May 17. L. 90: (1) and (2) R&RE and (2.3) and (2.5)(a) repealed, pp. 1442, 1443, §§ 1, 2, effective April 17. L. 91: (1)(a) and (1)(b) amended, p. 714, § 1, effective March 28. L. 92: (2.7) added, p. 965, § 3, effective June 1. L. 97: (1), (2), and (2.7) amended and (2.8) added, p. 308, § 1, effective August 6. L. 98: (1) and (2.8)(c) amended, p. 409, § 1, effective April 21.

L. 2000: (2) amended and (2.1) added, p. 295, § 1, effective July 1. **L. 2001:** (1)(d), (1)(e), (2), and (2.1) amended, p. 449, § 1, effective August 8. **L. 2002:** (1)(d) and (1)(e) amended, p. 7, § 1, effective August 7; (2.1) amended, p. 365, § 1, effective August 7. **L. 2003:** (1)(c) and (1)(d) amended, p. 808, § 1, effective March 28. **L. 2005:** (1)(c) and (1)(d) amended, p. 374, § 1, effective August 8. **L. 2006:** (1)(e), IP(2.1), and (2.8)(b) amended and (1)(f) and (2.2) added, p. 448, §§ 1, 2, effective August 7. **L. 2009:** (1)(c) and (1)(d) amended, (HB 09-1203), ch. 102, p. 377, § 2, effective August 5.

ANNOTATION

This section calls for payment of salaries in fixed dollar amounts and cost of living increases should not be implied. *Hayden v. State*, 43 Colo. App. 148, 599 P.2d 979 (1979).

Compensation for county sheriffs is expressly provided for in this section. *Van Cleave v. Bd. of County Comm'rs*, 33 Colo. App. 227, 518 P.2d 1371 (1973).

But this section does not authorize a county to compensate the sheriff through provision of living quarters or a housing allowance. *Van*

Cleave v. Bd. of County Comm'rs, 33 Colo. App. 227, 518 P.2d 1371 (1973).

Thus elimination of housing allowance not violation of constitution. Because housing allowance paid to sheriff-jailer was unauthorized and illegal, its elimination did not violate constitutional prohibitions against salary or compensation reduction during the term of office of a public official. *Van Cleave v. Bd. of County Comm'rs*, 33 Colo. App. 227, 518 P.2d 1371 (1973).

30-2-103. County commissioners - expenses. County commissioners shall be allowed their actual and necessary maintenance expenses, together with such mileage as shall be determined by resolution of the board of county commissioners of the county or as provided by the charter of a home rule county, within the limits provided under section 30-11-107 (1) (t), for each mile actually traveled whether within or without the state when engaged in business on behalf of the county; but no mileage expense shall be allowed while said commissioners are traveling in an automobile furnished by the county.

Source: **L. 45:** p. 335, § 8. **CSA:** C. 66, § 58(8). **CRS 53:** § 56-2-9. **C.R.S. 1963:** § 56-2-9. **L. 72:** p. 597, § 80. **L. 78:** Entire section amended, p. 443, § 3, effective March 3. **L. 80:** Entire section amended, p. 655, § 2, effective July 1.

30-2-104. Compensation of deputies and assistants. (1) (a) The county clerk and recorders, county treasurers, county assessors, county coroners, and surveyors of the respective counties may appoint such deputies, assistants, and employees as shall be necessary at the compensation, payable at least once each month, as fixed by the officers with the approval of the boards of county commissioners of their respective counties. Except for those employees provided for pursuant to article 1 of title 26, C.R.S., boards of county commissioners may adopt a classification and compensation plan for all county employees paid in whole or in part by the county. The classification and compensation plan shall include workweek formulas of not less than forty hours designed to satisfy the varying requirements of each county service and county department as provided in paragraph (b) of this subsection (1). Upon acceptance by an elected official, the plan shall become binding upon the employees of that office. Changes in benefits, pay grades, and job classifications of employees shall thereafter be made in accordance with the plan.

(b) (I) Notwithstanding any other provision of law to the contrary, workweek formulas shall take into account the various services provided by the county, the operation of the various county departments, and the demands which such services and operations have in requiring employees to be on the job in a manner which is not in conformity with the basic forty-hour workweek which generally characterizes office work.

(II) Such workweek formulas may provide for work time in excess of forty hours during consecutive seven-day calendar periods. In such cases, computation of forty-hour pay periods may be based on an averaging formula covering more than such seven-day calendar period.

(III) Authorized overtime work shall relate to such averaged workweeks where deter-

mined in the classification and compensation plan applicable to a described department or service.

(IV) All employees who work overtime pursuant to any classification and compensation plan shall receive overtime compensation, either in cash or in compensatory time.

(2) In the event litigation is instituted relating to compensation or classification, the burden of proof shall be upon the plaintiff or the elected official instituting such action. Costs of any litigation instituted by an elected official shall be paid out of the county general fund.

Source: L. 45: p. 336, § 9. CSA: C. 66, § 58(9). CRS 53: § 56-2-10. C.R.S. 1963: § 56-2-10. L. 73: p. 629, § 1. L. 79: (1) amended, p. 1134, § 1, effective April 25. L. 81: (1)(a) amended, p. 1425, § 1, effective May 6. L. 84: (1)(a) amended, p. 582, § 3, effective March 19. L. 2003: (1)(a) amended, p. 806, § 1, effective July 1. L. 2006: (1)(a) amended, p. 449, § 3, effective August 7.

ANNOTATION

Law reviews. For article, "The Fair Labor Standards Act: Criminal and Civil Liability", see 14 Colo. Law. 1802 (1985).

Authority vested in board under phrase "with the approval of the board" does not give board unbridled power to change salaries fixed by treasurer. Kanaly v. Wadlow, 31 Colo. App. 193, 502 P.2d 83 (1972), modified, 182 Colo. 115, 511 P.2d 484 (1973).

General assembly intended to divest board of exclusive power to fix salaries and to vest some meaningful power and authority in treasurer. Kanaly v. Wadlow, 31 Colo. App. 193, 502 P.2d 83 (1972), modified, 182 Colo. 115, 511 P.2d 484 (1973).

But when the county treasurer and the board of county commissioners are unable to agree on prospective salaries for the treasurer's employees, the burden in a lawsuit brought to resolve the differences lies with the treasurer or the employee bringing the suit to show that the proposal of the treasurer is reasonable under the circumstances. Wadlow v. Kanaly, 182 Colo. 115, 511 P.2d 484 (1973).

The board is vested with the ultimate responsibility for the conduct of the fiscal affairs of the county. Wadlow v. Kanaly, 182 Colo. 115, 511 P.2d 484 (1973).

And the commissioners are charged with the construction of an annual budget from submissions from the various departments of their anticipated financial needs for the ensuing year. Wadlow v. Kanaly, 182 Colo. 115, 511 P.2d 484 (1973).

No authority in county department heads to set salaries. To hold that the heads of the various county departments had the authority to set salaries of their employees, not prescribed by statute, unless clearly exorbitant, would be to seriously compound the problems faced by the commissioners in adopting a balanced budget. Wadlow v. Kanaly, 182 Colo. 115, 511 P.2d 484 (1973).

Board reviews salaries. It seems most consistent with the requirements of county govern-

ment fiscal planning to allow the board to review salaries proposed by the heads of the various departments serving executive and administrative functions in the county. Wadlow v. Kanaly, 182 Colo. 115, 511 P.2d 484 (1973).

Such an interpretation enables the commissioners to assure a reasonable budgetary process and develop a parity in salary levels throughout these various departments. Wadlow v. Kanaly, 182 Colo. 115, 511 P.2d 484 (1973).

The power to appoint such assistants and employees as are necessary is vested in the county superintendent of schools, who may fix their compensation with the approval of the board of county commissioners. Schroeder v. Bd. of County Comm'rs, 152 Colo. 313, 381 P.2d 820 (1963).

No subsequent authority of board to cut off. Where the county superintendent determined that a clerical assistant was necessary and fixed compensation of such assistant with approval of board of county commissioners, the board was thereafter without unilateral power to diminish or cut off compensation of such assistant. Schroeder v. Bd. of County Comm'rs, 152 Colo. 313, 381 P.2d 820 (1963).

As board cannot substitute its judgment. By eliminating the salary of a clerical assistant the board of county commissioners eliminated the position, and, in effect, substituted its determination of the necessity for an assistant when that prerogative is vested by law in the duly elected county official. Schroeder v. Bd. of County Comm'rs, 152 Colo. 313, 381 P.2d 820 (1963).

Nor can court. A trial court in entering a finding determining that the assistant of the county superintendent of schools is not necessary invades the province of the executive branch of the government and is powerless to take such action. Schroeder v. Bd. of County Comm'rs, 152 Colo. 313, 381 P.2d 820 (1963).

Award of attorney fees to county sheriff was error because "elected county official" in

subsection (2) is limited to those officials specifically enumerated in subsection (1). *Johnson v. Bd. of County Comm'rs*, 676 P.2d 1263 (Colo. App. 1984).

Section not applicable. The facts of this case do not bring it within the provisions for the payment of costs under this section. *Sullivan v.*

Bd. of County Comm'rs, 692 P.2d 1106 (Colo. 1984).

Applied in *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983); *Johnson v. Bd. of County Comm'rs*, 676 P.2d 1263 (Colo. App. 1984).

30-2-105. Superintendent of schools - mileage. (Repealed)

Source: **L. 45:** p. 336, § 10. **CSA:** C. 66, § 58(10). **CRS 53:** § 56-2-11. **C.R.S. 1963:** § 56-2-11. **L. 72:** p. 597, § 81. **L. 78:** Entire section amended, p. 443, § 4, effective March 3. **L. 80:** Entire section amended, p. 656, § 3, effective July 1. **L. 84:** Entire section repealed, p. 582, § 1, effective March 19.

30-2-106. Undersheriffs and deputies - salaries - report of fees. (1) Undersheriffs and deputy sheriffs shall be appointed by the sheriffs of their respective counties, and their salaries shall be paid at least once each month. In all counties the salaries of the undersheriff and deputy sheriff shall be fixed by the sheriff, with the approval of the board of county commissioners.

(2) The undersheriff and each deputy sheriff shall make to the sheriff a report in writing, under oath, of all fees collected of any description whatsoever and of all expenditures and necessary expenses relating to the discharge of the duties of his office.

(3) In addition thereto such sheriffs, undersheriffs, and deputy sheriffs shall be allowed such mileage as shall be determined by resolution of the board of county commissioners of each county or as provided by the charter of a home rule county, within the limits provided under section 30-11-107 (1) (t), for each mile actually and necessarily traveled in the performance of their duties.

Source: **L. 45:** p. 336, § 13. **CSA:** C. 66, § 58(13). **CRS 53:** § 56-2-12. **C.R.S. 1963:** § 56-2-12. **L. 72:** p. 597, § 82. **L. 78:** (3) amended, p. 444, § 5, effective March 3. **L. 80:** (3) amended, p. 656, § 4, effective July 1. **L. 2003:** (1) amended, p. 806, § 2, effective July 1.

ANNOTATION

Approval of board of county commissioners is discretionary power, not a ministerial duty to rubberstamp a county officer's decision. *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

Circumstances to be considered by board in determining reasonableness of salaries in-

clude the amount of revenue available, the needs of other county departments and the ability of the county's taxpayers to fund additional requests, as well as the requesting department's need for the expenditures. *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

30-2-107. Traveling expenses of sheriff. Sheriffs also shall be allowed actual traveling expenses payable out of the general county fund, upon certified itemized accounts being presented for the same, in the service of all warrants, capiases, mittimus, commitments, body attachments, and court orders requiring the same and in the performance of the official duties in the investigation and pursuit of law violators throughout the state of Colorado in such amount as shall be determined by resolution of the board of county commissioners of each county or as provided by the charter of a home rule county, within the limits provided under section 30-11-107 (1) (t); but the actual expenses incurred in the service of executions, writs of attachment, replevins, restitutions, and other process shall be paid by the parties requiring such service. All such accounts shall be subject to the approval of the board of county commissioners.

Source: **L. 1891:** p. 311, § 11. **L. 1899:** p. 335, § 7. **L. 07:** p. 398, § 1. **R.S. 08:** § 2571. **L. 15:** p. 245, § 1. **L. 17:** p. 227, § 4. **L. 19:** p. 373, § 3. **C.L. § 7928. CSA:**

C. 66, § 76. CRS 53: § 56-2-16. C.R.S. 1963: § 56-2-16. L. 72: p. 598, § 83. L. 78: Entire section amended, p. 444, § 6, effective March 3. L. 80: Entire section amended, p. 656, § 5, effective July 1.

ANNOTATION

Expenses and mileage fees differentiated. The actual traveling expenses of the sheriff provided for in this section are to be paid out of and not exceeding a mileage fee at the statutory rate per mile actually and necessarily traveled in the performance of his duty, which fee is separate and distinct from and in addition to that prescribed in the fee act. *Sargent v. Bd. of Comm'rs*, 21 Colo. 158, 40 P. 366 (1895).

The allowance for traveling expenses is not a payment for services, but it is a reimbursement of money expended, and is in addition to, and independent of, salary, and if the traveling expenses should exceed the amount of mileage, at the rate limited, against which they are chargeable, the full expenses could not be paid, and a proportionate loss would be suffered; but when mileage in either a civil or criminal case has been collected and deposited, it is the duty of the board of commissioners to allow the traveling expenses incurred in the case, payable out of the mileage, if it amounts to so much, or if not, to the extent of the mileage deposited. *Bransom v. Bd. of Comm'rs*, 5 Colo. App. 231, 37 P. 957 (1894).

Necessary traveling expenses paid by the sheriff in serving a venire for jurors in a court of record should be allowed by the county. *Sargent v. Bd. of Comm'rs*, 21 Colo. 158, 40 P. 366 (1895).

If a sheriff travels upon a railroad on a free pass, he cannot be allowed the ordinary rail-

road fare as expenses necessarily incurred, but, notwithstanding he may have such a pass, he may pay the customary fare and include its amount in his expense account. *Sargent v. Bd. of Comm'rs*, 21 Colo. 158, 40 P. 366 (1895).

The use of a sleeping car by a sheriff upon his return journey from transporting a prisoner was not only customary, but was proper and convenient, and reasonable, within the meaning of this section, as a legitimate part of the necessary expenses incurred by the sheriff. *Sargent v. Bd. of Comm'rs*, 21 Colo. 158, 40 P. 366 (1895).

But, the liability of the county in such cases depended in part upon the facts and circumstances of each case, and the decision of this particular question was limited to the facts of the case. *Sargent v. Bd. of Comm'rs*, 21 Colo. 158, 40 P. 366 (1895).

The mileage fees, if earned by the officer, had to be collected by him of litigants if in civil cases, and the various statutory conditions that made the county liable for costs in criminal cases had to have happened before the sheriff got credit from the county therefor; so that, in compensating the sheriff, he was not only limited to his salary and actual traveling expenses, but to get these he had to first have collected from the parties to suits the various items of fees which went to make up, and out of which only, his compensation was paid. *Sargent v. Bd. of Comm'rs*, 21 Colo. 158, 40 P. 366 (1895).

30-2-108. Coroner - compensation - mileage.

(1) (a) Repealed.

(b) In counties of every class, the coroner shall be reimbursed for such mileage as shall be determined by resolution of the board of county commissioners of the county or as provided by the charter of a home rule county, within the limits provided under section 30-11-107 (1) (t), for each mile actually and necessarily traveled in going to and returning from the place of investigation or the place of inquest, which reimbursement shall be paid out of the county treasury.

(c) In counties of every class, the board of county commissioners shall provide for reimbursement to coroners for expenses related to travel by the coroner for the purpose of testifying as a witness or acting in any other official capacity with respect to any legal proceeding involving a death investigated by that coroner. Such reimbursement may include a mileage allowance for each mile actually and necessarily traveled in an amount determined by the board within the limits provided under section 30-11-107 (1) (t) and actual and necessary lodging, subsistence, and incidental expenses as determined by the board. Such reimbursement shall be paid out of the county treasury.

(d) In counties of every class, the board of county commissioners may provide for additional compensation to be paid to any coroner who performs a post-mortem examination of the body of a deceased person pursuant to section 30-10-606 (2), which compensation shall be paid out of the county treasury.

(2) In addition to the fees provided in subsection (1) of this section, the coroner shall

receive the same fees for summoning jurors and witnesses, and swearing jurors and witnesses, as are now allowed by law for like service. For all services performed in place of the sheriff, the coroner shall receive the same fees as are allowed to the sheriff for like service.

Source: **L. 1891:** p. 214, § 9. **R.S. 08:** § 2577. **L. 15:** p. 238, § 1. **C.L. § 7935. CSA:** C. 66, § 85. **CRS 53:** § 56-2-17. **C.R.S. 1963:** § 56-2-17. **L. 70:** p. 195, § 2. **L. 73:** p. 627, § 2. **L. 78:** (1) amended, p. 444, § 7, effective March 3. **L. 80:** (1) amended, p. 656, § 6, effective July 1. **L. 81:** (1) amended, p. 1425, § 2, effective May 6. **L. 89:** (1) amended, p. 1275, § 1, effective April 18. **L. 2002:** (1) amended, p. 365, § 2, effective August 7. **L. 2006:** (1)(a) repealed, p. 450, § 5, effective August 7.

ARTICLE 3

County Elected Officials' Salary Commission

30-3-101.	Legislative declaration.	30-3-104.	Commission officers - meetings.
30-3-102.	Definitions.	30-3-105.	Commission duties and responsibilities.
30-3-103.	County elected officials' salary commission - creation - membership - qualifications.	30-3-106.	Assistance to the commission.

30-3-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The salaries for county elected officials should be based upon equitable and proper standards in order that such salaries accurately reflect the duties and responsibilities assumed by such officials and that citizens of the highest quality may be attracted to public service.

(b) Achievement of the goals described in paragraph (a) of this subsection (1) requires the establishment of an independent commission that is empowered to make recommendations to the general assembly on the equitable and proper salaries to be paid to such officials.

(c) The work product of the independent commission will materially assist the general assembly in setting the salaries for such officials.

Source: **L. 2005:** Entire article added, p. 1466, § 1, effective June 7.

30-3-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Associations of county elected officials" shall be limited to the following associations or their successor organizations:

- (a) Colorado counties, inc.;
- (b) County sheriffs of Colorado, inc.;
- (c) Colorado county clerks association;
- (d) Colorado county treasurers' association;
- (e) Colorado coroners association;
- (f) Colorado assessors' association; and
- (g) Professional land surveyors of Colorado, inc.

(2) "Commission" means the county elected officials' salary commission created in section 30-3-103.

(3) "County elected official" means a member of a board of county commissioners, a county sheriff, a county treasurer, a county assessor, an elected county surveyor, a county clerk and recorder, or a county coroner.

(4) "Member of the general public" means a person who is not an elected official.

Source: **L. 2005:** Entire article added, p. 1466, § 1, effective June 7.

30-3-103. County elected officials' salary commission - creation - membership - qualifications. (1) There is hereby established a commission to be known as the county elected officials' salary commission consisting of thirteen members who shall be appointed as follows:

(a) Twelve members shall be appointed by the president of the senate and the speaker of the house of representatives as follows:

(I) Seven members shall be appointed to represent each of the following county elected official positions:

- (A) County commissioner;
- (B) County sheriff;
- (C) County clerk and recorder;
- (D) County assessor;
- (E) County treasurer;
- (F) County coroner; and
- (G) County surveyor.

(II) Two members shall be employees of county departments of personnel or human resources as follows:

(A) One appointee from a category I county as designated in section 30-2-102 (1) (a); and

(B) One appointee from a category II, III, IV, or V county as designated in section 30-2-102 (1) (b) to (1) (e).

(III) Three members shall be members of the general public.

(b) One member shall be appointed by the executive director of the department of local affairs.

(2) (a) In appointing members pursuant to subparagraph (I) of paragraph (a) of subsection (1) of this section, the president of the senate and the speaker of the house of representatives shall take into consideration the recommendations provided by the associations of county elected officials.

(b) In appointing members pursuant to paragraph (a) of subsection (1) of this section, if the president of the senate and the speaker of the house of representatives are unable to agree on appointments, each leader shall appoint the following positions:

(I) The president of the senate shall appoint:

- (A) A member to represent county commissioners;
- (B) A member to represent county sheriffs;
- (C) A member to represent county clerk and recorders;
- (D) A member to represent county assessors;

(E) One member pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (a) of subsection (1) of this section; and

(F) One member of the general public.

(II) The speaker of the house of representatives shall appoint:

- (A) A member to represent county treasurers;
- (B) A member to represent county coroners;
- (C) A member to represent county surveyors;

(D) One member pursuant to sub-subparagraph (A) of subparagraph (II) of paragraph (a) of subsection (1) of this section; and

(E) Two members of the general public.

(3) Initial appointments to the commission in accordance with the requirements of subsection (1) of this section shall be made on or before July 15, 2005.

(4) Four of the commission members initially appointed by the president of the senate and the speaker of the house of representatives shall serve for a term of two years, and the remainder of the members shall serve terms of four years. Subsequent appointments shall be for terms of four years, except in the case of vacancies, which shall be filled by appointment for the unexpired term in accordance with subsection (6) of this section.

(5) Any member of the commission shall be eligible for reappointment to not more than one additional term of four years.

(6) Individuals shall be appointed to fill vacancies for the remainder of any unexpired term of members of the commission. Any vacancy shall be filled by the original appointing authority.

Source: L. 2005: Entire article added, p. 1467, § 1, effective June 7.

30-3-104. Commission officers - meetings. (1) The governor shall call the first meeting of the commission for the purpose of organization no later than August 1, 2005. At this meeting, the commission shall select from its membership a chair, a vice-chair, and a secretary to serve for terms of two years. The commission shall prescribe its own rules of procedure.

(2) The commission may meet as often as necessary to perform its functions.

(3) Commission members shall serve without compensation and shall not be entitled to reimbursement for expenses.

Source: L. 2005: Entire article added, p. 1469, § 1, effective June 7.

30-3-105. Commission duties and responsibilities. (1) The commission shall study:

(a) The salaries paid to county elected officials;

(b) The responsibilities of each county elected official and the scope of authority of the entity in which the official serves;

(c) The relative level of difficulty in performing the duties of each county elected official;

(d) The amount of time directly or indirectly related to the performance of the duties, functions, and services of each county elected official; and

(e) The current levels of salaries for comparable employment in other places of public and private employment in competitive labor markets.

(2) In carrying out its duties under this article, the commission may take testimony and gather information as the commission deems appropriate.

(3) No later than the first day of convening of the first regular session of the sixty-eighth general assembly and on the first day of convening of the general assembly every two years thereafter, the commission shall submit to the local government committees of the general assembly a report that satisfies the requirements of subsection (4) of this section. The commission may also submit any interim reports as it deems necessary. Such interim report may include salary recommendations.

(4) The report required to be submitted pursuant to subsection (3) of this section shall contain recommendations of the commission as to the appropriate levels of salaries to be paid to county elected officials in each category of county as set forth in section 30-2-102 for the biennial period following the submission of the report and any additional facts and information in the judgment of the commission that are relevant to this determination. The recommendations contained in the report shall be based on sound and systematic occupational analysis and job evaluation methods and shall consider the information studied in subsection (1) of this section.

(5) The general assembly, in considering and enacting legislation concerning the salaries to be paid to county elected officials, shall give consideration to the recommendations contained in the most recent report submitted by the commission.

Source: L. 2005: Entire article added, p. 1469, § 1, effective June 7. **L. 2010:** (3) and (4) amended, (SB 10-182), ch. 291, p. 1352, § 1, effective May 26.

30-3-106. Assistance to the commission. In carrying out its duties under this article, the commission may request information or assistance from the department of local affairs.

Source: L. 2005: Entire article added, p. 1470, § 1, effective June 7.

LOCATION AND BOUNDARIES

ARTICLE 5

County Boundaries

30-5-101.	Legislative declaration - county boundaries.	30-5-137.	Lake and Chaffee - names changed.
30-5-102.	Adams.	30-5-138.	La Plata.
30-5-103.	Alamosa.	30-5-139.	Larimer.
30-5-104.	Arapahoe.	30-5-140.	Las Animas.
30-5-105.	Archuleta.	30-5-141.	Lincoln.
30-5-106.	Baca.	30-5-142.	Logan.
30-5-107.	Bent.	30-5-143.	Mesa.
30-5-108.	Greenwood abolished.	30-5-144.	Mineral.
30-5-109.	Boulder.	30-5-145.	Moffat.
30-5-109.5.	Broomfield, city and county of.	30-5-146.	Montezuma.
30-5-110.	Chaffee.	30-5-147.	Montrose.
30-5-111.	Cheyenne.	30-5-148.	Morgan.
30-5-112.	Clear Creek.	30-5-149.	Otero.
30-5-113.	Conejos.	30-5-150.	Ouray.
30-5-114.	Costilla.	30-5-151.	Ouray and Montrose - boundary.
30-5-115.	Crowley.	30-5-152.	Ouray and San Miguel - boundary.
30-5-116.	Custer.	30-5-153.	Park.
30-5-117.	Delta.	30-5-154.	Phillips.
30-5-118.	Denver, city and county of.	30-5-155.	Pitkin.
30-5-119.	Dolores.	30-5-156.	Prowers.
30-5-120.	Douglas.	30-5-157.	Pueblo.
30-5-121.	Eagle.	30-5-158.	Rio Blanco.
30-5-122.	Elbert.	30-5-159.	Rio Grande.
30-5-123.	El Paso.	30-5-160.	Routt.
30-5-124.	Fremont.	30-5-161.	Saguache.
30-5-125.	Garfield.	30-5-162.	Saguache and Costilla - boundary. (Repealed)
30-5-126.	Gilpin.	30-5-163.	San Juan.
30-5-127.	Gilpin and Jefferson counties, boundary between.	30-5-164.	San Miguel.
30-5-128.	Grand.	30-5-165.	San Miguel and Dolores - boundary.
30-5-129.	Gunnison.	30-5-166.	San Miguel and Ouray - names changed.
30-5-130.	Hinsdale.	30-5-167.	Sedgwick.
30-5-131.	Huerfano.	30-5-168.	Summit.
30-5-132.	Jackson.	30-5-169.	Teller.
30-5-133.	Jefferson.	30-5-170.	Washington.
30-5-134.	Kiowa.	30-5-171.	Weld.
30-5-135.	Kit Carson.	30-5-172.	Yuma.
30-5-136.	Lake.		

30-5-101. Legislative declaration - county boundaries. (1) The general assembly recognizes that in the establishment of the state of Colorado the counties of the territory of Colorado were adopted as the counties of the new state and that there have been additional counties established by law and in accordance with then current methods of surveying and describing county boundaries. The general assembly finds and declares that it is desirable to revise the descriptions of county boundaries to update and establish by law more precise definitions of the boundaries of the several counties of this state as they are known to exist with the use of modern methods and equipment. It is not the intent of the general assembly to effect the transfer of land from one county to another or to adversely affect the title of any property merely because of the redefinition of county boundaries.

(2) The following shall be the boundaries of the respective counties of this state.

Source: R.S. p. 157, § 1. G.L. § 350. G.S. § 424. R.S. 08: § 1082. C.L. § 8559. CSA: C. 44, § 1. CRS 53: § 34-1-1. C.R.S. 1963: § 34-1-1. L. 81: p. 1427, § 1.

ANNOTATION

Construction in pari materia inapplicable. The sections defining the county boundaries are not to be construed like different acts passed on the same subject to which the rule of construction in pari materia would be applicable. *Link v. Jones*, 15 Colo. App. 281, 62 P. 339 (1900).

A county line is not determined by the actions of omission or commission of public officers, but by legislative enactment. *Bd. of Comm'rs v. Bd. of Comm'rs*, 58 Colo. 67, 143 P. 841 (1914).

Adjustment of property rights. In the absence of a constitutional limitation, it is competent for the general assembly, at the time it carves out a new county from the territory of an old one, or by subsequent legislation, to adjust the property rights and equities existing between the two. *City Council v. Bd. of Comm'rs*, 33 Colo. 1, 77 P. 858 (1904).

30-5-102. Adams. Except for those portions that became part of the city and county of Broomfield on November 15, 2001, in accordance with sections 10 to 13 of article XX of the state constitution, all that portion of Arapahoe county, beginning at the northwest corner of Arapahoe county as now constituted, thence east along the north boundary line of said Arapahoe county to the northeast corner of said Arapahoe county, thence south along the east boundary line of said county to the southeast corner of said county, thence west along the south boundary line of said county to the east boundary line of range fifty-seven west, thence north along the said east boundary line to the intersection of the east boundary line of range fifty-seven and the south boundary line of township three in said range, thence west along the south boundary line of township three to the point of intersection of south boundary line of township three in range fifty-seven west, and the east boundary line of the city of Denver as the same is constituted at the time this section takes effect, thence northerly and westerly, following the easterly and northern boundary lines of said city of Denver as then constituted, to the point of intersection of said boundary lines with the west boundary line of Arapahoe county, thence north to the place of beginning, shall be set apart and is hereby established as a county to be called the county of Adams, which said county shall have the legal capacities and functions of other counties of this state.

Source: L. 01: p. 133, § 1. R.S. 08: § 1083. C.L. § 8560. CSA: C. 44, § 2. CRS 53: § 34-1-2. C.R.S. 1963: § 34-1-2. L. 2004: Entire section amended, p. 639, § 1, effective April 23.

ANNOTATION

For the right of Adams county to receive land from the city and county of Denver, see

City Council v. Bd. of Comm'rs, 33 Colo. 1, 77 P. 858 (1904).

30-5-103. Alamosa. Beginning at the southwest corner of section eighteen, township thirty-six north, range nine east; thence north on the west line of range nine east to its intersection with the tenth standard parallel north; thence east on said parallel to its intersection with the crest of the mountain range that divides the waters of the streams flowing westerly into the San Luis Valley from the waters flowing easterly in the drainage of the Huerfano River; thence southerly along said crest to Blanca Peak; thence southwest-erly along the crest of the mountain range that divides the waters of the streams flowing westerly into the San Luis Valley from the waters of the drainage of Blanca Creek to the peak on said crest lying two-tenths of a mile, more or less, southerly of Little Bear Peak, said peak being on the boundary of the Sangre de Cristo Grant; thence along a straight line, on the boundary of said Grant, running south forty-three degrees twenty minutes west, to its intersection with the southern boundary of the northern half of township thirty-six north; and thence west on said southern boundary to the point of beginning. Said public land survey lines are based upon the New Mexico principal meridian.

Source: L. 13: p. 19, § 1. C.L. § 8561. CSA: C. 44, § 3. CRS 53: § 34-1-3. C.R.S. 1963: § 34-1-3. L. 81: Entire section R&RE, p. 1427, § 2, effective July 1.

30-5-104. Arapahoe. All that part of Arapahoe county as is included within the following described boundaries shall be set apart and is hereby established as a county, to be called the county of Arapahoe, the boundaries are as follows, to wit:

Beginning at the southwest corner of Arapahoe county; thence east to the intersection of the east boundary line of range fifty-seven west, with the south boundary line of Arapahoe county; thence north to the intersection of the east boundary line of range fifty-seven and south boundary line of township three in said range; thence west to the point of intersection of south boundary line of township three in range sixty-seven west and the east boundary line of the city of Denver as now constituted; thence following the eastern, southern and western boundary lines of the city of Denver as the same are constituted at the time this section goes into effect to a point where said boundary line of the city of Denver intersects the west boundary line of the county of Arapahoe; thence south to the southwest corner of Arapahoe, or place of beginning.

Source: L. 01: p. 138, § 1. L. 03: p. 164, § 1. R.S. 08: § 1084. C.L. § 8562. CSA: C. 44, § 4. CRS 53: § 34-1-4. C.R.S. 1963: § 34-1-4.

ANNOTATION

For the division of the former county of Arapahoe into the city and county of Denver, the county of Adams and the county of South Arapahoe, see City Council v. Bd. of Comm'rs, 33 Colo. 1, 77 P. 858 (1904).

And as to the right of South Arapahoe county to receive from the city and county of

Denver a just proportion of the value of the property of old Arapahoe county, see City Council v. Bd. of Comm'rs, 33 Colo. 1, 77 P. 858 (1904).

30-5-105. Archuleta. All that part of the county of Conejos included within the following described boundaries shall be set apart and is hereby established as a county, to be called the county of Archuleta, the boundaries of which are as follows:

Beginning on the southern boundary line of the state of Colorado at the intersection of said state line and the eastern boundary line of Tierra Amarilla Grant, which is thirty-seven and eleven one-hundredths chains west on said state line from the range line between ranges four and five east of the New Mexico principal meridian, and thence in a northwesterly direction following said east boundary line of the said Tierra Amarilla Grant to the north corner of said Tierra Amarilla Grant, and thence in the same direction until said line intersects with the range line between ranges two and three east of the New Mexico principal meridian, and thence north following said range line to the north boundary line of the county of Conejos, thence west along the southern boundary of the county of Mineral and the county of Hinsdale to the southwest corner of the said county of Hinsdale, thence south to the state line and thence east along the said southern boundary line of the state of Colorado to the place of beginning.

Source: L. 1885: p. 40, § 1. L. 05: p. 153, § 1. R.S. 08: § 1085. C.L. § 8563. CSA: C. 44, § 5. CRS 53: § 34-1-5. C.R.S. 1963: § 34-1-5.

30-5-106. Baca. Beginning at the intersection of the west line of range fifty west with the north line of township twenty-eight south; thence south along said range line to the southwest corner of township thirty south, range fifty west; thence west on the north line of township thirty-one south, range fifty west, to the northwest corner of said township and range; thence south on the west line of range fifty west to its intersection with the south boundary line of Colorado; thence east on said south boundary line to the southeast corner boundary of Colorado; thence north along the east boundary line of Colorado to its

intersection with the north line of township twenty-eight south, range forty-one west; and thence west on the north line of township twenty-eight south to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 26, § 1. R.S. 08: § 1086. C.L. § 8564. CSA: C. 44, § 6. CRS 53: § 34-1-6. C.R.S. 1963: § 34-1-6. L. 81: Entire section R&RE, p. 1428, § 3, effective July 1.

30-5-107. Bent. The boundary lines of the county of Bent are as follows:

Commencing upon the eastern boundary line of Colorado territory at its intersection with township line between townships thirteen and fourteen south; thence west on said township line to the range line between ranges fifty-nine and sixty west; thence south on said range line to the township line between townships twenty-seven and twenty-eight south; thence east on said township line to the eastern boundary line of Colorado territory; thence north on said eastern boundary line to the place of beginning.

Source: L. 1874: p. 61, § 1. G.L. § 376. G.S. § 450. R.S. 08: § 1087. C.L. § 8565. CSA: C. 44, § 7. CRS 53: § 34-1-7. C.R.S. 1963: § 34-1-7.

30-5-108. Greenwood abolished. The county of Greenwood is hereby abolished, and that portion of it not included in the county of Elbert shall be for all purposes a part of the county of Bent.

Source: L. 1874: p. 62, § 2. G.L. omitted. G.S. § 451. R.S. 08: § 1088. C.L. § 8566. CSA: C. 44, § 8. CRS 53: § 34-1-8. C.R.S. 1963: § 34-1-8.

30-5-109. Boulder. Boulder county: Except for those portions that became part of the city and county of Broomfield on November 15, 2001, in accordance with sections 10 to 13 of article XX of the state constitution, commencing at a point where the township line between townships one and two south intersects the range line between ranges sixty-eight and sixty-nine; thence west on said township line to the east line of Gilpin county; thence along said line to the South Boulder creek; thence west along the northern boundary line of Gilpin county to the summit of the snowy range; thence along the summit of first range to a point at or near the summit of Long's Peak; thence east on said township line to the range line between ranges sixty-eight and sixty-nine; thence south to the place of beginning.

Source: L. 1861: p. 55, § 22. R.S. p. 160, § 25. G.L. § 363. G.S. § 438. R.S. 08: § 1089. C.L. § 8567. CSA: C. 44, § 9. CRS 53: § 34-1-9. C.R.S. 1963: § 34-1-9. L. 2004: Entire section amended, p. 639, § 2, effective April 23.

ANNOTATION

Meaning of "on summit of the snowy range". In this section and in the sections fixing the boundaries of Boulder, Clear Creek and Gilpin, the western boundaries are fixed "on the

summit of the snowy range", and here the continental divide is meant, without dispute. Bd. of County Comm'rs v. Bd. of County Comm'rs, 9 Colo. 268, 11 P. 193 (1886).

30-5-109.5. Broomfield, city and county of. As of November 15, 2001, the corporate limits of the city and county of Broomfield shall be as follows: Two parcels of land in all or portions of sections one, two, three, four, five, six, seven, eight, and eleven, all in township two south, range sixty-nine west and a portion of section one, township two south, range seventy west; all or portions of sections twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-two, thirty-three, thirty-four, thirty-five, and thirty-six all in township one south, range sixty-nine west; all or portions of sections two, three, four, five, six, seven, eight, nine, ten, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-

nine, thirty, thirty-one, thirty-two, and thirty-three all in township one south, range sixty-eight west; and all or portions of sections twenty-three, twenty-six, twenty-seven, thirty-one, thirty-two, thirty-three, thirty-four, and thirty-five all in township one north, range sixty-eight west, all of the sixth principal meridian, Broomfield county, Colorado, except for those parcels otherwise remaining in the counties of Adams, Boulder, Jefferson, and Weld on and after November 15, 2001, pursuant to sections 10 to 13 of article XX of the state constitution.

Source: L. 2004: Entire section added, p. 640, § 3, effective April 23.

30-5-110. Chaffee. Chaffee county: Commencing at a point on the summit of the snowy range, at the northwest corner of the county of Park, and running due west to the western boundary of the state; thence south, on said boundary, to the summit of the Sierra La Plata, or the northwest corner of Conejos county; thence easterly along the northern boundary of Conejos county to the one hundred and seventh degree of longitude; thence north, following said degree, to the northwest corner of Saguache county; thence east, along the north boundary of Saguache county, to the top of the range at the Poncho pass; thence northeasterly along the summit of the range, crossing the Arkansas river, at a point three miles below the mouth of the South Arkansas river; thence easterly to the summit of the range which divides the waters of the Platte and Arkansas rivers, along the summit of the range and western boundaries of the counties of Fremont and Park, in a northwesterly direction to the point of beginning.

Source: L. 1872: p. 82, § 2. **G.L.** § 368. **G.S.** § 443. **R.S. 08:** § 1090. **C.L.** § 8568. **CSA:** C. 44, § 10. **CRS 53:** § 34-1-10. **C.R.S. 1963:** § 34-1-10.

ANNOTATION

In this section the term “snowy range” is applied, without further description, to the continental divide. *Bd. of County Comm’rs v. Bd. of County Comm’rs*, 9 Colo. 268, 11 P. 193 (1886). *Bd. of County Comm’rs v. Bd. of County Comm’rs*, 70 Colo. 417, 203 P. 269 (1921).

For a case fixing the point of beginning in the description of Lake (now Chaffee) county, see *Bd. of County Comm’rs v. Bd. of County Comm’rs*, 70 Colo. 417, 203 P. 269 (1921).

30-5-111. Cheyenne. So much of the counties of Bent and Elbert as is included within the following described boundaries, shall be set apart and is hereby established as a county, with the legal capacity and functions of other counties of this state, to be called the county of Cheyenne:

Beginning at a point on the eastern boundary line of the state of Colorado, where the same is intersected by the line between townships numbered eleven and twelve south; thence west on said township line to the west side of range fifty-one, west of the sixth principal meridian; thence south on said range line to the township line between townships numbered sixteen and seventeen south; thence east on said township line to the eastern boundary line of the state of Colorado; thence north on said state line to the place of beginning.

Source: L. 1889: p. 56, § 1. **R.S. 08:** § 1091. **C.L.** § 8569. **CSA:** C. 44, § 11. **CRS 53:** § 34-1-11. **C.R.S. 1963:** § 34-1-11.

30-5-112. Clear Creek. Clear Creek county: Commencing at the junction of North and South Clear creeks, and running thence up the dividing ridge between said streams, to the summit of the snowy range; thence along said summit to the point where the first correction line south, if continued, would intersect said summit; thence east on said correction line to the western boundary of the county of Jefferson; thence north to the place of beginning.

Source: R.S. p. 161, § 29. G.L. § 365. G.S. § 440. R.S. 08: § 1092. C.L. § 8570. CSA: C. 44, § 12. CRS 53: § 34-1-12. C.R.S. 1963: § 34-1-12.

30-5-113. Conejos. Conejos county: Commencing on the southern boundary of the state, in the center of the Rio Grande del Norte; thence up the center of said stream to where it leaves the canyon of the snowy range at the corner of Saguache county; thence in a northwesterly direction along the western boundary of said Saguache county to the Cochetopa pass; thence in a southwesterly direction on the summit of the Uncompahgre mountains and the Sierra La Plata, forming the southern boundary of Lake county, to the western line of the state; thence along the western boundary of the state to its southwest corner; thence along the southern boundary of the state to the place of beginning.

Source: R.S. p. 158, § 6. G.L. § 353. G.S. § 428. R.S. 08: § 1093. C.L. § 8571. CSA: C. 44, § 13. CRS 53: § 34-1-13. C.R.S. 1963: § 34-1-13.

30-5-114. Costilla. Costilla county: Commencing at a point on the southeastern boundary of the state, where the range line between ranges sixty-nine and seventy intersects said boundary; thence north along said range line to the point where the same intersects the Sangre de Cristo pass or road; thence in a southwesterly direction on said road to the summit of the Sangre de Cristo range; thence in a northerly and westerly direction along the summit of said range to the head of the main branch of the Mosco creek; thence in a southwesterly direction down the center of said Mosco creek to where said creek enters into the San Luis valley; thence in a westerly direction to the most easterly point of La Loma del Norte; thence down the center of the Rio Grande del Norte to the southern boundary of the state; thence east along said boundary to the place of beginning.

Source: R.S. p. 157, § 2. G.L. § 351. G.S. § 425. R.S. 08: § 1094. C.L. § 8572. CSA: C. 44, § 14. CRS 53: § 34-1-14. C.R.S. 1963: § 34-1-14.

30-5-115. Crowley. So much of the county of Otero as is included in the following described boundaries shall be set apart and is hereby established, with the legal capacities and functions of other counties in this state, as a county, to be called the county of Crowley:

Beginning at the northwest corner of Otero county; running thence east along the north boundary line of said Otero county to the range line between ranges fifty-four and fifty-five, west of the sixth principal meridian, which range line is the west boundary line of Kiowa county; thence south along said range and county line to the fourth correction line south to a point at the southwest corner of said Kiowa county; thence west along said correction line to the range line between ranges fifty-four and fifty-five west, in township twenty-one south; thence south on said range line to the south line of said township twenty-one south, to a point at the southeast corner of section thirty-six, in said township twenty-one, range fifty-five west; thence west along the south line of said township to the range line between ranges fifty-five and fifty-six west; thence south along said range line, four miles, more or less, to the southwest corner of section twenty-four, township twenty-two, south, range fifty-six west; thence west along the south line of sections twenty-four, twenty-three, twenty-two, twenty-one, twenty and nineteen, in range fifty-six west; thence continuing west on the south line of sections twenty-four, twenty-three, twenty-two and twenty-one in said township twenty-two south, range fifty-seven west, to where said section line intersects the center of the Arkansas river; thence north and northwesterly with the center and meanderings of said river to the west boundary line of said Otero county; thence north along said boundary line to the fourth correction line south; thence east along said correction line to the range line between ranges fifty-nine and sixty, which range line is the west boundary line of said Otero county; thence north along said range line to the place of beginning.

Source: L. 11: p. 277, § 1. C.L. § 8573. CSA: C. 44, § 15. CRS 53: § 34-1-115. C.R.S. 1963: § 34-1-15.

ANNOTATION

The boundary between two counties, established by legislative act, could not be changed by an artificial changing of the course of the Arkansas river. Thomson v. Clarks, Inc., 162 Colo. 506, 427 P.2d 314 (1967).

When the Arkansas river channel was altered in 1935-36 it was not a slow and gradual change but a sudden change caused by mechanical or

artificial means so as to constitute an avulsion rather than an accretion, and when such a sudden change occurs, there is no alteration in the boundary line; it remains at the location of the river immediately prior to the change. Thomson v. Clarks, Inc., 162 Colo. 506, 427 P.2d 314 (1967).

30-5-116. Custer. All that section of country now forming a portion of Fremont county, and further described in this section, is hereby created, set apart, and established as the county of Custer, and shall possess all such legal functions and capacities as other counties in this state. The new county of Custer shall be bounded as follows:

Commencing at a point on the summit of the Sangre de Cristo range of mountains where the fourth correction line south, if extended, would cross said range of mountains; thence running east along said fourth correction line to the line between ranges sixty-eight and sixty-nine west of the sixth principal meridian; thence south along said line to the north line of Huerfano county; thence westerly along said north line of Huerfano county to the summit of the Sangre de Cristo range of mountains; thence northerly and northwesterly, along the summit of the Sangre de Cristo range of mountains, to the place of beginning.

Source: G.L. §§ 401, 402. G.S. §§ 465, 466. R.S. 08: §§ 1095, 1096. C.L. §§ 8574, 8575. CSA: C. 44, §§ 16, 17. CRS 53: § 34-1-16. C.R.S. 1963: § 34-1-16.

30-5-117. Delta. So much of the county of Gunnison as is included within the following described boundaries shall be set apart and is hereby established as a county, with the legal capacity and functions of other counties of this state, to be called the county of Delta:

Beginning at a point two miles south of the third correction line extended west to a point of intersection with the 107 degrees, 30 minutes west longitude; thence due north along said degree of longitude to the divide between the headwaters of the Colorado and North Fork of the Gunnison rivers; thence along said divide in a southwesterly direction to a point on the extreme southwestern extremity of the Grand Mesa; thence in a southwesterly direction to the mouth of the Rio Dominguez; thence due south to a point two miles south of an extension of the third correction line; thence due east parallel with said extension of the third correction line to place of beginning.

Source: L. 1883: p. 124, § 1. G.S. § 472. R.S. 08: § 1097. C.L. § 8576. CSA: C. 44, § 18. CRS 53: § 34-1-17. C.R.S. 1963: § 34-1-17.

30-5-118. Denver, city and county of. (1) After April 16, 1901, the corporate limits of the city of Denver shall be as follows:

Beginning at the northwest corner of the southwest quarter of section eighteen, in township three south, range sixty-eight west; thence south on the range line between ranges sixty-eight and sixty-nine west, to the southwest corner of section seven, in township four south, range sixty-eight west; thence east on the south line of sections seven and eight, in township four south, range sixty-eight west, to southeast corner of section eight aforesaid; thence south on the west line of section sixteen, in said last mentioned township and range, to the southwest corner of said section sixteen; thence east on the south line of said section sixteen, to the northwest corner of the northeast quarter of section twenty-one, in said last mentioned township and range; thence south on the north and south center line of sections twenty-one and twenty-eight, in the same township and range, to the southwest corner of the southeast quarter of said section twenty-eight; thence east on the south line of sections twenty-eight, twenty-seven, twenty-six, and twenty-five, in the same township and range, to the southeast corner of section twenty-five; thence north on the east line of sections

twenty-five, twenty-four and thirteen, in the same township and range, to the southwest corner of section seven, in township four south, range sixty-seven west; thence east on the south line of sections seven, eight and nine, in said last mentioned township, to the southeast corner of said section nine; thence north on the east line of sections nine and four, in said last mentioned township and of sections thirty-three, twenty-eight and twenty-one, in township three south, range sixty-seven west, to the northeast corner of said section twenty-one; thence west on the south line of sections sixteen, seventeen and eighteen, in said last mentioned township, to the southwest corner of section eighteen last aforesaid; thence north on the west line of said last mentioned section eighteen to the northeast corner of the south half of the northeast quarter of section thirteen, in township three south, range sixty-eight west; thence west on the east and west center line of the north half of section thirteen aforesaid, to the easterly line of the right-of-way of the Burlington and Colorado railroad company; thence southeasterly, with the easterly line of said right-of-way, to the north line of the southeast quarter of section fourteen, in township three south, range sixty-eight west; thence west on the east and west center line of section fourteen aforesaid, to a point which is one hundred and twenty-five feet east of the west line of said section fourteen; thence north three hundred feet; thence west one hundred and twenty-five feet to the west line of said section fourteen; thence south three hundred feet, to the northwest corner of the southwest quarter of said section fourteen; thence west on the east and west center line of sections fifteen, sixteen and seventeen, in said last mentioned township, to the center of said section seventeen; thence west on the east and west center line of said section seventeen, thirteen hundred and twenty feet; thence north three hundred and thirty feet; thence west thirteen hundred and twenty feet to the west line of said section seventeen; thence south three hundred and thirty feet to the northwest corner of the southwest quarter of said section seventeen; thence west on the east and west center line of section eighteen, to the place of beginning; the territory included within the last above described boundaries being situated in the county of Arapahoe, in the state of Colorado; excepting, however, all towns and cities incorporated and now existing or hereafter incorporated under the general laws of the state and situated within said last mentioned boundaries.

(2) Whenever any of said towns or cities, or any town or city existing under general laws of this state and contiguous to the city of Denver, shall, in pursuance of any law of the state, be dissolved or become annexed to the city of Denver, then the territory included within the same shall thereby become part of the city of Denver. If any such territory is so annexed more than six months prior to the next general election of the city of Denver, the city council of the city of Denver shall immediately by ordinance create a new ward or wards of the city, including said territory, and provide for and call a special election in each new ward so created, for the election of an alderman from such ward, in accordance with the provisions of this section and of the general election laws of this state; and the alderman so elected from each new ward shall, upon his election and qualification, be and become a member of the board of aldermen and of the city council of the city of Denver, until the next general election for officers of said city.

Source: L. 01: p. 162, § 2. R.S. 08: § 1098. C.L. § 8577. CSA: C. 44, § 19. CRS 53: § 34-1-18. C.R.S. 1963: § 34-1-18.

ANNOTATION

Statutory provision (L. 1893, p. 131) attempting to add to city of Denver noncontiguous strip of land in Jefferson county held invalid. *City of Denver v. Coulehan*, 20 Colo. 471, 39 P. 425 (1894) (decided prior to earliest source, L. 01, p. 162, § 2).

The clause excepting, or withdrawing, from the territory included within the limits of the city of Denver all incorporated cities or towns within "said last mentioned boundaries", does not change or affect such exterior

boundaries. They remain just as defined by metes and bounds in the first part of this section, because the office of the exception is to preserve intact these included municipal organizations, and to exclude the territory covered thereby from that which, were it not for the proviso, would be a part of the territory of the city of Denver. *Town of Montclair v. Thomas*, 31 Colo. 327, 73 P. 48 (1903).

The incorporated town of Montclair, situated within the exterior boundaries of the city

of **Denver** and on the eastern border of said city, and county of Denver. Town of Montclair v. Thomas, 31 Colo. 327, 73 P. 48 (1903).
was disincorporated and merged into the city

30-5-119. Dolores. The county of Dolores is hereby created and established, with the legal capacities and functions of other counties of this state, and with boundaries as follows:

Commencing at the summit of the mountain known as the "Lizard's Head," near the headwaters of the Lake Fork of the San Miguel river, in the present county of Ouray; thence westward from the summit of said mountain along the summit of the range dividing the waters of the San Miguel and Dolores rivers to the summit of Lone Cone mountain; thence west to the western line of the state of Colorado; thence south along said western line to the north line of Montezuma county; thence east along said north line to the southwest corner of San Juan county; thence northeast along the summit of the range dividing the waters of the South Fork of Dolores river from the waters of Hermoso and Cascade creeks to the summit of the range at the head of the East Fork of the Dolores river; thence northeast along the summit of the range dividing the waters of said South Fork of Dolores river from the waters of the Lake Fork of the San Miguel river to the summit of said range south of the pass now crossed by the trail from the Fish lakes to Rico; thence from the summit of said range on a direct line to the summit of said "Lizard's Head" mountain, the place of beginning.

Source: L. 1881: p. 92, § 1. **G.S.** § 473. **R.S. 08:** § 1099. **C.L.** § 8578. **CSA:** C. 44, § 20. **CRS 53:** § 34-1-19. **C.R.S. 1963:** § 34-1-19.

30-5-120. Douglas. Beginning at the intersection of the center of the South Platte River with the first standard parallel south; thence east on said parallel to its intersection with the eastern boundary of the western half of range sixty-five west; thence south on said eastern boundary to its intersection with the south line of township ten south; thence west on said township line to its intersection with the center of the South Platte River; and thence northeasterly along the center of said river to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: R.S. p. 159, § 17. **G.L.** § 359. **G.S.** § 434. **R.S. 08:** § 1100. **C.L.** § 8579. **CSA:** C. 44, § 21. **CRS 53:** § 34-1-20. **C.R.S. 1963:** § 34-1-20. **L. 81:** Entire section R&RE, p. 1428, § 4, effective July 1.

30-5-121. Eagle. The county of Eagle is hereby created and established, with the legal capacities and functions of other counties of this state, and with boundaries as follows:

Commencing at a point on the northern boundary of Lake county where the divide between the Eagle river and Ten Mile branches from and leaves the National range; thence along the summit of the said divide and the dividing ridge between the Piney and the Blue rivers to the southern line of Grand county; thence due west to a point six miles west of the 107th degree of west longitude; thence due south to the northern boundary line of Pitkin county; thence east along said boundary line to the summit of the National range; thence in an easterly direction along said summit of the National range to the place of beginning.

Source: L. 1883: p. 127, § 1. **G.S.** § 474. **R.S. 08:** § 1101. **C.L.** § 8580. **CSA:** C. 44, § 22. **CRS 53:** § 34-1-21. **C.R.S. 1963:** § 34-1-21.

30-5-122. Elbert. So much of the county of Douglas as is included in the following described boundaries shall be set apart and is hereby established with the same legal capacity and functions as other counties of this state, to be called Elbert county:

Beginning at a point where the center of range sixty-five west intersects the first correction line south; thence east on said correction line to the eastern boundary of the state; thence south on said eastern boundary line to the line between townships thirteen and fourteen south; thence west on said line to the line between ranges fifty-nine and sixty west;

thence north on said last mentioned line to the second correction line south; thence west on said second correction line to the center of range sixty-five west; thence north through the center of range sixty-five to the place of beginning.

Source: L. 1874: pp. 60, 61, §§ 1, 2. G.L. §§ 380, 381. G.S. §§ 457, 458. R.S. 08: §§ 1102, 1103. C.L. §§ 8581, 8582. CSA: C. 44, §§ 23, 24. CRS 53: § 34-1-22. C.R.S. 1963: § 34-1-22.

30-5-123. El Paso. Beginning at the intersection of the west line of range sixty-seven west with the south line of township seventeen south; thence north on said range line to the northwest corner of section six, township sixteen south, range sixty-seven west; thence east on the north line of said section six to the southwest corner of section thirty-one, township fifteen south, range sixty-seven west; thence north on the west line of range sixty-seven west to the northwest corner of section thirty-one, township fourteen south, range sixty-seven west; thence west on section lines to the southwest corner of section twenty-five, township fourteen south, range sixty-nine west; thence north on section lines to the northwest corner of section one, township fourteen south, range sixty-nine west; thence east on the north line of township fourteen south to the southwest corner of section thirty-two, township thirteen south, range sixty-eight west; thence north on section lines to the second standard parallel south; thence east on said parallel to its intersection with the east line of range sixty west; thence south on said range line to its intersection with the south line of township seventeen south; and thence west on said township line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: R.S. p. 159, § 15. G.L. § 358. G.S. § 433. R.S. 08: § 1104. C.L. § 8583. CSA: C. 44, § 25. CRS 53: § 34-1-23. C.R.S. 1963: § 34-1-23. L. 81: Entire section R&RE, p. 1428, § 5, effective July 1.

30-5-124. Fremont. Beginning at the intersection of the fourth standard parallel south with the east line of range sixty-eight west; thence north on said range line to its intersection with the northern boundary of the southern half of township sixteen south; thence west on said northern boundary to the southeast corner of section seventeen, township sixteen south, range seventy west; thence north on section lines to the third standard parallel south; thence west on said parallel to its intersection with the crest of the divide on the east side of the drainage areas of the Arkansas River, being a point approximately one-half mile east of the southwest corner of section thirty-five, township fifteen south, range seventy-seven west; thence southerly along said crest, via Cameron Mountain, to a point on said crest divide lying north eighty-four degrees twenty-five minutes east, eighty-eight hundred and ninety-seven feet from a point on the Arkansas River three miles below the mouth of the South Arkansas River; thence westerly on a straight line to said point on the Arkansas River; thence on a straight line bearing south forty-five degrees ten minutes west, to the intersection of said line with the crest of the Sangre de Cristo Range; thence southeasterly along said crest to its intersection with the fourth standard parallel south; thence east on said parallel to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: R.S. p. 159, § 12. G.L. § 356. G.S. § 431. R.S. 08: § 1105. C.L. § 8584. CSA: C. 44, § 26. CRS 53: § 34-1-24. C.R.S. 1963: § 34-1-24. L. 81: Entire section R&RE, p. 1429, § 6.

30-5-125. Garfield. The county of Garfield is established with the legal capacities and functions of other counties in this state, and with boundaries as follows:

Beginning at the southwest corner of the southeast part of Routt county, or the 107th degree of west longitude; thence running due west six miles; thence running due south to the northern line of Pitkin county; thence running due west on the southern line of Summit county to the Utah line; thence running north on the western line of Summit county to Routt

county; thence running east on the north line of Summit county to the 107th degree of west longitude; thence south on the 107th degree of west longitude to the starting point.

Source: L. 1883: p. 130, § 1. G.S. § 475. R.S. 08: § 1106. C.L. § 8585. CSA: C. 44, § 27. CRS 53: § 34-1-25. C.R.S. 1963: § 34-1-25.

30-5-126. Gilpin. Beginning at the confluence of the center of North Clear Creek with the center of Clear Creek; thence due north to the center of South Boulder Creek; thence up the center of South Boulder Creek to where it intersects the monumented survey line between Gilpin and Boulder counties; thence due west along said monumented survey line to the crest of the continental divide; thence southerly on the continental divide to its intersection with the dividing ridge between North Clear Creek and Clear Creek drainage basins; and thence southeasterly along said ridge to the place of beginning.

Source: R.S. p. 161, § 31. G.L. § 366. G.S. § 441. R.S. 08: § 1107. C.L. § 8586. CSA: C. 44, § 28. CRS 53: § 34-1-26. C.R.S. 1963: § 34-1-26. L. 81: Entire section R&RE, p. 1429, § 7, effective July 1.

30-5-127. Gilpin and Jefferson counties, boundary between. That portion of the eastern boundary line of the county of Gilpin and that portion of the western boundary line of the county of Jefferson lying between the northwest corner of the county of Jefferson and the junction of the North and South Clear creeks, is fixed and established as follows:

Beginning at a certain point on the north line of township two south, range seventy-two west of the sixth principal meridian, which point is due north of the junction of the North and South Clear creeks; thence due south to the junction of the North and South Clear creeks; but Jefferson county shall not be liable for any taxes already collected on lands lying west of the boundary hereby established.

Source: L. 13: p. 284, § 1. C.L. § 8587. CSA: C. 44, § 29. CRS 53: § 34-1-27. C.R.S. 1963: § 35-1-27.

30-5-128. Grand. So much of the county of Summit, in the state of Colorado, as is included within the following described boundaries, shall be set apart and is hereby created into a new county, to be called Grand county:

Beginning on the summit of the snowy range of the Rocky mountains, on the west boundary of Clear Creek county, at the point where the dividing range between the waters of Williams Fork and Blue river diverges from the main snowy range; running thence northwest along the summit of said dividing range between Williams Fork and Blue river to a point of intersection with the boundary line between townships one and two, south of the base line; thence west along said township line to the eastern boundary of the Ute Indian reservation; thence north along said boundary to the northeast corner of said reservation; thence west along the north boundary of said reservation to the west boundary of the state; thence north to the northwest corner of the same; thence east along the north boundary of the state to the northwest corner of Larimer county; thence south along the western boundaries of Larimer, Boulder and Gilpin counties, and west, northwest and southwest, along the north and west boundaries of Clear Creek county, to the place of beginning.

Source: L. 1874: p. 70, §§ 1, 2. G.L. §§ 382, 383. G.S. §§ 459, 460. R.S. 08: §§ 1108, 1109. C.L. §§ 8588, 8589. CSA: C. 44, §§ 30, 31. CRS 53: § 34-1-128. C.R.S. 1963: § 34-1-28.

30-5-129. Gunnison. The county of Gunnison is hereby created and established, with the legal capacity and functions of other counties of this state, and with boundaries as follows:

Commencing at a point on the south line of Lake county where the said line crosses the summit of the range of mountains forming the watershed between the waters of the

Arkansas river and the streams draining westward into the Colorado river, known as the Saguache range; thence northward, along the summit of such range, to the north line of said Lake county; thence due west to the western line of the state; thence south along the west line of the state to the point where the north line of the county of Ouray intersects the same; thence east along the north line of Ouray county and the north line of Hinsdale county, to the west line of Saguache county; thence north along said west line to the northwest corner of Saguache county; thence east along the north line of Saguache county to the place of beginning.

Source: G.L. § 411. G.S. § 467. R.S. 08: § 1110. C.L. § 8590. CSA: C. 44, § 32. CRS 53: § 34-1-129. C.R.S. 1963: § 34-1-29.

30-5-130. Hinsdale. The county of Hinsdale shall be bounded as follows:

Commencing at the point of intersection of the ninth correction line north with the New Mexico principal meridian, and running thence north along said principal meridian to the southern boundary of Saguache county; thence westerly along the southern boundary of Saguache county to the one hundred and seventh meridian of longitude west from Greenwich; thence north along said meridian to a point ten miles north of the thirty-eighth parallel of north latitude; thence west to a point due north of a point six miles west of the mouth of Lost Trail creek, on the Rio Grande river; thence south to the point of intersection with the ninth correction line north; thence east along said correction line to the place of beginning.

Source: L. 1874: p. 66, § 2. G.L. § 378. G.S. § 454. R.S. 08: § 1111. C.L. § 8591. CSA: C. 44, § 33. CRS 53: § 34-1-30. C.R.S. 1963: § 34-1-30.

30-5-131. Huerfano. Beginning at the summit of Greenhorn Mountain; thence following the crest of the main range of mountains around the headwaters of the Huerfano and Cucharas rivers to the summit of the easterly of the two Spanish peaks; thence northeasterly along the dividing ridge between the waters of the Santa Clara and Apishapa rivers to the intersection of said ridge with a straight line from Corral de Toros on the Huerfano River to the Iron Springs; thence northwesterly along said line to the Corral de Toros; and thence on a straight line westerly to the place of beginning.

Source: R.S. p. 164, § 47. G.L. § 374. G.S. § 446. R.S. 08: § 1112. C.L. § 8592. CSA: C. 44, § 34. CRS 53: § 34-1-31. C.R.S. 1963: § 34-1-31. L. 81: Entire section R&RE, p. 1429, § 8, effective July 1.

30-5-132. Jackson. Beginning at the intersection of the north boundary line of Colorado with the continental divide; thence along said divide to the point where it intersects the Medicine Bow Mountains; thence northerly along the crest of the Medicine Bow Mountains to the north boundary line of Colorado; and thence west along said Colorado boundary line to the place of beginning.

Source: L. 09: p. 432, § 1. C.L. § 8593. CSA: C. 44, § 35. CRS 53: § 34-1-32. C.R.S. 1963: § 34-1-32. L. 81: Entire section R&RE, p. 1430, § 9, effective July 1.

30-5-133. Jefferson. Jefferson county is hereby bounded as follows:

Except for those portions that became part of the city and county of Broomfield on November 15, 2001, in accordance with sections 10 to 13 of article XX of the state constitution, commencing at a point where the township line between townships one and two south intersects the range line between ranges sixty-eight and sixty-nine; thence due west twenty miles; thence due south to the junction of North and South Clear creeks; thence south to the Platte river; thence down the center of said Platte river to the point where said river intersects the first correction line; thence west to the range line between ranges sixty-eight and sixty-nine; thence north to the place of beginning.

Source: G.L. § 364. G.S. § 439. L. 1889: p. 100, § 1. R.S. 08: § 1113. C.L. § 8594. CSA: C. 44, § 36. CRS 53: § 34-1-33. C.R.S. 1963: § 34-1-33. L. 2004: Entire section amended, p. 640, § 4, effective April 23.

Editor's note: Pursuant to §§ 30-6-105 to 30-6-109, inclusive, there is recorded in the office of the clerk and recorder of Park County in book 70, page 560, and in the office of the clerk and recorder of Jefferson County in book 140, page 400 (indexed in book 2 - Miscellaneous Papers - in the office of the secretary of state), a proclamation showing attachment to Park County and detachment from Jefferson County of territory described as follows:

"Beginning at the intersection of the boundary line between Park and Jefferson Counties with the center line of the South Platte River, about two miles above Lake George, thence down the said Platte River along its center line to intersection of said center line with the Second Correction Line South, thence westerly along said Correction Line to its intersection with the boundary line between Park and Jefferson Counties, thence along said boundary line to point of beginning."

ANNOTATION

This section and § 30-5-153 are to be construed like patents or grants or segregations of a different date where the older in time necessarily concludes, and this principle requires first the determination of Jefferson county's boundaries and the inclusion therein of all territory which its lines would embrace, and the exclusion therefrom of all territory which would otherwise be embraced within the lines of Park county. Link v. Jones, 15 Colo. App. 281, 62 P. 339 (1900).

Wherever a line is run southerly or south, or due south, the result is precisely the same and the line thus stated in a description is to be taken as run due south unless there is some other thing in the description which compels or permits another course in order to work out the description which the grantor has put in a deed

or whereby a general assembly has fixed the boundaries of a county. Link v. Jones, 15 Colo. App. 281, 62 P. 339 (1900).

Therefore, the description in the location of Jefferson county "thence south to the Platte river" starts and runs a line from the junction of North and South Clear creeks due south to the Platte river. Link v. Jones, 15 Colo. App. 281, 62 P. 339 (1900).

When the general assembly stated the western boundary of Jefferson county and ran the line south from the junction of North and South Clear creeks it ran a line due south making allowance for the magnetic variation, and it must strike the Platte river at the point where that line thus projected would strike the stream. Link v. Jones, 15 Colo. App. 281, 62 P. 339 (1900).

30-5-134. Kiowa. Beginning at the point of intersection of the east boundary line of Colorado with the south line of township twenty south; thence west on said township line to its intersection with the west line of range fifty-four west; thence north on said range line to the northwest corner of township twenty south, range fifty-four west; thence west on the south line of township nineteen south, range fifty-four west, to the southwest corner of said township and range; thence north on the west line of range fifty-four west to its intersection with the south line of township seventeen south; thence east on said township line to its intersection with the west line of range fifty-one west; thence north on said range line to its intersection with the south line of township sixteen south; thence east on said township line to the east boundary line of Colorado; and thence south on the Colorado boundary line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 222, § 1. R.S. 08: § 1114. C.L. § 8595. CSA: C. 44, § 37. CRS 53: § 34-1-34. C.R.S. 1963: § 34-1-34. L. 81: Entire section R&RE, p. 1430, § 10, effective July 1.

30-5-135. Kit Carson. The county of Kit Carson is hereby established, with the legal capacity and functions of other counties in this state, and the boundaries are as follows:

Beginning at the northeast corner of Elbert county and running west along the north line of said Elbert county to the west line of range fifty-one, west of the sixth principal meridian;

thence south on said west line of range fifty-one to the township line between townships eleven and twelve south; thence east along said township line to where it intersects the state line of Kansas; thence north on the east boundary line of Elbert county to the place of beginning.

Source: L. 1889: p. 225, § 1. R.S. 08: § 1115. C.L. § 8596. CSA: C. 44, § 38. CRS 53: § 34-1-35. C.R.S. 1963: § 34-1-35.

30-5-136. Lake. Beginning at the point on the continental divide from which the Tenmile Range departs northerly; thence on a due west line to its second intersection with the continental divide; thence westerly and then southerly along the continental divide to its intersection with the section line lying one mile north of the south line of township eleven south; thence east on section lines to an intersection with the range, known as the Mosquito Range, dividing the waters of the Arkansas and South Platte rivers; thence northerly along the crest of said range to its intersection with the continental divide; and thence northeasterly along said divide to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1879: p. 45, § 1. G.S. § 468. R.S. 08: § 1116. C.L. § 8597. CSA: C. 44, § 39. CRS 53: § 34-1-36. C.R.S. 1963: § 34-1-36. L. 81: Entire section R&RE, p. 1430, § 11, effective July 1.

30-5-137. Lake and Chaffee - names changed. The name of the county of Lake is hereby changed to Chaffee, and the name of Carbonate county is changed to Lake county.

Source: L. 1879: p. 48, § 1. G.S. § 469. R.S. 08: § 1117. C.L. § 8598. CSA: C. 44, § 40. CRS 53: § 34-1-37. C.R.S. 1963: § 34-1-37.

30-5-138. La Plata. The county of La Plata shall be bounded as follows:

Commencing at a point six miles west of the mouth of Lost Trail creek, and running thence north to a point ten miles north of the thirty-eighth parallel of north latitude; thence west to the western boundary of the state; thence south along said western boundary to the southwest corner of the state; thence east along the southern boundary of the state to a point due south of the place of beginning; thence north to the place of beginning.

Source: L. 1874: p. 67, § 3. G.L. § 379. G.S. § 455. R.S. 08: § 1118. C.L. § 8599. CSA: C. 44, § 41. CRS 53: § 34-1-38. C.R.S. 1963: § 34-1-38.

30-5-139. Larimer. Beginning at the intersection of the first standard parallel north with the east line of range sixty-eight west; thence west on said parallel to its intersection with the east line of range sixty-nine west; thence south on said range line to its intersection with the south line of township four north; thence west on said township line to its intersection with the continental divide; thence northwesterly on the continental divide to the point where it intersects the Medicine Bow Mountains; thence northwesterly along the crest of the Medicine Bow Mountains to its intersection with the north boundary line of Colorado; thence east on said north boundary line to its intersection with the east line of range sixty-eight west; and thence south to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: R.S. p. 160, § 23. G.L. § 362. G.S. § 437. R.S. 08: § 1119. C.L. § 8600. CSA: C. 44, § 42. CRS 53: § 34-1-39. C.R.S. 1963: § 34-1-39. L. 81: Entire section R&RE, p. 1430, § 12, effective July 1.

30-5-140. Las Animas. The boundaries of the county of Las Animas are as follows:

Commencing at the southeast corner of the county of Pueblo; thence running due west to the Iron Springs; thence westerly along the southern line of Pueblo county, to the dividing

ridge between the waters of the Apishapa and Santa Clara rivers; thence southward up the said dividing ridge to the summit of the easterly of the two Spanish peaks; thence westerly along the summit of the mountains to the eastern boundary of the county of Costilla; thence south along said eastern boundary of Costilla county to the southern line of the state; thence east to the southeast corner of the state; thence north to the place of beginning.

Source: R.S. p. 164, § 48. G.L. § 375. G.S. § 447. R.S. 08: § 1120. C.L. § 8601. CSA: C. 44, § 43. CRS 53: § 34-1-40. C.R.S. 1963: § 34-1-40.

30-5-141. Lincoln. Beginning at the intersection of the first standard parallel south with the west line of range fifty-six west; thence south on said range line to its intersection with the second standard parallel south; thence west on said parallel to the northwest corner of section six, township eleven south, range fifty-six west; thence south on the west line of range fifty-six west to its intersection with the south line of township thirteen south; thence west on said township line to its intersection with the west line of range fifty-nine west; thence south on said range line to its intersection with the south line of township seventeen south; thence east on said township line to its intersection with the west line of range fifty-five west; thence south on said range line to the southwest corner of township seventeen south, range fifty-five west; thence east on the south line of said township and range to the southeast corner thereof; thence north on the east line of range fifty-five west to the southwest corner of township seventeen south, range fifty-four west; thence east on the south line of township seventeen south to the southeast corner of township seventeen south, range fifty-two west; thence north on the east line of range fifty-two west to its intersection with the third standard parallel south; thence east on said parallel to the southeast corner of township fifteen south, range fifty-two west; thence north on the east line of range fifty-two west to its intersection with the second standard parallel south; thence east on said parallel to the southeast corner of township ten south, range fifty-two west; thence north on the east line of range fifty-two west to its intersection with the first standard parallel south; and thence west on said parallel to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 234, § 1. R.S. 08: § 1121. C.L. § 8602. CSA: C. 44, § 44. CRS 53: § 34-1-41. C.R.S. 1963: § 34-1-41. L. 81: Entire section R&RE, p. 1431, § 13, effective July 1.

30-5-142. Logan. Beginning at the intersection of the east line of range forty-eight west with the north boundary line of Colorado; thence west on said north boundary line to its intersection with the west line of range fifty-five west; thence south on said range line to the southwest corner of township nine north, range fifty-five west; thence west on the north line of township eight north, range fifty-five west, to the northwest corner of said township and range; thence south on the west line of range fifty-five west to its intersection with the south line of township seven north; thence east on said township line to its intersection with the west line of range fifty-four west; thence south on said range line to its intersection with the south line of township six north; thence east on said township line to its intersection with the east line of range forty-eight west; thence north on said range line to the northeast corner of township eight north, range forty-eight west; thence east on the south line of township nine north, range forty-eight west, to the southwest corner of said township and range; and thence north on the east line of range forty-eight west to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1887: p. 247, § 1. R.S. 08: § 1122. C.L. § 8603. CSA: C. 44, § 45. CRS 53: § 34-1-42. C.R.S. 1963: § 34-1-42. L. 81: Entire section R&RE, p. 1431, § 14, effective July 1.

30-5-143. Mesa. So much of the county of Gunnison as is included within the following described boundaries shall be set apart and is hereby established as a county, with

the legal capacity and functions of other counties of this state, to be called the county of Mesa:

Beginning at the northwest corner of Pitkin county, and running thence south along and with the western line of Pitkin county to the divide between the waters of the Grand river, now the Colorado river, and the north fork of the Gunnison river; thence southwesterly along and with said divide to the southwestern extremity of the Grand Mesa; thence southwesterly to the mouth of the Rio Dominguez; thence due south to the parallel of thirty-eight degrees and thirty minutes of north latitude; thence west to the western boundary line of the state of Colorado; thence north along said boundary line to the northern boundary line of Gunnison county; and thence east along said northern boundary line of Gunnison county to the place of beginning.

Source: L. 1883: p. 133, § 1. G.S. § 476. R.S. 08: § 1123. C.L. § 8604. CSA: C. 44, § 46. CRS 53: § 34-1-43. C.R.S. 1963: § 34-1-43. L. 2011: Entire section amended, (HB 11-1303), ch. 264, p. 1172, § 84, effective August 10.

30-5-144. Mineral. Beginning at the intersection of the east line of range two east with the south line of township thirty-seven north; thence north on said range line to its intersection with the south line of township forty north, range two east; thence east on said township line to the southeast corner of said township and range; thence north on the east line of range two east to its intersection with the crest of the La Garita Mountains; thence northwesterly along the said crest to its intersection with the continental divide; thence westerly along the continental divide to its intersection with the west line of range two west; thence south on said range line to its intersection with the south line of township forty north, range two west; thence east on said township line to the northwest corner of township thirty-nine north, range two west; thence south on the west line of range two west to its intersection with the south line of township thirty-seven north; and thence east on said township line to the place of beginning. Said public land survey lines are based upon the New Mexico principal meridian.

Source: L. 1893: p. 94, § 1. L. 1895: p. 205, § 1. R.S. 08: § 1124. C.L. § 8605. CSA: C. 44, § 47. CRS 53: § 34-1-44. C.R.S. 1963: § 34-1-44. L. 81: Entire section R&RE, p. 1432, § 15, effective July 1.

30-5-145. Moffat. All that part of Routt county as is included within the following described boundaries shall be set apart and is hereby established as a county, to be called the county of Moffat:

Beginning at a point on the north boundary of the state of Colorado at a point where said state line is intersected by the range line between ranges eighty-eight and eighty-nine west of the sixth principal meridian, known as the eleventh guide meridian; thence south on said range line to its intersection with the township line between township seven and eight; thence west on said township line to the section line between sections three and four, in township seven north, range eighty-nine west; thence south on said section line to the northeast corner of section twenty-eight in said township seven north, range eighty-nine west; thence west along the north line of sections twenty-eight, twenty-nine and thirty, in township seven north, range eighty-nine west of the sixth principal meridian to its intersection with the range line between ranges eighty-nine and ninety; thence south on said range line to its intersection with the north line of Rio Blanco county; thence west along the said north line of Rio Blanco county to its intersection with the line between the state of Utah and the state of Colorado; thence north on the said line between the state of Utah and the state of Colorado to the northwest corner of the state of Colorado; thence east on the line between the state of Wyoming and the state of Colorado to the point of beginning.

Source: L. 11: p. 516, § 1. C.L. § 8606. CSA: C. 44, § 48. CRS 53: § 34-1-45. C.R.S. 1963: § 34-1-45.

30-5-146. Montezuma. The county of Montezuma is hereby established, with the legal capacity and functions of other counties of this state, and the boundaries are as follows:

Beginning at the southwest corner of La Plata county, in the state of Colorado, and running thence east along the southern boundary line of said La Plata county to a point on the apex of the ridge dividing the waters of the Rio Mancos from the waters of the Rio La Plata; thence in a northeasterly direction along the apex of said ridge to the southern boundary line of Dolores county, in said state of Colorado; thence west along said southern boundary line of Dolores county to the eastern boundary line of the territory of Utah; thence south along said eastern boundary line of Utah to the place of beginning; and including all that portion of La Plata county drained by the waters of the Mancos river, Bear creek and Dolores river.

Source: L. 1889: p. 262, § 1. **R.S. 08:** § 1125. **C.L.** § 8607. **CSA:** C. 44, § 49. **CRS 53:** § 34-1-46. **C.R.S. 1963:** § 34-1-46.

30-5-147. Montrose. The county of Montrose is hereby established with the legal capacity and functions of other counties in this state, and with boundaries as follows:

Beginning at a point on parallel one hundred and seven degrees and thirty minutes two miles south of the third correction line extended west; thence west to a point due south of the mouth of the Rio Dominguez; thence south to parallel thirty-eight degrees and thirty minutes; thence west along said parallel to the west line of the state; thence south along said line to the northwest corner of Ouray county; thence east along said line to parallel one hundred and eight degrees of west longitude; thence north along said last named parallel to a point ten miles due north of the north line of Ouray county; thence east to parallel one hundred and seven degrees and thirty minutes; thence north along said parallel to the point of beginning.

Source: L. 1883: p. 136, § 1. **G.S.** § 477. **R.S. 08:** § 1126. **C.L.** § 8608. **CSA:** C. 44, § 50. **CRS 53:** § 34-1-47. **C.R.S. 1963:** § 34-1-47.

30-5-148. Morgan. So much of the county of Weld as is included in the following described boundaries shall be set apart and is hereby established as a county, with the legal capacity and functions of other counties of this state, to be called the county of Morgan:

Beginning at the southeast corner of Weld county, and running thence west along the south line of Weld county to a point at the west line of range sixty, west of the sixth principal meridian; thence north, along the west line of said range sixty, to a point on said range line at the north line of township six, north of range sixty, west; thence east, along said north line of township six, north, and continuing on said course to a point on the east line of said county of Weld and the west line of range fifty-four; thence south, along the east boundary line of said Weld county, to the place of beginning.

Source: L. 1889: p. 267, § 1. **R.S. 08:** § 1127. **C.L.** § 8609. **CSA:** C. 44, § 51. **CRS 53:** § 34-1-48. **C.R.S. 1963:** § 34-1-48.

30-5-149. Otero. Beginning at the intersection of the south line of township twenty-seven south with the west line of range fifty-nine west; thence north on the west line of range fifty-nine west to the northwest corner of township twenty-six south, range fifty-nine west; thence west on the south line of township twenty-five south, range fifty-nine west, to the southwest corner of said township and range; thence north on the west line of range fifty-nine west to its intersection with the center of the Arkansas River; thence east and southeasterly with the center and meanderings of said river to its intersection with the north line of section twenty-eight, township twenty-two south, range fifty-seven west; thence east on section lines to the west line of range fifty-five west; thence north on said range line to its intersection with the north line of township twenty-two south; thence east on said township line to its intersection with the west line of range fifty-four west; thence north on said range line to its intersection with the fourth standard parallel south; thence east on said

parallel to its intersection with the east line of range fifty-four west; thence south on said range line to the southeast corner of township twenty-five south, range fifty-four west; thence west on the north line of township twenty-six south, range fifty-four west, to the northeast corner of said township and range; thence south on the east line of range fifty-four west to its intersection with the south line of township twenty-seven south; and thence west on said township line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 281, § 1. R.S. 08: § 1128. C.L. § 8610. CSA: C. 44, § 52. CRS 53: § 34-1-49. C.R.S. 1963: § 34-1-49. L. 81: Entire section R&RE, p. 1432, § 16, effective July 1.

30-5-150. Ouray. The county of Ouray is hereby created, with the legal capacity and functions of other counties in this state, and shall embrace all that territory drained by the Uncompahgre river and its tributaries south of thirty-eight degrees and twenty minutes north latitude and north of the San Juan county line.

Source: L. 1883: p. 139, § 1. G.S. § 478. R.S. 08: § 1129. C.L. § 8611. CSA: C. 44, § 53. CRS 53: § 34-1-50. C.R.S. 1963: § 34-1-50.

30-5-151. Ouray and Montrose - boundary. That portion of the western boundary line of the county of Ouray and that portion of the eastern boundary line of the county of Montrose lying between the northwest corner of the county of Ouray and the northern boundary line of the county of San Miguel, is hereby fixed and established as follows:

Beginning at the northwest corner of the southwest quarter of the northwest quarter of section eighteen, township forty-seven north, range eleven west, New Mexico principal meridian which point is the northwest corner of Ouray county; thence south three quarters of a mile to the southwest corner of section eighteen, township forty-seven north, range eleven west; thence east one-half mile to the southwest corner of the southeast quarter of section eighteen, township forty-seven north, range eleven west; thence south to the center of section nineteen, township forty-seven north, range eleven west; thence east one mile to the center of section twenty, township forty-seven north, range eleven west; thence south two miles to the center of section thirty-two, township forty-seven north, range eleven west; thence one mile to the center of section thirty-three, township forty-seven north, range eleven west; thence south two miles to center of section nine, township forty-six north, range eleven west; thence east four miles to center of section seven, township forty-six north, range ten west; thence south one-half mile to the southwest corner of the southeast quarter of said section seven; thence east one and one-half miles to northeast corner of section seventeen, township forty-six north, range ten west; thence south one mile to southwest corner of section sixteen, township forty-six north, range ten west; thence east one mile to southeast corner of section sixteen, township forty-six north, range ten west; thence south one-half mile to the southwest corner of the northwest quarter of section twenty-two, township forty-six north, range ten west; thence east one mile to southeast corner of the northeast quarter of section twenty-two, township forty-six north, range ten west; thence south one-half mile to southeast corner of section twenty-two, township forty-six north, range ten west; thence east one-half mile to northeast corner of the northwest quarter of section twenty-six, township forty-six north, range ten west; thence south three miles to southeast corner of the southwest quarter of section two, township forty-five north, range ten west; thence west one-half mile to northwest corner of section eleven, township forty-five north, range ten west; thence south one and one-half miles to southwest corner of the northwest quarter of section fourteen, township forty-five north, range ten west; which is the north boundary line of San Miguel county.

Source: L. 13: p. 140, § 1. C.L. § 8612. CSA: C. 44, § 54. CRS 53: § 34-1-51. C.R.S. 1963: § 34-1-51.

30-5-152. Ouray and San Miguel - boundary. The state engineer, through the county surveyors of Ouray and San Miguel counties, within six months after this section becomes effective, shall designate the county line between the counties of Ouray and San Miguel, beginning at a point which is the southeast corner of Montrose county, the same being identical with the one-quarter corner between sections fourteen and fifteen, township forty-five north, range ten west, New Mexico principal meridian; thence west one mile to the one-quarter corner of sections fifteen and sixteen; thence south one-half mile to the corner of sections fifteen, sixteen, twenty-one and twenty-two; thence east three-quarters of a mile to the northwest corner of the northeast quarter of the northeast quarter of section twenty-two; thence south two miles to the southwest corner of the southeast quarter of the southeast quarter, section twenty-seven; thence east one-quarter mile to the corner of sections twenty-six, twenty-seven, thirty-four and thirty-five; all in township forty-five north, range ten west, New Mexico principal meridian; thence east three miles to the corner of sections twenty-nine, thirty, thirty-one and thirty-two, township forty-five north, range nine west, New Mexico principal meridian; thence south one mile to the southwest corner of section thirty-two on the eleventh correction line; all in township forty-five north, range nine west, New Mexico principal meridian; thence along the eleventh correction line to the northeast corner of section six, township forty-four north, range nine west, New Mexico principal meridian; thence west along the north line of section six to the northwest corner of lot one of said section; thence south to the southwest corner of the southeast quarter of the southeast quarter, section six; thence west one-quarter mile to the southwest corner of the southeast quarter of section six; thence south two miles to the southwest corner of the southeast quarter of section eighteen; all in township forty-four north of range nine west; thence east or west to the watershed hereinbefore established as the boundary line between Ouray and San Miguel counties.

Source: L. 17: p. 118, § 1. **C.L.** § 8613. **CSA:** C. 44, § 55. **CRS 53:** § 34-1-52. **C.R.S. 1963:** § 34-1-52. **L. 84:** Entire section amended, p. 816, § 1, effective March 16.

30-5-153. Park. Park county: Commencing at a point where the second correction line south intersects the Platte river; thence south to the third correction line south; thence west to the summit of the snowy range, east of the Arkansas river; thence in a northerly direction along the divide between the Arkansas and Platte rivers, and around the headwaters of the Platte river and its tributaries; thence easterly along the snowy range dividing the waters of the Platte from the waters of the Blue, to the point of intersection with the first correction line south; thence east on said correction line to the western boundary of Jefferson county; thence south on said boundary to the Platte river; thence up the center of said river to the place of beginning.

Source: R.S. p. 161, § 33. **G.L.** § 367. **G.S.** § 442. **R.S. 08:** § 1130. **C.L.** § 8614. **CSA:** C. 44, § 56. **CRS 53:** § 34-1-53. **C.R.S. 1963:** § 34-1-53.

Editor's note: Pursuant to §§ 30-6-105 to 30-6-109, inclusive, there is recorded in the office of the clerk and recorder of Park County in book 70, page 560, and in the office of the clerk and recorder of Jefferson County in book 140, page 400 (indexed in book 2 - Miscellaneous Papers - in the office of the secretary of state), a proclamation showing attachment to Park County and detachment from Jefferson County of territory described as follows:

“Beginning at the intersection of the boundary line between Park and Jefferson Counties with the center line of the South Platte River, about two miles above Lake George, thence down the said Platte River along its center line to intersection of said center line with the Second Correction Line South, thence westerly along said Correction Line to its intersection with the boundary line between Park and Jefferson Counties, thence along said boundary line to point of beginning.”

ANNOTATION

In this section the term “snowy range” is applied to the mosquito spur, but it is designated as “the snowy range east of the Arkansas river”. Bd. of County Comm’rs v. Bd. of County Comm’rs, 9 Colo. 268, 11 P. 193 (1886).

The mosquito spur of the snowy range, the park range, is a distinct and continuous range or chain of mountains next and immediately east of the Arkansas river, extending from the snowy range at and between the sources of the Arkansas and Platte rivers southward beyond said third correction line; and the summit of this range is the natural boundary between Chaffee and Park counties. Hollenbeck v. Sykes, 17 Colo. 317, 29 P. 380 (1892).

The continental divide constitutes, in part, the western boundary of the county of Park, at the north, where it is described as “the snowy range, dividing the waters of the Platte from the waters of the Blue”. Bd. of County Comm’rs v. Bd. of County Comm’rs, 9 Colo. 268, 11 P. 193 (1886).

It was held that in this section the words “up the river”, at the conclusion of the description of Park county’s eastern boundary, must be rejected and the call read “thence to the place of beginning”, instead of “thence up the river to the place of beginning”. Link v. Jones, 15 Colo. App. 281, 62 P. 339 (1900).

30-5-154. Phillips. Beginning at the intersection of the south line of township six north with the east boundary line of Colorado; thence west along said township line to its intersection with the west line of range forty-seven west; thence north on said range line to its intersection with the second standard parallel north; thence east on said parallel to the southwest corner of township nine north, range forty-seven west; thence north on the west line of range forty-seven west to its intersection with the northern boundary of the southern half of township nine north; thence east on said northern boundary to its intersection with the east boundary line of Colorado; and thence south on said boundary line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 288, § 1. R.S. 08: § 1131. C.L. § 8615. CSA: C. 44, § 57. CRS 53: § 34-1-54. C.R.S. 1963: § 34-1-54. L. 81: Entire section R&RE, p. 1432, § 17, effective July 1.

30-5-155. Pitkin. The county of Pitkin is hereby established, with the legal capacity and functions of other counties in this state, and with boundaries as follows:

Beginning at the point on the summit of the survey or National range where the Elk mountain range intersects the same; thence in a westerly and northwesterly direction along the summit of the Elk mountain range to Snow Mass mountain; thence due west to the divide west of Rock creek; thence along said divide in a northwesterly direction to the southern boundary of Summit county; thence east along the southern boundary of Summit county to the top of the National range being the west boundary line of Lake county; thence along the summit of said range in a southeasterly direction to the place of beginning.

Source: L. 1881: p. 89, § 1. G.S. § 471. R.S. 08: § 1132. C.L. § 8616. CSA: C. 44, § 58. CRS 53: § 34-1-55. C.R.S. 1963: 34-1-55.

30-5-156. Prowers. Beginning at the intersection of the eastern boundary line of Colorado with the south line of township twenty-seven south; thence west on said township line to its intersection with the west line of range forty-seven west; thence north on said range line to its intersection with the fifth standard parallel south; thence east on said parallel to the southwest corner of township twenty-five south, range forty-seven west; thence north on the west line of range forty-seven west to its intersection with the fourth standard parallel south; thence east on said parallel to the eastern boundary line of Colorado; and thence south on said boundary line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 294, § 1. R.S. 08: § 1133. C.L. § 8617. CSA: C. 44, § 59. CRS 53: § 34-1-56. C.R.S. 1963: § 34-1-56. L. 81: Entire section R&RE, p. 1433, § 18, effective July 1.

30-5-157. Pueblo. The boundaries of the county of Pueblo shall be as follows:

Commencing at a point on the western boundary line of said county, as heretofore constituted, where the fourth correction line south crosses the western boundary of said county, thence running due west six miles; thence due south to the summit of the Greenhorn range of mountains; thence southward along said range of mountains to the summit of the Cuerno Verde peak; thence northeast in a straight line to Corral de Toros on the Huerfano river; thence eastward to the Iron Springs; thence due east to the east line of the state; thence north along said east line of the state to a point due east of the northeast corner of said county, as heretofore constituted; thence west to the northwest corner of said county, as heretofore constituted; and thence south to the place of beginning.

Source: R.S. p. 164, § 46. G.L. § 373. G.S. § 445. R.S. 08: § 1134. C.L. § 8618. CSA: C. 44, § 60. CRS 53: § 34-1-57. C.R.S. 1963: § 34-1-57.

30-5-158. Rio Blanco. So much of the county of Garfield as is included within the following described boundaries shall be set apart and is hereby established as a county, with the legal capacities and functions of other counties of this state, to be called the county of Rio Blanco:

Commencing at a point where the line between townships four and five south intersects the line between the state of Colorado and the territory of Utah; thence east on said township line to the southeast corner of township four south, range one hundred west; thence north three miles to the southeast corner of section thirteen, township four south, range one hundred west; thence east to the corner of sections fifteen, sixteen, twenty-one and twenty-two in township four south, range ninety-four west; thence north nine miles to the northeast corner of section four, township three south, range ninety-four west; thence east to the northeast corner of township three south, range ninety west; thence north six miles to the northeast corner of township two south, range ninety west; thence east to the eleventh guide meridian west; thence north on said eleventh guide meridian line to the base line; thence east on said base line to the southeast corner of township one north, range eighty-nine west; thence north six miles to the northeast corner of said township; thence east to the east boundary line of Garfield county; thence north to the south boundary line of Routt county; thence west on the south boundary line of Routt county to the state line; thence south on said state line to place of beginning.

Source: L. 1889: p. 325, § 1. R.S. 08: § 1135. C.L. § 8619. CSA: C. 44, § 61. CRS 53: § 34-1-58. C.R.S. 1963: § 34-1-58.

30-5-159. Rio Grande. Beginning at the intersection of the ninth standard parallel north with the east line of range eight east; thence north on said range line to its intersection with the tenth standard parallel north; thence west on said parallel to its intersection with the west line of range four east; thence north on said range line to its intersection with the north line of township forty-one north; thence west on said township line to its intersection with the west line of range three east; thence south on said range line to the southeast corner of township forty north, range two east; thence west on the south line of said township and range to the northwest corner of township thirty-nine north, range three east; thence south on the west line of range three east to its intersection with the ninth standard parallel north; thence east on said parallel to the place of beginning. Said public land survey lines are based upon the New Mexico principal meridian.

Source: L. 1874: p. 66, § 1. G.L. § 377. L. 1879: p. 48, § 1. G.S. §§ 453, 470. R.S. 08: §§ 1136, 1137. C.L. §§ 8620, 8621. CSA: C. 44, §§ 62, 63. CRS 53: § 34-1-59. C.R.S. 1963: § 34-1-59. L. 81: Entire section R&RE, p. 1433, § 19, effective July 1.

30-5-160. Routt. Beginning at the intersection of the west line of range eighty-eight west with the north boundary line of Colorado; thence south on said range line to its intersection with the north line of township seven north; thence west on said township line

to the section line between sections three and four in township seven north, range eighty-nine west; thence south on said section line to the northeast corner of section twenty-eight in said township seven north, range eighty-nine west; thence west along the north line of sections twenty-eight, twenty-nine, and thirty in township seven north, range eighty-nine west to its intersection with the west line of range eighty-nine west; thence south on the west line of range eighty-nine west to the southwest corner of section eighteen, township three north, range eighty-nine west; thence east on the east-west centerline of said township to the southeast corner of section sixteen in range eighty-six west; thence south on the north-south centerline of said range to the south line of township one south; thence east on said township line to its intersection with the west line of range eighty-two west; thence north along said range line to its intersection with the continental divide in township six north; thence northerly along said divide to its intersection with the north boundary line of Colorado; and thence west on said boundary line to the place of beginning. Said public land surveys are based upon the sixth principal meridian.

Source: G.L. §§ 393, 394. G.S. §§ 463, 464. R.S. 08: §§ 1138, 1139. C.L. §§ 8622, 8623. CSA: C. 44, §§ 64, 65. CRS 53: § 34-1-60. C.R.S. 1963: § 34-1-60. L. 82: Entire section R&RE, p. 480, § 1, effective July 1.

30-5-161. Saguache. Saguache county: Commencing at the most easterly point of La Loma del Norte; thence in an easterly direction to the point where the Mosco creek enters into the San Luis Valley; thence up the center of said creek to the boundary line of Fremont county, on the summit of the Sangre de Cristo range; thence in a northwesterly direction along the summit of said range to the top of the range at the Poncho pass; thence in a direct line west to the one hundred and seventh degree of longitude; thence south, following said degree, to the north boundary line of Conejos county; thence east along the north boundary line of Conejos county to where it intersects the southwest boundary of Saguache county; thence on a produced southeasterly line to the mouth of the canyon of the snowy range, from whence flows the Rio Grande del Norte; thence down the center of said stream to the place of beginning.

Source: L. 1872: p. 81, § 1. G.L. § 352. G.S. § 427. R.S. 08: § 1140. C.L. § 8624. CSA: C. 44, § 66. CRS 53: § 34-1-61. C.R.S. 1963: § 34-1-61.

30-5-162. Saguache and Costilla - boundary. (Repealed)

Source: L. 1874: p. 68, § 13. G.L. omitted. G.S. § 426. R.S. 08: § 1141. C.L. § 8625. CSA: C. 44, § 67. CRS 53: § 34-1-62. C.R.S. 1963: § 34-1-62. L. 81: Entire section repealed, p. 1434, § 22, effective July 1.

30-5-163. San Juan. The county of San Juan is hereby created and established, with the legal capacity and functions of the other counties of the state, and with boundaries as follows:

Commencing at a point on the western boundary of Hinsdale county, nine miles south of where it intersects the tenth correction line north; running thence due west to the western line of the state; thence north along such line to a point ten miles north of the thirty-eighth parallel of north latitude; thence east to a point on the summit of the main range of mountains, dividing the waters of the Uncompahgre and Animas rivers from the waters of the Lake Fork of the Gunnison; thence in a southerly direction along the summit of said range to a point at the head of the north fork of Pole creek; thence down said creek to the present boundary line between Hinsdale and La Plata counties; thence due south along said line to the place of beginning; and the boundary lines of La Plata and Hinsdale counties are hereby changed to correspond with the provisions of this section.

Source: L. 1876: p. 58, § 1. G.L. § 384. G.S. § 461. R.S. 08: § 1142. C.L. § 8626. CSA: C. 44, § 68. CRS 53: § 34-1-63. C.R.S. 1963: § 34-1-63.

30-5-164. San Miguel. The county of San Miguel is hereby created and established, with the legal capacity and functions of other counties of this state, and with the boundaries as follows:

Commencing at a point on the boundary line between the counties of Hinsdale and San Juan, due east of the junction of Mineral creek and the main branch of the Uncompahgre river; thence due west through said junction to the summit of the divide between Red Mountain valley and Poughkeepsie gulch; thence southerly along said divide, to the divide between the waters of the Animas river and the Uncompahgre river; thence along the divide separating the waters of the Uncompahgre and San Miguel rivers on the north from those of Animas river on the south, to the north line of La Plata county; thence along the north line of said La Plata county to the western line of the state; thence north to the southwest corner of Lake county; thence east along the south line of Lake county to the western line of Hinsdale county; thence southerly along the western boundary of Hinsdale county to the place of beginning.

Source: G.L. § 385. G.S. § 462. R.S. 08: § 1143. C.L. § 8627. CSA: C. 44, § 69. CRS 53: § 34-1-64. C.R.S. 1963: § 34-1-64.

30-5-165. San Miguel and Dolores - boundary. The boundary line between San Miguel and Dolores counties is hereby established as follows:

Commencing at the common section corner of sections twenty-seven, twenty-eight, thirty-three and thirty-four, township forty-one north, range nine west, New Mexico principal meridian, being the point of intersection of the said line with the west boundary line of the county of San Juan; thence north and west along the summit of the range dividing the waters of the San Miguel and Dolores rivers to the summit of Lone Cone mountain; thence northwesterly to the northeast corner of section twenty-three, township forty-two, north, range thirteen west New Mexico principal meridian; thence westerly following the section lines three miles north of the south boundary line of township forty-two to the west bank of the Dolores river on the boundary line between sections fourteen and twenty-three of said township forty-two north range eighteen west New Mexico principal meridian; thence south along the east boundary line of said section twenty-three to the southwest corner of said section twenty-three; thence west along the section lines two miles north of the south boundary of said township forty-two to the west boundary line of the state of Colorado.

Source: L. 27: p. 278, § 1. CSA: C. 44, § 70. CRS 53: § 34-1-65. C.R.S. 1963: § 34-1-65.

30-5-166. San Miguel and Ouray - names changed. The name of the county of Uncompahgre is hereby changed to Ouray, and the name of Ouray county is hereby changed to San Miguel county.

Source: L. 1883: p. 123, § 1. G.S. § 483. R.S. 08: § 1144. C.L. § 8628. CSA: C. 44, § 71. CRS 53: § 34-1-66. C.R.S. 1963: § 34-1-66.

30-5-167. Sedgwick. Beginning at the northeast corner boundary of Colorado; thence west on the north boundary line of Colorado to its intersection with the west line of range forty-seven west; thence south on said range line to its intersection with the southern boundary of the northern half of township nine north; thence east on said southern boundary to the east boundary line of Colorado; and thence north on said boundary line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: L. 1889: p. 340, § 1. R.S. 08: § 1145. C.L. § 8629. CSA: C. 44, § 72. CRS 53: § 34-1-67. C.R.S. 1963: § 34-1-67. L. 81: Entire section R&RE, p. 1433, § 20, effective July 1.

30-5-168. Summit. Summit county: All that portion of the state bounded on the south by the county of Lake, and on the east by the summit of the snowy range, and on the north and west by the state boundary.

Source: R.S. p. 162, § 37. G.L. § 369. G.S. § 444. R.S. 08: § 1146. C.L. § 8630. CSA: C. 44, § 73. CRS 53: § 34-1-68. C.R.S. 1963: § 34-1-68.

ANNOTATION

“Snowy range” defined. Every rule of construction requires us to say that the general assembly, in describing the eastern boundary of the county of Summit as the summit of the

snowy range, intended the continental divide. Bd. of County Comm’rs v. Bd. of County Comm’rs, 9 Colo. 268, 11 P. 193 (1886).

30-5-169. Teller. So much of the counties of El Paso and Fremont as is included within the following described boundaries shall be set apart and is hereby established as a county, to be called the county of Teller:

Beginning at the northeast corner of Fremont county at the intersection of the line between ranges sixty-seven and sixty-eight west of the sixth principal meridian, with the line between townships fifteen and sixteen south; thence north on the line between ranges sixty-seven and sixty-eight, seven miles, more or less, to the corner common to sections thirty and thirty-one, township fourteen south, range sixty-seven west, and sections twenty-five and thirty-six, township fourteen south of range sixty-eight west; thence westerly along section lines seven miles, more or less, to the corner common to sections twenty-five, twenty-six, thirty-five and thirty-six, in township fourteen south, range sixty-nine west; thence north on section lines, five miles, more or less, to the corner common to sections one and two, township fourteen south, range sixty-nine west, and sections thirty-five and thirty-six, township thirteen south, range sixty-nine west; thence east two miles along township line to corner common to sections five and six, township fourteen south, range sixty-eight west, and sections thirty-one and thirty-two, township thirteen south, range sixty-eight west; thence north along section lines eighteen miles, more or less, to the north section corner common to sections five and six, township eleven south, range sixty-eight west; thence west along the south boundary line of Douglas county sixteen miles, more or less, to the northwest corner of section three, township eleven south, range seventy-one west, being a point in the easterly boundary line of the county of Park; thence south along the easterly boundary line of Park county thirty miles, more or less, to the line between townships fifteen and sixteen south, being a point on the north boundary line of the county of Fremont; thence east along the north boundary line of Fremont county five miles, more or less, to the northeast corner of section five, township sixteen south, range seventy west; thence south along section lines three miles, more or less, to the corner common to sections sixteen and seventeen, twenty and twenty-one of township sixteen south of range seventy west; thence east along section lines, sixteen miles, more or less, to line between ranges sixty-seven and sixty-eight west; thence north on said range line, three miles, more or less, to the place of beginning.

Source: L. 1899: p. 359, § 1. R.S. 08: § 1147. C.L. § 8631. CSA: C. 44, 74. CRS 53: § 34-1-69. C.R.S. 1963: § 34-1-69.

ANNOTATION

Constitutionality. The act of 1899 from which this section derives under the title “to establish the county of Teller and the temporary county seat thereof”, is not in contravention of § 21 of art. V, Colo. Const., providing that no bill shall be passed containing more than one subject, which shall be clearly expressed in the

title, because the one subject of the act was “to establish the county of Teller”, and each of the provisions following as specified in the title relates to the necessary incidents in establishing a new county; and the fact that certain of the incidents to the establishing of a new county are specified in the title does not limit the act to the

particular matters detailed and exclude other matters necessary to the general purpose of the act. *Frost v. Pfeiffer*, 26 Colo. 338, 58 P. 147 (1899).

Section 3 of art. XIV, Colo. Const., which provides that "no part of the territory of any county shall be stricken off, and added to an adjoining county without first submitting the question to the qualified voters of the county

from which the territory is proposed to be stricken off, nor unless a majority of all the qualified voters of said county, voting on the question, shall vote "therefor", does not restrict the power of the general assembly to create new counties from territory embraced in one or more existing counties. *Frost v. Pfeiffer*, 26 Colo. 338, 58 P. 147 (1899).

30-5-170. Washington. (1) The county of Washington is hereby established, with the same legal capacity and functions as other counties of this state, and the boundaries are as follows:

Beginning at the southeast corner of Weld county, and running thence west along the south boundary of Weld county to a point at the west line of range fifty-four west of the sixth principal meridian; thence north along the west line of said range fifty-four to a point on said range line at the north line of township five, north of range fifty-four west; thence east along said north line of township five north, and continuing on said course direct to a point on the east boundary line of the state, and of said Weld county; thence south along the east boundary line of the state and Weld county to the place of beginning.

(2) There is hereby stricken from the county of Adams, formerly a part of the county of Arapahoe, and annexed to the county of Washington, all that territory now a part of Adams county, formerly a part of Arapahoe county, described as follows:

Beginning at the intersection of the east boundary line of range forty-nine west and the north boundary line of Adams county; thence west along the north boundary line of said Adams county to the east boundary line of range fifty-seven west; thence south along said line to the south boundary line of said Adams county; thence east along the southern boundary of said Adams county to the east boundary line of range forty-nine west; thence north along said line to the place of beginning.

Source: L. 1887: p. 251, § 1. L. 03: p. 169, § 1. R.S. 08: §§ 1148, 1149. C.L. §§ 8632, 8633. CSA: C. 44, §§ 75, 76. CRS 53: § 34-1-70. C.R.S. 1963: § 34-1-70.

ANNOTATION

Authority of county treasurer as to tax deeds. Where lands situated in Arapahoe county were sold to that county for taxes and afterwards became a part of the county of Adams, after the erection of Washington county and the inclusion therein of the lands, the treasurer of that county

was the proper officer to execute tax deeds upon the sales made in Arapahoe, and was authorized to execute a tax deed, in correction of one previously executed by the treasurer of Arapahoe county. *Empire Ranch & Cattle Co. v. Howell*, 60 Colo. 192, 152 P. 1177 (1915).

30-5-171. Weld. Except for those portions that became part of the city and county of Broomfield on November 15, 2001, in accordance with sections 10 to 13 of article XX of the state constitution, beginning at the intersection of the west line of range sixty-eight west with the base line; thence north on said range line to its intersection with the north line of township four north; thence east on said township line to its intersection with the west line of range sixty-seven west; thence north on said range line to its intersection with the north boundary line of Colorado; thence east along said north boundary line to its intersection with the west line of range fifty-five west; thence south on said range line to the southeast corner of township nine north, range fifty-six west; thence west on the south line of said township and range to the northeast corner of township eight north, range fifty-six west; thence south on the west line of range fifty-five west to its intersection with the north line of township six north; thence west on said township line to its intersection with the west line of range sixty west; thence south on said range line to the southeast corner of township five north, range sixty-one west; thence west on the south line of said township and range to the northeast corner of township four north, range sixty-one west; thence south on the east line

of range sixty-one west to its intersection with the base line; and thence west on the base line to the place of beginning. Said public land survey lines are based upon the sixth principal meridian.

Source: R.S. p. 160, § 21. G.L. § 361. G.S. § 436. R.S. 08: § 1150. C.L. § 8634. CSA: C. 44, § 77. CRS 53: § 34-1-71. C.R.S. 1963: § 34-1-71. L. 81: Entire section R&RE, p. 1433, § 21, effective July 1. L. 2004: Entire section amended, p. 640, § 5, effective April 23.

30-5-172. Yuma. (1) The county of Yuma is hereby established, with the same legal capacities and functions as other counties of this state, and the boundaries are as follows:

Beginning at the northeast corner of Washington county; thence running west along the north line of Washington county to the range line between ranges forty-eight and forty-nine west of the sixth principal meridian, in said Washington county; thence south along said range line to the south line of Washington county; thence east along said south line of Washington county to the southeast corner of Washington county; thence north along the east line of said Washington county to the place of beginning.

(2) There is hereby stricken from the county of Adams, formerly a part of Arapahoe county, and annexed to the county of Yuma, all that territory now a part of Adams county described as follows:

Beginning at the northeast corner of Adams county, thence west along the north boundary of said county to the range line dividing ranges forty-eight and forty-nine west; thence along said range line to the south boundary of said county; thence east along the south boundary of said county to the southeast corner of said county; thence north along the eastern boundary of said county to the place of beginning.

Source: L. 1889: p. 476, § 1. L. 03: p. 173, § 1. R.S. 08: §§ 1151, 1152. C.L. §§ 8635, 8636. CSA: C. 44, §§ 78, 79. CRS 53: § 34-1-72. C.R.S. 1963: § 34-1-72.

ARTICLE 6

Location, Change, and Settlement of Boundaries

30-6-100.3.	Definitions.	30-6-109.	Liabilities of annexed territory.
30-6-101.	Survey of boundaries - arbitration.	30-6-109.5.	Annexation - county airports - agreements between governing bodies - approval.
30-6-102.	Board of arbitration.	30-6-109.7.	Minor boundary adjustments.
30-6-103.	Arbitration - agreements - oaths - expenses.	30-6-110.	Boundaries - survey - action to settle.
30-6-104.	Boundaries not changed.	30-6-111.	State engineer - reimbursement for expenses.
30-6-105.	Annexation - petition - notice to voters.	30-6-112.	Boundaries - not changed.
30-6-106.	Annexation - adjoining county.	30-6-113.	Compliance with boundary control commission requirements.
30-6-107.	Annexation - election result - proclamation.		
30-6-108.	County clerks and recorders to record.		

30-6-100.3. Definitions. As used in this article, unless the context otherwise requires, "county" means any county or city and county.

Source: L. 86: Entire section added, p. 1034, § 1, effective July 1.

30-6-101. Survey of boundaries - arbitration. Wherever the boundary lines of any county are so indefinite as to make it impossible to determine where such lines are, and when a portion of territory by reason of such indefinite description is claimed by two counties, the board of county commissioners of each county so claiming said territory is

authorized to have a survey made to define the boundaries. If it occurs that either county is dissatisfied with the boundary line as thus determined, it may be entitled to require of the other an arbitration for the settlement of the matter, from which arbitration there shall be no appeal, and the decision shall be final.

Source: G.L. § 420. G.S. § 479. R.S. 08: § 1153. C.L. § 8637. CSA: C. 44, § 80. CRS 53: § 34-2-1. C.R.S. 1963: § 34-2-1.

30-6-102. Board of arbitration. When such arbitration is required, the board of county commissioners of each county shall choose one person from their county, and such persons shall select a third person who shall not be a resident of either county, and such three persons so chosen shall constitute a board of arbitration for the purposes mentioned in section 30-6-101.

Source: G.L. § 421. G.S. § 480. R.S. 08: § 1154. C.L. § 8638. CSA: C. 44, § 81. CRS 53: § 34-2-2. C.R.S. 1963: § 34-2-2.

30-6-103. Arbitration - agreements - oaths - expenses. All counties, before entering into such arbitration by their boards of county commissioners, shall sign such agreements as required by law concerning arbitrations, and the board of arbitrators, before acting in such capacity, shall take such oath as prescribed by law. The expense of survey and arbitration shall be equally borne by each county, to be paid out of the county general fund.

Source: G.L. § 422. G.S. § 481. R.S. 08: § 1155. C.L. § 8639. CSA: C. 44, § 82. CRS 53: § 34-2-3. C.R.S. 1963: § 34-2-3.

30-6-104. Boundaries not changed. Nothing in sections 30-6-101 to 30-6-103 shall be construed to authorize a change of county lines.

Source: G.L. § 423. G.S. § 482. R.S. 08: § 1156. C.L. § 8640. CSA: C. 44, § 83. CRS 53: § 34-2-4. C.R.S. 1963: § 34-2-4.

30-6-105. Annexation - petition - notice to voters. When a majority of the taxpaying electors residing in that portion of the territory of any county proposed to be stricken off and annexed to an adjoining county shall petition the board of county commissioners of the county in which such territory is situate to have such portion stricken off and annexed to the adjoining county, giving the area and general boundaries of such territory by natural objects and monuments as near as may be, and shall deposit with such board of county commissioners an amount of money sufficient to pay the expenses of the surveying and platting of such territory, it is the duty of the said commissioners to have such territory surveyed and platted in a suitable manner and to cause to be submitted to the registered electors of such county at the general election next after the filing of such petition and plat with them the question of whether such portion of the territory of their county shall be so stricken off. The board of county commissioners shall also require the county clerk and recorder, in giving the notice required by law of the general election then next ensuing, to insert therein a notice to said registered electors that the question of striking off such territory from their county, particularly describing such territory by metes and bounds as shown by said survey, will be submitted to them for their approval or rejection and that they should designate on their ballots their approval thereof, which shall be expressed by the words "for the new county line", or their dissent thereto, expressed by the words "against the new county line". The board of county commissioners of the county to which such territory has been annexed may, in their discretion, pay the necessary expenses of such survey and plat by warrant on the treasury as in other cases.

Source: L. 1887: p. 71, § 1. R.S. 08: § 1157. C.L. § 8641. CSA: C. 44, § 84. CRS 53: § 34-2-5. C.R.S. 1963: § 34-2-5. L. 85: Entire section amended, p. 1342, § 4, effective April 30.

ANNOTATION

Timeliness of filing of petition under this section is governed by § 1-1-109 and language of notification requirement in such section is mandatory and thus county board of commis-

sioners has no discretion to shorten notice period. *Sellers v. Bd. of County Comm'rs*, 682 P.2d 509 (Colo. App. 1984).

30-6-106. Annexation - adjoining county. Upon the receipt of the said petition and deposit by the board of county commissioners, they shall immediately give notice of the fact to the board of county commissioners of the adjoining county to which the petitioners desire said territory should be annexed, and the board of county commissioners of the adjoining county shall, upon receipt of the same, require the county clerk of that county, in giving notice of the next general election, to notify the electors of that county of the proposed annexation, particularly setting forth by metes and bounds in said notice the description of the said territory, that the question of such annexation will be submitted to them at said election, and that said electors shall designate on their ballots their dissent from or agreement thereto, which dissent or agreement shall be expressed as is provided in section 30-6-105.

Source: L. 1887: p. 72, § 2. R.S. 08: § 1158. C.L. § 8642. CSA: C. 44, § 85. CRS 53: § 34-2-6. C.R.S. 1963: § 34-2-6.

30-6-107. Annexation - election result - proclamation. When the votes cast at the annexation election have been duly canvassed, the county clerk of each of said counties shall transmit the result of said election, as to this question, along with the other returns, to the secretary of state, and if such canvass shows that a majority of the votes cast at said election in each of the said counties was in favor of the question submitted in the respective counties mentioned in section 30-6-106, the secretary of state shall immediately make proclamation thereof, setting forth a description of said territory, as it is described in said notice, plat, and survey, and that by virtue of such majority vote in said counties such territory has been stricken off from the one county, naming it, and annexed to the other county, naming it.

Source: L. 1887: p. 72, § 3. R.S. 08: § 1159. C.L. § 8643. CSA: C. 44, § 86. CRS 53: § 34-2-7. C.R.S. 1963: § 34-2-7.

30-6-108. County clerks and recorders to record. It is the duty of the county clerks and recorders of the said counties to record at length said proclamation of the secretary of state, together with said survey and plat, in the deed records of his county, and thereafter the county line so established shall be the lawfully constituted line between said counties, and the said territory so annexed to such county shall be subject to the jurisdiction of the county to which it has been so added, and shall be a part and parcel thereof.

Source: L. 1887: p. 73, § 4. R.S. 08: § 1160. C.L. § 8644. CSA: C. 44, § 87. CRS 53: § 34-2-8. C.R.S. 1963: § 34-2-8.

30-6-109. Liabilities of annexed territory. The territory so stricken off from any county and annexed to the adjoining county shall be held to pay its ratable proportion of all then existing liabilities of the county from which it has been taken. Such ratable proportion of liabilities, as soon as the proclamation has been made, shall be fixed by the board of county commissioners of the county from which it is taken, and certified to the board of county commissioners of the county of which it becomes a part; and said board of county commissioners of the last mentioned county shall cause a special tax to be levied upon the property subject to taxation in such annexed territory for one, two, or three years, until such ratable proportion has been fully collected and paid, and the money, when collected, shall be refunded to the county from which the territory has been taken.

Source: L. 1887: p. 73, § 5. R.S. 08: § 1161. C.L. § 8645. CSA: C. 44, § 88. CRS 53: § 34-2-9. C.R.S. 1963: § 34-2-9.

Cross references: For effect on pending actions of the merger of a municipality into the city and county of Denver, see § 30-11-201.

30-6-109.5. Annexation - county airports - agreements between governing bodies - approval. (1) Any provision of this article to the contrary notwithstanding, the territory of one county may be stricken off and annexed to an adjoining county, whether such territory is contiguous to such adjoining county or not, for the purpose of building and operating a major air carrier airport if the annexing county has a population of more than four hundred thousand and the boards of county commissioners of the two counties enter into an agreement for such annexation and the annexation agreement is subsequently ratified pursuant to the provisions of this section.

(2) Any such annexation agreement shall include, at a minimum:

(a) A description of the boundaries of the territory to be stricken off and annexed;

(b) A provision for the reversion of such territory to the county from which it is to be stricken off if the purposes of the annexation are not achieved;

(c) A provision that any consideration paid by the annexing county go to or for the benefit of the county and any school district from which the annexed territory is to be stricken off; and

(d) A provision designating either the next general election or a special election on a date certain as the ratification election for the proposed annexation agreement.

(3) In order to enter into such an agreement for the striking off and annexation of territory, each board of county commissioners shall be required to approve the agreement by a majority vote at a regular board meeting after not less than seven days' notice to the public and the opportunity for oral and written public comment on the agreement. Such notice shall be published in at least one newspaper of general circulation in the county or counties involved.

(4) After approval of the annexation agreement pursuant to subsection (3) of this section, the board of county commissioners of the county from which the territory is proposed to be stricken off shall submit such proposed annexation agreement to the registered electors of such county, pursuant to section 3 of article XIV of the state constitution, at the next general election or at a special election. Such election shall be governed by the provisions of the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., and shall be paid for by the county in which it is held.

(5) Failure of the registered electors to ratify the annexation agreement by majority vote shall defeat the proposed annexation, and the territory shall not be stricken off. The agreement shall be null and void.

Source: L. 86: Entire section added, p. 1034, § 1, effective July 1. L. 92: (4) amended, p. 873, § 101, effective January 1, 1993.

30-6-109.7. Minor boundary adjustments. (1) (a) The general assembly hereby finds and declares that:

(I) The existence of certain irregular and irrational boundaries between portions of the city and county of Denver and the neighboring counties of Adams, Arapahoe, and Jefferson has resulted in confusion and inefficiency in the delivery of public services, including police, fire, and emergency medical services, to properties on or near such boundaries; and

(II) Such irregular boundaries jeopardize the ability of landowners to utilize and develop their property and impose increased costs and service delays when those landowners seek development approval.

(b) The general assembly further finds and declares that it is the purpose of this section to:

(I) Create a statutory mechanism, permitted by section 3 of article XIV of the Colorado constitution, that provides landowners with a limited means by which such irregular and

irrational boundaries may be corrected for territory located in the city and county of Denver and in the counties of Adams, Arapahoe, and Jefferson;

(II) Limit the minor boundary adjustments under this section to no more than fifty acres per adjustment and to no more than two hundred fifty acres for each such county; and

(III) Permit a minor county boundary adjustment only if such adjustment is requested by one hundred percent of the landowners of property within the territory that is subject to such adjustment and only after the consent of all affected counties, municipalities, and school districts has been obtained.

(2) Any provision of this article to the contrary notwithstanding, a portion of the territory of one county may be stricken off and added to an adjoining county without an election pursuant to the procedure contained in this section.

(3) (a) A petition initiating a minor boundary adjustment that is signed by one hundred percent of the landowners of the territory of a county proposed to be stricken off may be submitted to the board of county commissioners in which such territory is situate. The petition shall include a map, survey, and legal description giving the area and general boundaries of such territory.

(b) Upon receipt of the petition, the board of county commissioners in which such territory is situate shall conduct a hearing on the petition after not less than thirty days' notice to the public and allow the opportunity for oral and written comment on the petition. Such notice shall be published in at least one newspaper of general circulation in such territory. All owners of real property in the territory and any special district organized pursuant to title 32, C.R.S., that serves the territory are to be notified of such hearing by first class mail not less than ten days and not more than thirty days before the hearing.

(c) Following such hearing, the board of county commissioners in which such territory is situate shall act by resolution to approve or deny the minor boundary adjustment initiated by the petition. In the event the minor boundary adjustment is denied, no further action shall be taken.

(d) As used in this subsection (3), "landowner" means the owner in fee of any undivided interest in a given parcel of land that is within the boundaries of the territory of the county proposed to be stricken off. If the mineral estate has been severed, the landowner is the owner in fee of an undivided interest in the surface estate and not the owner in fee of an undivided interest in the mineral estate.

(4) No resolution approving a boundary adjustment shall be adopted or effective pursuant to this section unless:

(a) The territory to be stricken off and added to an adjoining county is contiguous to such adjoining county;

(b) The total area of the territory to be stricken off and added to an adjoining county does not exceed fifty acres;

(c) Both the county from which such territory is to be stricken off and the adjoining county to which such territory is to be added are represented on the boundary control commission established by section 1 of article XX of the Colorado constitution and the governing bodies of such counties have consented by resolution to the adjustment;

(d) As to any county boundary adjustment under this section which will result in the detachment of area from any school district and the attachment of the same to another school district, the board of directors of the school district to which such area will be attached and the board of directors of the school district from which such area will be detached have consented by resolution to such adjustment;

(e) The governing body of any municipality having incorporated territory contiguous to or contained within any portion of the territory to be stricken off has consented, by ordinance or resolution, to such adjustment.

(5) If a minor boundary adjustment is approved pursuant to this section, the board of county commissioners of the county from which such territory is to be stricken off shall negotiate an intergovernmental agreement with the adjoining county to which such territory is to be added. The intergovernmental agreement shall set forth the terms adjusting the boundary of each county and shall include, but not be limited to, the following:

(a) A description of the purpose of the minor boundary adjustment and of the petition initiating such adjustment;

(b) A provision specifying that obligations that are in any way secured by property taxes or other revenue streams from the territory to be stricken off shall be paid as provided in section 30-6-109.

(6) Upon approval by both counties of an intergovernmental agreement described in subsection (5) of this section, the board of county commissioners of each county that is a party to the agreement shall adopt a resolution approving the minor boundary adjustment. A copy of each resolution shall be recorded in the deed records of each county pursuant to section 30-6-108. Effective upon such recordation, the new county boundary so established shall be the lawfully constituted line between each county, and the territory stricken off from one county and added to the adjoining county shall be subject to the jurisdiction of such adjoining county and a part and parcel of the area of such adjoining county; except that the effective date of such new boundary for the purpose of general taxation shall be on and after the next January 1.

(7) Not more than two hundred fifty acres may be stricken from or added to any county pursuant to the provisions of this section.

(8) Except as provided by subsection (8.5) of this section, no territory of a county that contains an occupied residential unit may be stricken off and added to an adjoining county pursuant to this section. As used in this subsection (8), "occupied residential unit" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families.

(8.5) Subsections (3) and (8) of this section shall not apply to a minor boundary adjustment if the county to which territory will be added is bound by the intergovernmental agreement negotiated pursuant to subsection (5) of this section to use the territory solely for park and open space purposes.

(9) In addition to any other requirements contained in this section, prior to the initiation of any minor boundary adjustment in which territory is proposed to be stricken off of the counties of Adams, Arapahoe, or Jefferson and added to the city and county of Denver, a decision approving the proposed minor boundary adjustment shall be made by a majority vote of the six-member boundary control commission, established by section 1 of article XX of the state constitution.

(10) (Deleted by amendment, L. 2003, p. 1323, § 1, effective August 6, 2003.)

Source: L. 98: Entire section added, p. 800, § 1, effective August 5. L. 2003: (8) and (10) amended and (8.5) added, p. 1323, § 1, effective August 6.

Editor's note: Subsection (10) of this section contained a provision that repealed the entire section effective August 5, 2003. Subsection (10) was deleted by amendment in House Bill 03-1239 to give continuing effect to the section. The bill also amended subsection (8) and added a new subsection (8.5). This bill did not contain a safety clause. A bill without a safety clause usually takes effect on the day following the expiration of the ninety-day period after adjournment of the general assembly. Therefore, House Bill 03-1239 would normally take effect on August 6, 2003, one day after the repeal of the section was to take effect. An argument could be made that the deletion of the repealer and the other amendments to the section were of no effect because the repeal had already taken effect on the previous day. However, such an interpretation would defeat the general assembly's purpose in enacting the bill. For that reason, if a court is asked to address this circumstance, it could reach the conclusion that the amendment deleting the repeal should be given effect as of the date the governor signed the bill on April 22, 2003, rather than the technical effective date (see *People v. Tacorante*, 624 P.2d 1324 (Colo. 1981), where a similar conclusion was reached). In view of these factors, the repeal of this section is not reflected in the version printed above; rather, the section appears as amended by House Bill 03-1239.

30-6-110. Boundaries - survey - action to settle. When the boundary lines of any county in this state are so indefinite that a portion of territory, by reason of such indefinite description, is claimed by two counties, and such fact appears by petition of the board of county commissioners of either county to the state engineer, it is the duty of such state engineer, in connection with the county surveyor of each of such counties, to run out and establish such lines as nearly as may be in accordance with such defective description, fix and define such boundary line, by plain and substantial mounds, marks, and unmistakable

natural monuments, and to furnish the board of county commissioners of each of said counties with a description of such line as soon thereafter as may be practical. When such line is established it shall be the boundary line between said counties, unless one of said counties, within six months from the day of filing the description of said line by the state engineer with the board of county commissioners of such county, commences an action in a court of competent jurisdiction in this state to determine and settle such disputed line, and prosecute the same with due diligence until its final determination, or has settled such disputed line, within said six months, by arbitration, as is provided by this article and rule 109, C.R.C.P. If the county surveyor of either of such counties shall not appear or assist the state engineer in making such survey after due notice so to do, it shall in no manner affect or invalidate such survey, or the boundary lines as they may be fixed by such state engineer.

Source: L. 1887: p. 238, § 1. R.S. 08: § 1162. C.L. § 8646. CSA: C. 44, § 89. CRS 53: § 34-2-10. C.R.S. 1963: § 34-2-10.

Editor's note: Rule 109, C.R.C.P., referenced in this section, was repealed March 17, 1994.

ANNOTATION

An actual survey and marking of the line upon the ground is intended by this section, and an attempt by the state engineer and county surveyors to fix a disputed county boundary line without going upon the ground and making an actual survey, was unauthorized and their proceedings were without any force or effect whatever. *Bd. of Comm'rs v. Bd. of Comm'rs*, 25 Colo. 95, 53 P. 383 (1898), reversing 9 Colo. App. 368, 48 P. 675 (1897).

This section is mandatory upon the state engineer when he has received the petition. *Commissioners of Routt County v. Commissioners of Grand County*, 4 Colo. App. 306, 35 P. 1061 (1894).

Equitable not special action to correct errors of engineer. It was held where the state engineer having, under this section, established the boundary between contiguous counties, a proceeding instituted by one of them, under the statute, to correct alleged errors of the state engineer, is an equitable action, and not a special proceeding. *Bd. of Comm'rs v. Bd. of Comm'rs*, 58 Colo. 67, 143 P. 841 (1914).

Proper venue in county where property located. An action to judicially define and settle a boundary line, as fixed by the general assembly, involves an interest in real property, is for the determination of a form of an interest or right in real property, and affects property, and should be tried in the county where the property is situated. *People v. District Court*, 66 Colo. 40, 179 P. 875 (1919).

Survey without effect if action brought within six months. If within six months of the filing of the report of the state engineer upon his survey of a county boundary, an action is brought, pursuant to this section, to determine such boundary, such survey is without effect for any purpose. *People v. District Court*, 66 Colo. 40, 179 P. 875 (1919).

And district court of county from which, by survey, territory is taken, has jurisdiction of an action to establish the boundary under this section. *People v. District Court*, 66 Colo. 40, 179 P. 875 (1919).

Jurisdiction must be affirmatively pled. The complaint in an action under this section to determine and settle a disputed boundary line between counties, after one has been run out and established by the state engineer, must contain affirmative and positive allegations showing the proceedings to have been such as to confer jurisdiction. *Commissioners of Routt County v. Commissioners of Grand County*, 4 Colo. App. 306, 35 P. 1061 (1894).

As must statute of limitations. In order to confer jurisdiction in an action under the section to determine and settle a disputed boundary line between counties, after one has been run out and established by the state engineer, the complaint must affirmatively show that it was commenced within six months after the filing of the description of the boundary line by the state engineer. *Commissioners of Routt County v. Commissioners of Grand County*, 4 Colo. App. 306, 35 P. 1061 (1894).

Action under this section and estoppel separate causes. A complaint setting forth (1) the establishment of a county line by the state engineer, and that the plaintiff county is dissatisfied therewith, (2) the long recognition by both counties and the inhabitants and officials thereof, of the particular line for which the plaintiff contends, contains two separate causes of action, one the action authorized by this section and the other an attempt to set up an estoppel. *Bd. of Comm'rs v. Bd. of Comm'rs*, 58 Colo. 67, 143 P. 841 (1914).

Court renders judgment on evidence. In an action between counties under this section to establish a boundary line, the court has jurisdiction to render judgment upon the evidence, and

is not limited to a determination of the accuracy of the line run by the state engineer. Bd. of Comm'rs v. Bd. of Comm'rs, 2 Colo. App. 412, 31 P. 183 (1892).

This section broadly confers upon a court of competent jurisdiction the power to deter-

mine and settle the disputed line, and it must be held that the jurisdiction conferred is ample enough to enable the court, on the testimony before it, to determine what the line is, and where it should be run. Bd. of Comm'rs v. Bd. of Comm'rs, 2 Colo. App. 412, 31 P. 183 (1892).

30-6-111. State engineer - reimbursement for expenses. The office of the state engineer shall be reimbursed for the expenses of any survey conducted in connection with a boundary dispute pursuant to section 30-6-110, and such expenses shall be borne equally by the counties involved in the boundary dispute.

Source: L. 1887: p. 239, § 2. R.S. 08: § 1163. C.L. § 8647. CSA: C. 44, § 90. CRS 53: § 34-2-11. C.R.S. 1963: § 34-2-11. L. 99: Entire section amended, p. 383, § 1, effective August 4.

30-6-112. Boundaries - not changed. Nothing in this section and sections 30-6-110 and 30-6-111 shall be so construed as to authorize a change of any county line.

Source: L. 1887: p. 239, § 3. R.S. 08: § 1164. C.L. § 8648. CSA: C. 44, § 91. CRS 53: § 34-2-12. C.R.S. 1963: § 34-2-12.

30-6-113. Compliance with boundary control commission requirements. In addition to any other requirements, a decision approving the proposed annexation by a majority vote of the six-member boundary control commission established by section 1 of article XX of the state constitution shall be made prior to the initiation of any annexation procedures pursuant to this article to annex land from the counties of Adams, Arapahoe, or Jefferson to the city and county of Denver.

Source: L. 86: Entire section added, p. 1035, § 1, effective July 1.

ARTICLE 7

County Seats Designated

30-7-101. County seats designated. 30-7-102. Relocation not affected.

30-7-101. County seats designated. The county seats of the several counties of the state of Colorado as heretofore established by statutes or statutory election proceedings are hereby confirmed, validated, and established from the date of such statutory enactment or proceeding as follows:

County	County Seat
(1) Adams	Brighton
(2) Alamosa	Alamosa
(3) Arapahoe	Littleton
(4) Archuleta	Pagosa Springs
(5) Baca	Springfield
(6) Bent	Las Animas
(7) Boulder	Boulder
(8) Broomfield, city and county of	Broomfield
(9) Chaffee	Salida
(10) Cheyenne	Cheyenne Wells
(11) Clear Creek	Georgetown
(12) Conejos	Conejos
(13) Costilla	San Luis
(14) Crowley	Ordway

(15)	Custer	Westcliffe
(16)	Delta	Delta
(17)	Denver, city and county of	Denver
(18)	Dolores	Dove Creek
(19)	Douglas	Castle Rock
(20)	Eagle	Eagle
(21)	Elbert	Kiowa
(22)	El Paso	Colorado Springs
(23)	Fremont	Canon City
(24)	Garfield	Glenwood Springs
(25)	Gilpin	Central City
(26)	Grand	Hot Sulphur Springs
(27)	Gunnison	Gunnison
(28)	Hinsdale	Lake City
(29)	Huerfano	Walsenburg
(30)	Jackson	Walden
(31)	Jefferson	Golden
(32)	Kiowa	Eads
(33)	Kit Carson	Burlington
(34)	Lake	Leadville
(35)	La Plata	Durango
(36)	Larimer	Fort Collins
(37)	Las Animas	Trinidad
(38)	Lincoln	Hugo
(39)	Logan	Sterling
(40)	Mesa	Grand Junction
(41)	Mineral	Creede
(42)	Moffat	Craig
(43)	Montezuma	Cortez
(44)	Montrose	Montrose
(45)	Morgan	Fort Morgan
(46)	Otero	La Junta
(47)	Ouray	Ouray
(48)	Park	Fairplay
(49)	Phillips	Holyoke
(50)	Pitkin	Aspen
(51)	Prowers	Lamar
(52)	Pueblo	Pueblo
(53)	Rio Blanco	Meeker
(54)	Rio Grande	Del Norte
(55)	Routt	Steamboat Springs
(56)	Saguache	Saguache
(57)	San Juan	Silverton
(58)	San Miguel	Telluride
(59)	Sedgwick	Julesburg
(60)	Summit	Breckenridge
(61)	Teller	Cripple Creek
(62)	Washington	Akron
(63)	Weld	Greeley
(64)	Yuma	Wray

Source: L. 55: p. 244, § 1. CRS 53: § 34-4-1. C.R.S. 1963: § 34-4-1. L. 2001: Entire section amended, p. 256, § 3, effective November 15.

30-7-102. Relocation not affected. Nothing in this article shall affect the right of any county to change the location of its county seat as provided by law.

Source: L. 55: p. 244, § 1. CRS 53: § 34-4-2. C.R.S. 1963: § 34-4-2.

ARTICLE 8

Location and Removal of County Seats

30-8-101.	County seat - removal - election.	30-8-107.	cable. County seats - removal - petition - election.
30-8-102.	Special registration.	30-8-108.	Commissioners' surveys - county buildings.
30-8-103.	Polling places - special ballot.	30-8-109.	Attached territory - tax liability.
30-8-104.	Removal - when.		
30-8-105.	Elections - laws applicable.		
30-8-106.	Election contests - laws applicable.		

30-8-101. County seat - removal - election. When an election is ordered by the board of county commissioners of any county on the question of removal or location of the county seat, it is the duty of such board of county commissioners to appoint special judges and registers of such elections, and to provide a special ballot box in each voting precinct in which shall be deposited all the ballots cast at such election in such precinct on the question of location or removal of the county seat.

Source: L. 1881: p. 103, § 1. G.S. § 1284. R.S. 08: § 1171. C.L. § 8649. CSA: C. 44, § 92. CRS 53: § 34-3-1. C.R.S. 1963: § 34-3-1.

ANNOTATION

The constitutional prohibition against local or special laws in certain enumerated cases, locating or changing county seats being one of those cases, was held to be wholly prospective and intended to affect only future legislation. *People v. Bd. of County Comm'rs*, 6 Colo. 202 (1882).

Construction with general election laws. Although registration of electors to vote on the question of removal of a county seat is governed by this and the following sections, they are not exclusive but must be construed with the provisions concerning general elections. *People ex rel. Roberg v. Bd. of Comm'rs*, 86 Colo. 249, 281 P. 117 (1929).

The section governing registration of electors does not repeal this article concerning elections for the removal of county seats. *People ex rel. Roberg v. Bd. of Comm'rs*, 86 Colo. 249, 281 P. 117 (1929).

In the absence of fraud and where there is a substantial compliance with the statute, informalities and innocent departures on the part

of the election board in the matter of an election to remove a county seat, will not render the election void, where it appears that there was a conscientious determination on the part of the election officials to ascertain the will of the electorate on the question submitted, which was carried into effect. *People ex rel. Roberg v. Bd. of Comm'rs*, 86 Colo. 249, 281 P. 117 (1929).

The act of February 11, 1881, was intended to establish a uniform procedure regulating all elections concerning county seats, and it applies to the conduct of an election for the permanent location of a county seat. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914).

Since the act of 1881 was inconsistent with and repugnant to former legislation upon this subject, although it contained no repealing clause, it was well settled that, notwithstanding such omission, so much of former legislation as was in conflict with the latter provisions was impliedly repealed. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914).

30-8-102. Special registration. It is the duty of the judges and registers so appointed to make a special registration of the voters of each precinct who have resided in the county at least six months, and in such precinct at least ninety days, prior to the day designated for holding such election, which day shall be the day designated by law for holding a general election, and no other.

Source: L. 1881: p. 103, § 2. G.S. § 1285. R.S. 08: § 1172. C.L. § 8650. CSA: C. 44, § 93. CRS 53: § 34-3-2. C.R.S. 1963: § 34-3-2.

ANNOTATION

It was purely a question for the general assembly as to whether the same rule should be adopted as to residence in the case of an election to locate a county seat, as § 2 of art. XIV, Colo. Const., had already adopted in the case of an election upon the question of removal of a county seat, and the length of residence required in the latter case was definitely fixed by the constitution, and the general assembly was

left free to determine the qualifications of voters at an election upon the question of the location of a county seat, unquestionably, since there is no specific constitutional inhibition, and the statute is general, applying alike to all similarly situated, the general assembly had the power and authority to enact it. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914).

30-8-103. Polling places - special ballot. The election shall be held at the same places at which the general election is ordered to be held, but the vote for or against removal or location of the county seat shall be by a special ballot, separate and distinct from the general ticket voted at said election, which ballot shall be deposited in the special ballot box provided for in section 30-8-101, and no vote shall be counted for or against said removal or location which is not deposited in such special ballot box.

Source: L. 1881: p. 103, § 3. G.S. § 1286. R.S. 08: § 1173. C.L. § 8651. CSA: C. 44, § 94. CRS 53: § 34-3-3. C.R.S. 1963: § 34-3-3.

30-8-104. Removal - when. No county seat shall be removed until the expiration of thirty days after the canvass of the votes by the county canvassers upon the question of location or removal, nor until the board of county commissioners of such county has made and entered of record on its journal an order directing such removal. The board shall make such order within thirty days after the county canvass is completed, unless enjoined or restrained from so doing by an order of the district court of said county or by the supreme court.

Source: L. 1881: p. 104, § 4. G.S. § 1287. R.S. 08: § 1174. C.L. § 8652. CSA: C. 44, § 95. CRS 53: § 34-3-4. C.R.S. 1963: § 34-3-4.

30-8-105. Elections - laws applicable. All laws now in force relating to elections shall apply to elections held upon the question of removal or location of county seats, except that the question of location of such county seats shall be contested in the district court of said county in the first instance, but may be removed to the district court of any other county under the provisions of the Colorado rules of civil procedure relating to change of the place of trial, and shall be also subject to appeal as provided by law and the Colorado appellate rules. Not less than two-thirds of all the legal votes cast shall be necessary to effect the removal of the county seat of any county in this state.

Source: L. 1881: p. 104, § 5. G.S. § 1288. R.S. 08: § 1175. C.L. § 8653. CSA: C. 44, § 96. CRS 53: § 34-3-5. C.R.S. 1963: § 34-3-5.

Cross references: For the laws governing elections, see title 1.

ANNOTATION

Section held valid. *Alexander v. People ex rel. Schofield*, 7 Colo. 155, 2 P. 894 (1883).

Removal of county seats is subject over which general assembly has plenary jurisdiction and control, and in the absence of constitutional restrictions, a removal could be authorized upon any vote, great or small, which the

body deemed advisable. *Alexander v. People ex rel. Schofield*, 7 Colo. 155, 2 P. 894 (1883).

Where two-thirds of electors of county voting on proposition did not vote to remove the county seat of said county, the county seat was not removed. *Alexander v. People ex rel. Schofield*, 7 Colo. 155, 2 P. 894 (1883).

Where, in an election for the permanent location of a county seat, voters designate on their ballots different places which are substantially in the same locality, the ballots should be

counted for the general spot covered by the descriptions. *Coleman v. People*, 7 Colo. App. 243, 42 P. 1041 (1895).

30-8-106. Election contests - laws applicable. All laws governing contests of elections shall be applicable to contests of county seat elections; except that the board of county commissioners of the county shall in all cases be the contestee, and that the contest shall be conducted in the district court of the proper county. Such district court may appoint a magistrate to take testimony in relation to the grounds of contest alleged by the contestor, which magistrate may sit to take evidence in any precinct of his county.

Source: L. 1881: p. 104, § 6. G.S. § 1289. R.S. 08: § 1176. C.L. § 8654. CSA: C. 44, § 97. CRS 53: § 34-3-6. C.R.S. 1963: § 34-3-6. L. 91: Entire section amended, p. 365, § 40, effective April 9.

Cross references: For the laws governing contests of elections, see § 1-11-201 et seq.

ANNOTATION

The territorial statute made no provision for a contest of an election upon the removal of a county seat. *People v. Bd. of County Comm'rs*, 6 Colo. 202 (1882).

A statement of contest of an election for the removal of a county seat which fails to enumerate a single qualified voter who was de-

nied the right to vote or the name of any person who voted without possessing the necessary qualifications, held bad under the facts and circumstances disclosed. *People ex rel. Roberg v. Bd. of Comm'rs*, 86 Colo. 249, 281 P. 117 (1929).

30-8-107. County seats - removal - petition - election. (1) When the taxpaying electors of any county in this state are desirous of changing the county seat of the county in which they reside from the place where such county seat has been permanently located, they may at any time present to the board of county commissioners of such county a petition signed by a majority of such taxpaying electors whose names shall appear on the last tax roll. No names shall be withdrawn from said petition after the same has been presented to the board of county commissioners, except in cases of actual fraud in the procuring of signatures to the same.

(2) Thereupon it is the duty of the board to require the county clerk and recorder, in giving notice for the next general election, to notify the registered voters of said county to designate upon their ballots at such election the place of their choice; and, if upon canvassing the votes polled or given it appears that any one place has two-thirds of all legal votes polled or given, such place shall be the county seat, and notice of any change thereby made shall be given as provided by law. Where there are no county buildings and the petition so states, it shall not be necessary for such majority to be more than a mere majority of all the legal votes cast to effect such removal.

(3) The term "taxpaying electors" as used in this section means only those persons who are qualified voters under the registration and election laws of this state, and who in the calendar year last preceding the year in which such petition is presented as aforesaid have paid a tax, or are liable for the payment of such tax, on real or personal property assessed to them and owned by them in the county in which such petition is presented.

Source: R.S. p. 162, § 42. G.L. omitted. G.S. § 685. L. 1885: p. 163, § 1. L. 1891: p. 117, § 1. R.S. 08: § 1167. L. 11: p. 263, § 1. L. 13: p. 229, § 1. C.L. § 8655. CSA: C. 44, § 98. CRS 53: § 34-3-7. C.R.S. 1963: § 34-3-7. L. 85: (2) amended, p. 1343, § 5, effective April 30.

ANNOTATION

Under the constitution the general assembly has no power to remove a county seat. Coleman v. People, 7 Colo. App. 243, 42 P. 1041 (1895).

Regulated by general law. The constitution deprives the general assembly of power to remove a county seat, but permits the question of such removal to be regulated by general law, with the limitations, that there can be no removal unless a majority of the electors vote for it, and that no proposition on the subject shall be submitted more often than once in four years. Coleman v. People, 7 Colo. App. 243, 42 P. 1041 (1895).

Voting majorities required for placement or removal. The plain meaning of this section is

that where the county seat has not been permanently located a majority of all the legal votes upon the proposition must be in favor of some one place, and if it has been permanently established, it requires a two-thirds vote in favor of some one place before a removal can be effected. Bd. of Comm'rs v. People ex rel. Love, 26 Colo. 297, 57 P. 1080 (1899).

Where the relator, in mandamus proceedings to compel the removal of a county seat, has long been a resident of the county, without taking steps to test the legality of its location, he should not be permitted to initiate such proceedings. Coleman v. People, 7 Colo. App. 243, 42 P. 1041 (1895).

30-8-108. Commissioners' surveys - county buildings. The board of county commissioners has the power to make all needful arrangements for having such county seat surveyed into lots, squares, streets, and alleys, selling and disposing of the same, and erecting a jailhouse, courthouse, or other county buildings as to the board seems best.

Source: R.S. p. 163, § 44. G.L. § 372. G.S. § 687. R.S. 08: § 1169. C.L. § 8656. CSA: C. 44, § 99. CRS 53: § 34-3-8. C.R.S. 1963: § 34-3-8.

30-8-109. Attached territory - tax liability. No tax shall be levied against the people of any county to erect any public building in another county, in the same judicial district.

Source: G.L. § 568. G.S. § 561. R.S. 08: § 1184. C.L. § 8657. CSA: C. 44, § 100. CRS 53: § 34-3-9. C.R.S. 1963: § 34-3-9.

COUNTY OFFICERS

ARTICLE 10

County Officers

Cross references: For election and terms of county officers, see §§ 6 and 8 of art. XIV, Colo. Const., and §§ 1-4-205 and 1-4-206; for prohibited appointments by outgoing officers, see § 24-50-402; for provisions regarding official bonds, see article 13 of title 24; for standards of conduct for county officials, see article 18 of title 24.

PART 1

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- 30-10-101. Offices - inspection of records - failure to comply - penalty.
- 30-10-102. All money delivered to treasurer - penalty for failure.
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PART 2

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PART 3

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- 30-10-310. Committee of commissioners - report.
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- 30-10-319. Clerk of board - duties.
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- 30-10-403. Deputy clerk - duties.
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- 30-10-406. County clerk and recorder - duties - filing requirements.
- 30-10-407. Microfilm and optical imaging records - when - standards for optical imaging systems.
- 30-10-408. Grantor and grantee indices to be kept by county clerk and recorder.
- 30-10-409. Reception book - form - contents - acceptance for recording.
- 30-10-410. File of plats or maps - index - names.
- 30-10-411. Index of records - grantors - grantees. (Repealed)
- 30-10-412. Recording of papers in bankruptcy. (Repealed)
- 30-10-413. Certified copies prima facie evidence.
- 30-10-414. Abstract of deeds - contents. (Repealed)
- 30-10-415. Tax sales excepted.
- 30-10-416. Clerk to administer oaths - take affidavit or deposition.
- 30-10-417. False oaths, perjury.
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PART 5

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- 30-10-501.5. Qualifications.
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- 30-10-502. Form of bond.
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- 30-10-504. Undersheriff - duties - vacancy.
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- 30-10-506. Deputies.
- 30-10-507. Liability of sheriff for deputy. (Repealed)
- 30-10-508. Executor of sheriff liable. (Repealed)
- 30-10-509. Liability of sheriff for neglect.
- 30-10-510. Appointment and revocation. (Repealed)

30-10-511. Sheriff custodian of jail.
 30-10-512. Sheriff to act as fire warden.
 30-10-513. Duties of sheriff - coordination of fire suppression efforts for forest, prairie, or wildland fire - expenses.
 30-10-513.5. Authority of sheriff relating to fires within unincorporated areas of county - liability for expenses.
 30-10-514. Sheriff to transport prisoners.
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 30-10-703. Form of bond.
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PART 1

GENERAL PROVISIONS

30-10-101. Offices - inspection of records - failure to comply - penalty. (1) (a) Every sheriff, county clerk and recorder, and county treasurer shall keep his or her respective office at the county seat of the county and in the office provided by the county, if any such has been provided, or, if there is none provided, then at such place as the board of county commissioners shall direct. Subject to the provisions of part 2 of article 72 of title 24, C.R.S., and any judicially recognized right of privacy, all books and papers required to be in such offices shall be open to the examination of any person, but no person, except parties in interest, or their attorneys, shall have the right to examine pleadings or other papers filed in any cause pending in such court.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the sheriff, county clerk and recorder, county treasurer, and clerk of the district and county courts may maintain his or her office at a location other than the county seat when authorized to do so pursuant to part 1 of article 5 of title 13, C.R.S.

(c) Notwithstanding any other provision of law to the contrary, the sheriff, county clerk and recorder, and county treasurer may keep one or more offices outside of the county seat or such other place authorized pursuant to part 1 of article 5 of title 13, C.R.S. Any such office shall be in addition to his or her respective office kept pursuant to paragraph (a) of this subsection (1) and shall be within the same county. Any such additional office may be kept only if the board of county commissioners of such county makes office space or funding available to provide for the office.

(d) As used in this section, "office" shall mean a place where some or all of the duties of a sheriff, county clerk and recorder, county treasurer, or clerk of the district and county courts are conducted.

(2) Subject to the provisions of subsection (2.5) of this section, any person or corporation and their employees engaged in making abstracts or abstract books or in the business of title insurance, as defined in section 10-11-102 (3), C.R.S., shall have the right, during usual business hours and subject to such rules and regulations as the officer having the custody of such records may prescribe, to inspect and make memoranda, copies, or photographs of the contents of all such books and papers for the purpose of their business; but any such officer may make reasonable and general regulations concerning the inspection

of such books and papers by the public or by such abstractors or title insurance personnel. If, for the purpose of making such copies, it becomes necessary to remove such records from the room where they are usually kept to some other room in the courthouse where such copying apparatus may be installed for such purpose, the county clerk and recorder, in his or her discretion, may charge to the person or corporation making such copies a fee of ten dollars per hour for the service of the deputy who has charge of such records while they are being so copied; but such fees shall not be charged to one person or corporation unless the same fee is likewise charged to every person or corporation copying such records.

(2.5) (a) In lieu of affording the right of inspection and copying set forth in subsection (2) of this section, any clerk and recorder may make available to abstractors, title insurance personnel, and others, by annual subscription and on such medium as the clerk and recorder shall determine in accordance with the provisions of section 30-10-407, a daily copy in bulk of all documents recorded and filed in such office or less than all if the clerk and recorder determines it to be feasible to sort the bulk as requested. Such bulk copy shall be available to the subscriber no later than the third business day following the date of recording or filing. The fee to be charged by the clerk and recorder for bulk copies supplied in accordance with this subsection (2.5) shall be sufficient to cover the direct and indirect costs of production incurred by the clerk and recorder.

(b) Upon tender of the appropriate fee as provided in section 30-1-103 (2) (j), the clerk and recorder shall furnish single copies of documents upon demand.

(c) The clerk and recorder shall not be required to conduct a search of the real estate records in order to locate any document for copying or for any other purpose.

(3) If any person or officer refuses or neglects to comply with the provisions of this section, he shall forfeit for each day he so refuses or neglects the sum of five dollars, to be collected by civil action, in the name of the people of the state of Colorado, and pay it into the school fund; but this shall not interfere with or take away any right of action for damages by any person injured by such neglect or refusal.

Source: G.L. § 554. L. 1885: p. 157, § 1. R.S. 08: § 1352. L. 13: p. 227, § 1. L. 19: p. 368, § 1. C.L. § 8829. CSA: C. 45, § 176. CRS 53: § 35-1-1. C.R.S. 1963: § 35-1-1. L. 77: (1) amended, p. 1435, § 1, effective May 26. L. 83: (2) amended, p. 1226, § 5, effective July 1. L. 91: (2) amended, p. 709, § 5, effective July 1. L. 93: (1) amended, p. 91, § 2, effective July 1. L. 96: (2) amended and (2.5) added, p. 1556, § 3, effective July 1. L. 2001: (1)(c) and (1)(d) added, p. 652, § 1, effective May 30. L. 2010: (1)(a) amended, (HB 10-1062), ch. 161, p. 556, § 1, effective August 11.

ANNOTATION

Law reviews. For note, "One Year Review of Wills, Estates and Trusts", see 41 Den. L. Ctr. J. 118 (1964).

The amendment to art. VI, Colo. Const., transfers most of the former jurisdiction of the then county courts to the district courts, including, among others, the type of matters (juvenile, mental health, domestic relations, probate) intended to be kept private by this section. Times-Call Publishing Co. v. Wingfield, 159 Colo. 172, 410 P.2d 511 (1966).

Other than "interested" persons allowed access to court records. This section does not mean that judges and clerks of courts of record are prohibited from allowing persons other than parties in interest or their attorneys to examine the pleadings or other papers on file in such courts; however, it does mean that although there is no absolute right to examine such pleadings or other papers, persons could be allowed to do so at discretion of court. Times-Call Publish-

ing Co. v. Wingfield, 159 Colo. 172, 410 P.2d 511 (1966).

Press not barred from court records. This section, originating in 1885, was certainly not intended to bar the press from access to pleadings and court records in civil actions involving matters of public interest such as school bond election contests. Times-Call Publishing Co. v. Wingfield, 159 Colo. 172, 410 P.2d 511 (1966).

This section was not designed to allow individuals who wish to abstract the entire records for future profit in their private business, the privilege of using continuously the public property, and of monopolizing from day to day, for months and years, a portion of the time and attention of the county clerk against his will and without recompense. Bean v. People ex rel. Uppercu, 7 Colo. 200, 2 P. 909 (1883).

Mandamus proper remedy. Where a county clerk and recorder refuses to allow abstractors the use of the county records for the purpose of

making abstracts, mandamus is a proper remedy for them to resort to. *Stocknan v. Brooks*, 17 Colo. 248, 29 P. 746 (1892).

Sufficient allegation for mandamus. An allegation by plaintiffs, in their petition for mandamus, that the county clerk and recorder refused to allow them to examine the records, or make memoranda therefrom, though often requested to do so, is sufficient, since by the terms of this section any person has the right to inspect the records; and it is not necessary to allege that plaintiffs did not have all the information that

could be acquired by the enforcement of the writ. *Stocknan v. Brooks*, 17 Colo. 248, 29 P. 746 (1892).

No mandamus to allow abstracting entire land records. A county clerk is not compellable, by mandamus, to allow abstract makers to use his office and the county records for the purpose of abstracting the entire records of the land titles of the county for sale. *Bean v. People ex rel. Upperco*, 7 Colo. 200, 2 P. 909 (1883).

Applied in *In re W.D.A. v. City & County of Denver*, 632 P.2d 582 (Colo. 1981).

30-10-102. All money delivered to treasurer - penalty for failure. (1) Except as provided in subsection (2) of this section, every county clerk and recorder, district attorney, sheriff, or other state or county officer appointed by law, required or permitted to receive and pay over to the county treasurer any taxes, fines, fees, or other moneys whatsoever, within thirty days after the receipt of such moneys, shall pay the same over to the county treasurer, and together therewith such officer so paying over the same shall deliver to the county treasurer a statement of the amount of such moneys so collected by him and paid over, which statement shall be signed by the person paying the same, sworn to before the county treasurer, and then filed and preserved in the office of such treasurer. Every person falsely swearing in any such statement is guilty of perjury in the second degree. The county treasurer shall not demand or receive any fee for administering the oath required by this section.

(2) Fines and fees levied and collected in state courts for which no specific disposition is provided shall be paid to the department of the treasury for deposit in the general fund.

Source: G.L. § 558. G.S. § 658. R.S. 08: § 1356. C.L. § 8833. CSA: C. 45, § 180. CRS 53: § 35-1-2. C.R.S. 1963: § 35-1-2. L. 64: p. 221, § 46. L. 72: p. 556, § 9. L. 73: p. 1401, § 24. L. 2010: (1) amended, (HB 10-1062), ch. 161, p. 556, § 2, effective August 11.

ANNOTATION

Fees, emoluments, and taxes which were collected by a county clerk as an agent of the motor vehicle department were included in the

purview of this section. *Flanders v. Kochenberger*, 118 Colo. 104, 193 P.2d 181 (1948).

30-10-103. Copies prima facie evidence. Copies of all documents, writs, proceedings, instruments, papers, and writings duly filed or deposited in the office of any county judge, county clerk and recorder, or county treasurer, and transcripts from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be prima facie evidence in all cases.

Source: G.L. § 559. G.S. § 659. R.S. 08: § 1357. C.L. § 8834. CSA: C. 45, § 181. CRS 53: § 35-1-3. C.R.S. 1963: § 35-1-3.

ANNOTATION

Purpose. The plain purpose and effect of this section was to make copies of the writings there specified prima facie evidence of the contents of the original writings, to do nothing more and nothing less. *Bd. of Comm'rs v. Keene Five-Cents Sav. Bank*, 108 F. 505 (8th Cir. 1901).

The object of this section certainly was not to make mere copies competent, relevant, or material evidence of facts of which the original writings were not evidence. *Bd. of Comm'rs v. Keene Five-Cents Sav. Bank*, 108 F. 505 (8th Cir. 1901).

Objection not tenable. If the county court permits one of the books of its office to be taken into another court as evidence, the objection that

the original, and not a certified copy, is produced is not tenable. *McAllister v. People ex rel. Brisbane*, 28 Colo. 156, 63 P. 308 (1900).

30-10-104. Resignations of officers, to whom made. All county officers who hold their office by election shall make their resignation to the officer authorized by law to fill such vacancies in such office, respectively.

Source: G.L. § 560. G.S. § 660. R.S. 08: § 1358. C.L. § 8835. CSA: C. 45, § 182. CRS 53: § 35-1-4. C.R.S. 1963: § 35-1-4.

30-10-105. When office becomes vacant. (1) Every county office shall become vacant, on the happening of any one of the following events, before the expiration of the term of office:

- (a) The death of the incumbent;
- (b) The resignation of the incumbent;
- (c) The removal of the incumbent;
- (d) The incumbent's ceasing to be an inhabitant of the county for which he was elected or appointed;
- (e) The incumbent's refusal or neglect to take his oath of office, to give or renew his official bond, or to deposit such oath and bond within the time prescribed by law;
- (f) The decision of a competent tribunal declaring void his election or appointment;
- (g) The incumbent is declared incapacitated in the manner provided in subsection (4) of this section.
- (h) Repealed.

(2) In the event a county officer is found guilty of any felony or infamous crime by a court or jury, the board of county commissioners shall immediately suspend such county officer from office without pay until his conviction is final and he has exhausted, or by failure to assert them has waived, all rights to new trial and all rights of appeal. At the time such officer's conviction is final and he has exhausted, or by failure to assert them has waived, all rights to appeal and new trial, the said board shall remove such officer from office and his successor shall be appointed as provided by statute, unless during such period of suspension a successor has been duly elected and qualified and said successor, whether so appointed or elected, shall be the duly constituted officer.

(3) Should the officer suspended from office by the board of county commissioners as provided in this section be found not guilty in a state or federal court either on appeal, original trial, or new trial, the board shall forthwith reinstate such officer and give him his back pay, unless during such period of suspension a successor to such suspended officer has been duly elected and qualified. In the event a successor to such suspended officer has been so elected and qualified, such suspended officer shall receive his back pay only up to the expiration date of his regular term of office and he shall not be reinstated or paid further unless he is such person duly elected and qualified.

(4) (a) Any county officer shall be declared incapacitated when there is a judicial determination that he is unable to routinely and fully carry out the responsibilities of his office by virtue of mental or physical illness or disability and he has been so unable for a continuous period of not less than six months immediately preceding the finding of incapacity. The quantum of proof required, the procedures to be followed, and the rights reserved to the subject of any determination of incapacity under this subsection (4) shall be those specified for the appointment of guardians in part 3 of article 14 of title 15, C.R.S., to the extent applicable.

(b) A proceeding to determine incapacity under this subsection (4) shall be commenced in the district court by a majority of the board of county commissioners. With respect to a county commissioner, proceedings shall be commenced when said commissioner fails to attend any regular meeting of the board of county commissioners for a period of six months. With respect to any county officer other than a county commissioner, proceedings shall be commenced when such officer fails to report to his office or other regular place of business for a period of six months.

(c) In any county having a population of less than one hundred thousand, the county shall be represented in the district court by the district attorney or by a qualified attorney acting for the district attorney who is appointed by the district court for that purpose. In any county having a population of one hundred thousand or more, the county shall be represented by the county attorney or a qualified attorney acting for the county attorney who is appointed by the district court for that purpose.

Source: G.L. § 561. G.S. § 661. R.S. 08: § 1359. C.L. § 8836. CSA: C. 45, § 183. CRS 53: § 35-1-5. L. 57: p. 308, § 1. C.R.S. 1963: § 35-1-5. L. 89: (1)(g) and (4) added, p. 1277, §§ 1, 2, effective March 9. L. 90: (1)(h) added, p. 1445, § 2, effective April 5; (1)(h) repealed, p. 1847, § 43, effective May 31. L. 2000: (4)(a) amended, p. 1835, § 15, effective January 1, 2001.

ANNOTATION

No interpretation of vacancy needed. So simple, direct, and integrated is the language of this section that there is no room for interpretation as to when a vacancy occurs. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

Vacancy applies not to the incumbent, but to the term, or to the office, or both, depending generally upon the context. *People ex rel. Bentley v. Le Fevre*, 21 Colo. 218, 40 P. 882 (1895).

The court said that the word "vacancy" as used in modern times relates not only to the office which is to be filled, but to the term for which the appointment is to be made. *Monash v. Rhoades*, 11 Colo. App. 404, 53 P. 236 (1898), *aff'd*, 27 Colo. 235, 60 P. 569 (1900); *People ex rel. Calloway v. De Guelle*, 47 Colo. 13, 105 P. 1110 (1909).

Conviction works disqualification and vacancy. Conviction under the statute of an infamous crime or of an offense involving the violation of the oath of office operates as a disqualification so as to create a vacancy forthwith in the office. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

Instant vacancy upon conviction. The happening of the event fixes the time and fulfillment of the vacancy, and the mingling of situations which ordinarily would give rise to vacancies ipso facto with others that do not necessarily create vacancies ipso facto, without difference of treatment in the statute, is significant, thus, among the listed events creating a vacancy in office are three which by their very nature result in termination of office holding, and the statutory declaration that the office becomes vacant upon the happening thereof seems almost surplusage; also reference is made to the provisions relating to the death of an incumbent, or his resignation, or his removal; the occurrence of any of these events establishes instant a vacancy; and to hold that the death of an incumbent, or his resignation, or his removal effects an immediate vacancy in the office but that the same is not true as to an officer convicted of either of the described offenses would result in a strained, unnatural and illogical construction, in

view of the language employed in the statute which makes no such distinction. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

But the mere doing of a prohibited act by an official, without his conviction therefor, does not create a vacancy. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

And in this state all infamous crimes are felonies, but not all felonies are infamous crimes. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

If a county official was convicted of income tax evasion, and if such amounts to conviction of an infamous crime or an offense involving a violation of his official oath, within the purview of this section, the office of sheriff of Jefferson county became vacant by operation of the law on the date of such conviction. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

Effect of out-of-state convictions. The fact that the general assembly has provided in certain statutes that convictions in other jurisdictions shall operate disadvantageously in the state to the convicted person, and did not so provide in this section, requires us to hold that, as to the latter, the general assembly purposely omitted words which would have given effect to foreign convictions, because to ascertain the intent of the general assembly enacting a particular statute, resort may be had to a comparison in language of the statute under study with analogous but unrelated legislation. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

A conviction in the federal court for this state is not conclusive on a question of disqualification to hold an office of honor, trust, or profit under the laws of Colorado. *People v. Enlow*, 135 Colo. 249, 310 P.2d 539 (1957).

When resignation without effect. The right of any public official to resign cannot be doubted; but when the resignation is predicated upon the premise, stated, or which his conduct may imply, that it is to avoid performing a specific duty in the interest of a party in whose behalf such official is legally bound to act, his resignation, however formally tendered and ac-

cepted, will be regarded as without effect. *People ex rel. Rosenberg v. Keating*, 112 Colo. 26, 144 P.2d 992 (1944).

Where the county clerk-elect died before qualification, a vacancy in the office occurred on the expiration of the term of the then incumbent, to be filled by appointment of the county commissioners. *Gibbs v. People ex rel. Watts*, 66 Colo. 414, 182 P. 894 (1919).

Where the sheriff incumbent was reelected but failed to qualify for the second term, and died before his first term expired, one ap-

pointed by the board of county commissioners to the vacancy, held only to the second Tuesday of the succeeding January, the day appointed by law for the commencement of the second term of his predecessor, even though by express terms, his appointment was "until the next general election"; that upon the second Tuesday of the succeeding January there was a vacancy, and one then appointed by the county commissioners to fill it was entitled to the office until the next general election. *People ex rel. Calloway v. De Guelle*, 47 Colo. 13, 105 P. 1110 (1909).

30-10-106. Substitute officers have same powers and compensation. When any coroner is required to act as sheriff, or any other officer in this state is required to perform any duties belonging to any other office, for the time being, he shall have the same powers in respect to that duty as are given by law to the officer whose duties he performs, and shall be entitled to receive the same compensation for his services.

Source: G.L. § 562. G.S. § 662. R.S. 08: § 1360. C.L. § 8837. CSA: C. 45, § 184. CRS 53: § 35-1-6. C.R.S. 1963: § 35-1-6. L. 64: p. 221, § 47.

30-10-107. Penalty for refusing to qualify. Any person elected or appointed to any county office in any county in this state who refuses to qualify, having consented to such election or appointment, is liable to a fine not exceeding one hundred nor less than twenty-five dollars, at the discretion of any court having competent jurisdiction.

Source: R.S. p. 190, § 1. G.L. § 564. G.S. § 664. R.S. 08: § 1361. C.L. § 8838. CSA: C. 45, § 185. CRS 53: § 35-1-7. C.R.S. 1963: § 35-1-7.

30-10-108. Fines appropriated to school fund of county. All fines contemplated in section 30-10-107 shall be recoverable before any court in this state, in the name of the county in which the case arises, and shall be appropriated to the use of the school fund of said county.

Source: R.S. p. 190, § 10. G.L. § 564. G.S. § 665. R.S. 08: § 1362. C.L. § 8839. CSA: C. 45, § 186. CRS 53: § 35-1-8. C.R.S. 1963: § 35-1-8.

30-10-109. Office hours. All county offices shall be kept open for the transaction of county business on the days and during the hours designated by resolution of the board of county commissioners. However, all clerks of court and sheriffs shall be subject, at all times, to the command of the people, and each thereof shall at all hours, night and day, be prepared to attend such duties as may reasonably be required of them.

Source: L. 51: p. 304, § 1. CSA: C. 45, § 187(1). CRS 53: § 35-1-9. L. 55: p. 248, § 1. L. 59: p. 344, § 1. C.R.S. 1963: § 35-1-9. L. 77: Entire section amended, p. 1436, § 1, effective May 26.

30-10-110. Bonds or insurance of officers - oaths. (1) Except as provided in subsection (2) of this section, every county officer named in section 30-10-101, before entering upon the duties of office, on or before the day of the commencement of the term for which the officer was elected, shall execute and deposit an official bond, as prescribed by law. Any such officer shall also take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with the official bond to be filed and preserved therewith.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase

crime insurance coverage on behalf of the county officer and county employees to protect the people of the county from any malfeasance on the part of the officer while in office or employees.

Source: G.L. § 555. G.S. § 668. R.S. 08: § 1353. C.L. § 8830. CSA: C. 45, § 177. CRS 53: § 35-1-10. C.R.S. 1963: § 35-1-10. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 557, § 3, effective August 11.

Cross references: For oath of office, see §§ 8 and 9 of art. XII, Colo. Const.; for approval and execution of bonds, see §§ 10-4-301 and 24-13-116.

30-10-111. Oath of deputy. A deputy appointed to office, before entering upon the deputy's duties under such appointment, shall take and subscribe the like oath of office as that required to be taken by the appointing officer and shall deposit the same in the office where the oath of such officer is deposited.

Source: G.L. § 556. G.S. § 669. R.S. 08: § 1354. C.L. § 8831. CSA: C. 45, § 178. CRS 53: § 35-1-11. C.R.S. 1963: § 35-1-11. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 557, § 4, effective August 11.

30-10-112. Officer to act until successor qualifies. When the term of office of any sheriff, coroner, county judge, county clerk and recorder, assessor, county treasurer, county surveyor, or other county officer expires, it shall be lawful for such officer, whether reelected or not, and his deputies, to continue to perform all the duties of such office until his successor is duly qualified as required by law.

Source: G.L. § 557. G.S. § 657. R.S. 08: § 1355. C.L. § 8832. CSA: C. 45, § 179. CRS 53: § 35-1-12. C.R.S. 1963: § 35-1-12. L. 64: p. 222, § 48.

PART 2

RECALL OF COUNTY OFFICERS

30-10-201 to 30-10-210. (Repealed)

Source: L. 92: Entire part repealed, p. 924, § 198, effective January 1, 1993.

Editor's note: This part 2 was numbered as article 2 of chapter 35, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to the recall of officers, see part 1 of article 12 of title 1.

PART 3

COUNTY COMMISSIONERS

Cross references: For powers and functions of a board of county commissioners, see part 1 of article 11 of this title.

30-10-301. Oath of commissioners. Each person elected as commissioner, on receiving a certificate of his election, shall take an oath to support the constitution of the United States and of the state of Colorado, and to perform the duties of his office to the best of his ability, which oath, being endorsed upon said certificate, under the hand and seal of the person administering it, shall be sufficient for said person to act as such commissioner.

Source: G.L. § 440. G.S. § 532. R.S. 08: § 1189. C.L. § 8667. CSA: C. 45, § 10. CRS 53: § 35-3-1. C.R.S. 1963: § 35-3-1.

Cross references: For county commissioners' election and term of office, see § 6 of art. XIV, Colo. Const., and § 1-4-205.

ANNOTATION

The oath provided by this section obligates the officer to support the federal and state constitutions and to perform the duties of his office

to the best of his ability. *People v. Schneider*, 133 Colo. 173, 292 P.2d 982 (1956).

30-10-302. County seal - open meetings - rules. The seal of the county shall be the seal of the board of county commissioners. The board of county commissioners shall meet in open session and all persons conducting themselves in an orderly manner may attend its meetings. The board may establish rules and regulations to govern the transactions of its business.

Source: G.L. § 459. G.S. § 542. R.S. 08: § 1191. C.L. § 8669. CSA: C. 45, § 12. CRS 53: § 35-3-2. C.R.S. 1963: § 35-3-2.

Cross references: For public meetings, see part 4 of article 6 of title 24.

ANNOTATION

The language of this section does not require physically open doors, but only free public access. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

And when no intent to exclude the public existed and when no one actually was ex-

cluded, no violation of this statute had occurred where the county commissioners sat with the doors closed. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

30-10-303. Meetings of board. (1) Each board of county commissioners shall meet at the county seat of its county at least one business day of each month and at such other times and locations within the county as in the opinion of the board the public interest may require. Such meetings shall be held on a regular and published schedule, as determined by resolution of the board.

(2) The board may hold such special or emergency meetings and adopt such publication procedure therefor as the public interest may, in the opinion of the board, require.

Source: G.L. § 439. G.S. § 531. R.S. 08: § 1190. C.L. § 8668. CSA: C. 45, § 11. CRS 53: § 35-3-3. C.R.S. 1963: § 35-3-3. L. 79: Entire section amended, p. 1141, § 1, effective June 15.

ANNOTATION

The powers of the board of county commissioners are statutory. *People ex rel. Jones v. Carver*, 5 Colo. App. 156, 38 P. 332 (1894).

No authority is conferred upon it except at meetings held at the times prescribed by statute, or at such other times as in the opinion of the board the public interests may require. *People ex rel. Jones v. Carver*, 5 Colo. App. 156, 38 P. 332 (1894).

No one member has authority to call such a meeting, and their judgment can be expressed only after they come together. *People ex rel. Jones v. Carver*, 5 Colo. App. 156, 38 P. 332 (1894).

And to make the meeting one at which such expression can be given, all the members must be present. *People ex rel. Jones v. Carver*, 5 Colo. App. 156, 38 P. 332 (1894).

Under former section boards of county commissioners were bound to hold their first regular meeting for the year on the first Monday in January. *Liggett v. Bd. of Comm'rs*, 6 Colo. App. 269, 40 P. 475 (1895).

This section is silent as to the manner of calling special meetings, and there are strong reasons for requiring an order entered of record at a regular meeting, by which the public at large, as well as the members of the board, may have notice of the time and the nature of the business to be transacted; if, however, it should be conceded that the board may meet upon the

call of the chairman or otherwise, a sound rule of public policy requires that all members of the board shall have notice of the meeting. *Packard v. Bd. of County Comm'rs*, 2 Colo. 338 (1874).

And it was not a violation of this statute when county commissioners met and transacted business without notice of a meeting held on a day other than those provided for by the statute, where it was well known throughout the county that the commissioners regularly held their meetings on the first Monday of every month. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

30-10-304. Meetings of board in counties over one hundred thousand. Each board of county commissioners of counties containing more than one hundred thousand inhabitants shall hold at least two meetings in each week of each year; but in the months of July and August of each year the board will not be required to hold more than two meetings in each of those months.

Source: L. 07: p. 319, § 3. R.S. 08: § 1194. C.L. § 8670. CSA: C. 45, § 13. CRS 53: § 35-3-4. C.R.S. 1963: § 35-3-4. L. 2001: Entire section amended, p. 653, § 3, effective May 30.

30-10-305. Penalty for absence from meetings in counties over one hundred thousand. If any member of the board of county commissioners of counties containing more than one hundred thousand inhabitants is absent from any regular meeting thereof without being excused by a majority of the board, he shall forfeit to the county ten dollars for any such absence, which sum so forfeited shall be deducted from the absentee's salary next to be paid.

Source: L. 07: p. 319, § 4. R.S. 08: § 1195. C.L. § 8671. CSA: C. 45, § 14. CRS 53: § 35-3-5. C.R.S. 1963: § 35-3-5.

30-10-306. Commissioners' districts - vacancies. (1) Each county shall be divided into three compact districts by the board of county commissioners. Each district shall be as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. Each district shall be numbered consecutively and shall not be subject to alteration more often than once every two years. One commissioner shall be elected from each of such districts by the voters of the whole county. If any commissioner, during his or her term of office, moves from the district in which he or she resided when elected, his or her office shall thereupon become vacant. All proceedings by the board of county commissioners in formation of such districts not inconsistent with this section are confirmed and validated.

(2) Each county having a population of seventy thousand or more which has chosen to increase the members of the board of county commissioners from three to five shall be divided into three or five districts by the board of county commissioners according to the method of election described in section 30-10-306.5 (5) or (6) or section 30-10-306.7. The districts shall be as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. Each district shall be numbered consecutively, and shall not be subject to alteration more often than once every two years; except that, notwithstanding subsection (3) of this section, the board may alter the districts to conform to precinct boundaries that are changed in accordance with section 1-5-103 (1),

C.R.S., based on the division of the state into congressional districts or an approved plan for reapportionment of the members of the general assembly when necessary to ensure that no precinct is located in more than one district. Commissioners shall be elected at large or from districts according to the method of election described in section 30-10-306.5 (5) or (6) or section 30-10-306.7. If any commissioner required to be resident in a district moves during his term of office from the district in which he resided when elected, his office shall thereupon become vacant. All proceedings by the board of county commissioners in formation of such districts not inconsistent with this section are confirmed and validated.

(3) When a board of county commissioners determines to change the boundaries of commissioner districts or when new districts are created, such changes or additions shall be made only in odd-numbered years and, if made, shall be completed by July 1 of such year, except in cases of changes resulting from changes in county boundaries.

(4) Notwithstanding subsections (1) to (3) of this section, after each federal census of the United States, each district shall be established, revised, or altered to assure that such districts shall be as nearly equal in population as possible based on such census minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. The establishment, revision, or alteration of districts required by this subsection (4) shall be completed by September 30 of the odd-numbered year following such census.

(5) No less than thirty days before adopting any resolution to change the boundaries of commissioner districts or create new commissioner districts, the board of county commissioners shall hold a public hearing on the proposed district boundaries.

Source: G.L. § 438. L. 1881: p. 100, § 1. G.S. § 530. L. 01: p. 144, § 1. R.S. 08: § 1196. C.L. § 8672. CSA: C. 45, § 15. CRS 53: § 35-3-6. L. 63: p. 262, § 1. C.R.S. 1963: § 35-3-6. L. 75: Entire section R&RE, p. 190, § 2, effective April 24. L. 80: (3) added, p. 424, § 2, effective March 25; (2) amended, p. 411, § 18, effective January 1, 1981. L. 84: (3) amended and (4) added, p. 818, § 1, effective March 26. L. 88: (2) amended, p. 1113, § 2, effective April 9; (3) amended, p. 298, § 4, effective January 1, 1989. L. 2002: (1), (2), and (4) amended and (5) added, p. 135, § 1, effective August 7.

ANNOTATION

Intent of “by the county commissioners”. When the general assembly in 1963 amended this statute by adding the words “by the county commissioners”, the supreme court believed to be obvious that it was the general assembly’s intent to make it clear and unmistakable that the county commissioners henceforth had the duty and responsibility to maintain their commission districts as compact districts with populations as nearly equal as possible. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

This section does, in fact, impose a positive duty upon the commissioners to redistrict. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

When the general assembly used the word “shall”, it intended to impose upon the county commissioners a mandatory duty and not suggest merely a permissive or discretionary act. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

This section is tantamount to a command upon the county commissioners to properly apportion their commissioner districts, and

either neglecting or refusing to obey this command amounts to a disregard of statutory duty in not taking affirmative action. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

The functions of a board of county commissioners under this section are administrative, and it cannot evade its responsibility to take the necessary affirmative action where such is required to correct malapportionment of commissioner districts. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

Failure or refusal to act proper basis for judicial intercession. Either the failure within a reasonable time or the refusal to act upon the petition of citizens when redistricting is required in order to comply with the law, is a proper basis for judicial intercession. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

And mandamus has been upheld as a remedy to require county commissioners to comply with this section. Bd. of County Comm’rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

There is no reason to distinguish between “compact” in the constitutional provision re-

lating to legislative districts and the same term in the statute concerning commissioner districts. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

And compactness concerns a geographic area whose boundaries are as nearly equidistant as possible from the geographic center. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

Compactness requirement satisfied. Where county was redistricted into three districts, one of which had an area of five square miles and the other two of which had areas of over 1200 square miles, but where the new districts were much more equal in population than the old, the requirement of compactness was satisfied. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

Commissioners may express views privately. Where, at an earlier private meeting, two of the county commissioners agreed to support a redistricting plan when it was proposed by residents of a city in one of the proposed districts, this conduct of the two commissioners did not invalidate the later action of the board in adopting the plan, because it is desirable for commissioners to seek the sentiments of various citizens and it is not improper for them to state their views on matters which will later come before them for action. *Allen v. Bd. of County Comm'rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

No party affiliation required. The state constitution provides that any qualified voter is eligible to hold the office of county commis-

sioner, and this section additionally requires one commissioner shall be elected from each district by the voters of the entire county, but it is not necessary that one have any party affiliation in order to hold the office of county commissioner. *Andersen v. Smyth*, 146 Colo. 165, 360 P.2d 970 (1961); *Mohler v. Johnson*, 196 Colo. 330, 584 P.2d 1218 (1978).

But residency is. A person is not eligible for designation as a candidate for nomination to the office of county commissioner unless at the time of the designation he is a resident of the district he seeks to represent. *Spain v. Fischahs*, 143 Colo. 464, 354 P.2d 502 (1960).

Under this section, the designee of a political party for nomination to the office of county commissioner must be a resident of the district which he seeks to represent at the time of the county assembly of the political party at which candidates are designated. *Spain v. Fischahs*, 143 Colo. 464, 354 P.2d 502 (1960); *Mohler v. Johnson*, 196 Colo. 330, 584 P.2d 1218 (1978).

The "removal" contemplated by former section was not a mere temporary change of place of abode from one district to another, whether it be for pleasure, temporary convenience or for business reasons, and to work a vacancy in the office the removal which the general assembly had in mind must be with a fixed intention by the commissioner who goes from one district to another to give up his legal residence or home in the former, and at the same time to acquire a domicile or legal home in the latter. *People v. Espinoza*, 81 Colo. 198, 254 P. 778 (1927).

30-10-306.5. Procedure to increase number of county commissioners. (1) In any county having a population of seventy thousand or more, the membership of the board of county commissioners may be increased from three to five members pursuant to this section.

(2) Subject to referral as provided in this subsection (2), a board of county commissioners may pass a resolution increasing its membership to five members and designating not fewer than two of the methods of election set forth in subsection (5) or (6) of this section. The resolution shall be referred to the registered electors of the county at a general election. If a majority of votes cast are in favor of the referred resolution, the board of county commissioners shall take such action as is necessary to assure that the increased number of county commissioners are elected at the next general election according to the procedure for election contained in the referred resolution which received the largest number of votes cast.

(3) (a) In the alternative, a petition signed by at least eight percent of the total number of qualified electors of a county voting for all candidates for the office of secretary of state at the last preceding general election shall be sufficient to place on the ballot at a general election the question of whether to increase the membership to five members with a designation of not fewer than two of the methods of election set forth in subsection (5) or (6) of this section.

(b) If a majority of the votes cast on a question placed on the ballot pursuant to paragraph (a) of this subsection (3) are in favor of increasing the membership, the board of county commissioners shall pass a resolution increasing the membership to five members and providing for the election of the increased number of county commissioners at the next general election according to the procedure for election specified in such question which received the largest number of votes cast.

(4) (Deleted by amendment, L. 94, p. 1269, § 1, effective May 22, 1994.)

(5) (a) If three county commissioners are to be resident in districts and two elected by the voters of the whole county, they shall be elected as set forth in this subsection (5). Members resident in districts elected pursuant to this subsection (5) may be elected by the voters of the whole county or may be elected only by voters resident in the district from which the member runs for election.

(b) If the first general election after the voters' approval of such increase is held in 1976 or any fourth year thereafter, two members resident in districts and one at-large member shall be elected to four-year terms at said election, and one at-large member shall be elected to fill the vacancy until the next general election, and two members, one resident in a district and one at large, shall be elected to four-year terms at said next general election. Thereafter, three members, two resident in districts and one at large, shall be elected at the general elections which occur each four years after the first general election following such resolution, and two members, one resident in a district and one at large, shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(c) If the first general election after the voters' approval of such increase is held in 1978 or any fourth year thereafter, two members, one resident in a district and one at large, shall be elected to four-year terms at said election, and one at-large member shall be elected to fill the vacancy until the next general election, and three members, two resident in districts and one at large, shall be elected to four-year terms at said next general election. Thereafter, two members, one resident in a district and one at large, shall be elected at the general elections which occur each four years after the first general election following such resolution, and three members, two resident in districts and one at large, shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(d) Prior to March 1 of the election year, the board of county commissioners shall designate the at-large position from which a commissioner is to be elected to a two-year term to fill a vacancy described in paragraph (b) or (c) of this subsection (5).

(6) (a) If five county commissioners resident in districts are to be elected, they shall be elected as set forth in this subsection (6). Members elected pursuant to this subsection (6) may be elected by the voters of the whole county or may be elected only by voters resident in the district from which the member runs for election.

(b) If the first general election after the voters' approval of such increase is held in 1982 or any fourth year thereafter, two members resident in districts shall be elected to four-year terms at said election, and one member resident in a district shall be elected to fill the vacancy until the next general election, and three members resident in districts shall be elected to four-year terms at said next general election. Thereafter, two members resident in districts shall be elected at the general elections which occur each four years after the first general election following such resolution, and three members resident in districts shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(c) If the first general election after the voters' approval of such increase is held in 1984 or any fourth year thereafter, three members resident in districts shall be elected to four-year terms at said election, and one member resident in a district shall be elected to fill the vacancy until the next general election, and two members resident in districts shall be elected to four-year terms at said next general election. Thereafter, three members resident in districts shall be elected at the general elections which occur each four years after the first general election following such resolution, and two members resident in districts shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(d) The board of county commissioners shall designate the district from which a commissioner is to be elected to a two-year term to fill a vacancy described in paragraph (b) or (c) of this subsection (6).

Source: L. 80: Entire section added, p. 411, § 19, effective January 1, 1981. L. 94: (2) to (4) amended and (5)(d) added, pp. 1269, 1270, §§ 1, 2, effective May 22.

30-10-306.7. Procedure for electing county commissioners. (1) In any county having a population of seventy thousand or more which has increased the membership of the board of county commissioners to five pursuant to sections 1-4-205 (3) (a), C.R.S., and 30-10-306.5, the registered electors may, either by referendum or by initiative, change the method of electing said members or reduce the membership of the board of county commissioners to three, pursuant to the procedures in this section.

(2) (a) In any such county, the method of electing members of the board of county commissioners may be changed to any one of the following methods:

(I) Five commissioners resident in five districts, elected by the voters of the whole county or elected only by voters resident in the district from which the member runs for election. In such case, the procedures for election shall be in accordance with section 30-10-306.5 (6). The county clerk and recorder shall make any other necessary provision to effectuate the change in method of election.

(II) Three commissioners resident in three districts, elected by the voters of the whole county or elected only by voters resident in the district from which the member runs for election. In such case, the procedures for election shall be in accordance with subsection (5) of this section.

(III) Five commissioners elected as follows: Three commissioners resident in three districts and elected by voters resident in those districts and two commissioners elected at large; or three commissioners resident in districts and elected by voters of the whole county and two commissioners elected at large. In such case, the procedures for election shall be in accordance with paragraph (a) of subsection (5) of this section.

(b) The registered electors of such a county may, either by referendum or by initiative, decrease the members of the board of county commissioners from five to three. In such case, the term of office of all members serving on the board shall expire at the time the next duly elected board takes the oath of office following the first general election after the voters' approval of such decrease, and three new members shall be elected in accordance with sections 1-4-205 (2), C.R.S., and 30-10-306. Two seats, as determined by lot, shall be elected for four-year terms and the remaining seat shall be elected for a two-year term of office in accordance with sections 1-4-205 (2), C.R.S., and 30-10-306. The county clerk and recorder shall make any necessary changes to effectuate the decrease in membership.

(3) Subject to referral as provided in this subsection (3), a board of county commissioners may pass a resolution changing the method of electing the members of the board or decreasing the membership of the board, as provided in subsection (2) of this section. Prior to the ninetieth day before the next general election, the board of county commissioners shall request that the county clerk and recorder place the resolution on the ballot for referral to the registered electors of the county at the next general election.

(4) In the alternative, a petition signed by at least eight percent of the total number of qualified electors of a county voting for all candidates for the office of secretary of state at the last preceding general election shall be sufficient to place on the ballot at a general election the question of whether to change the method of electing members of the board or to decrease the membership of the board. In the case of a petition to change the method of electing members of the board, such petition shall specify the method of election according to subsection (2) of this section. Such a petition, shall be delivered to the county clerk and recorder prior to the ninetieth day before the next general election with a request that the question be placed on the ballot for referral to the registered electors of the county at the next general election.

(5) (a) If a majority of the votes cast on the question are in favor of changing the method of electing the five commissioners or providing for three commissioners, as provided in subparagraph (II) or subparagraph (III) of paragraph (a) of subsection (2) of this section, the board of county commissioners shall change the boundaries of the commissioner districts so as to create three districts as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. The districts shall be numbered consecutively and shall not be subject to alteration more often than once every two years; except that, notwithstanding section 30-10-306 (3), the board

may alter the districts to conform to precinct boundaries that are changed in accordance with section 1-5-103 (1), C.R.S., based on the division of the state into congressional districts or an approved plan for reapportionment of the members of the general assembly when necessary to ensure that no precinct is located in more than one district. All other provisions of sections 1-4-205 (3) (a), C.R.S., and 30-10-306 (2) and (3) relating to the method of electing members, as provided in this paragraph (a), shall be applicable; except that, when districts are created, such changes shall be completed by July 1 of the odd-numbered year immediately preceding the general election.

(b) (I) Upon adoption of the boundaries of the three commissioner districts pursuant to subsection (2) of this section, it shall be decided by lot which of the five presently elected commissioners shall serve each of the three commissioner districts and which two commissioners shall serve the county at large.

(II) If more than one presently elected commissioner resides within the boundaries of the same newly created commissioner district, those commissioners shall first determine by lot which of them will serve that district and which of them will represent the county at large. The remaining commissioners shall then determine by lot which of them will serve the two remaining districts and which of them will serve as the second commissioner at large.

(III) The county clerk and recorder shall establish the time, place, and manner in which such lots shall be conducted and shall declare the official results of such lots immediately thereafter.

(c) In the event that the registered electors of a county vote to change the method of election pursuant to this subsection (5), the terms of office of the five presently elected commissioners shall not be affected.

(d) Thereafter, the method of election in such counties shall be as provided in sections 1-4-205 (3) (a), C.R.S., and 30-10-306.5 (5).

Source: L. 88: Entire section added, p. 1111, § 1, effective April 9; (5)(a) amended, p. 1436, § 36, effective June 11. L. 2002: (5)(a) amended, p. 136, § 2, effective August 7.

30-10-307. Chairman - temporary chairman. At the first meeting after election, the board of county commissioners shall choose one of its number as chairman, who shall preside at such meeting and all other meetings, if present; but, in case of his absence from such meeting, the members present shall choose one of its number as temporary chairman.

Source: G.L. § 460. G.S. § 543. R.S. 08: § 1199. C.L. § 8675. CSA: C. 45, § 18. CRS 53: § 35-3-7. C.R.S. 1963: § 35-3-7.

30-10-308. Oaths administered and orders signed by chairman. The chairman of said board of county commissioners has the power to administer oaths to any person concerning any matter submitted to the board or connected with its powers and duties, and he shall sign all county orders.

Source: G.L. § 461. G.S. § 544. R.S. 08: § 1201. C.L. § 8678. CSA: C. 45, § 21. CRS 53: § 35-3-8. C.R.S. 1963: § 35-3-8.

ANNOTATION

Power to issue warrant in board alone. While a county warrant is to be signed by the chairman of the board of county commissioners, and also to be signed and attested by the clerk, yet the power to issue a county warrant is vested alone in the board of county commissioners and can be only exercised at a meeting of the board. Stoddard v. Benton, 6 Colo. 508 (1883).

And a warrant drawn and signed without any action of the board is a nullity in the hands of any one chargeable with notice of the irregularity, and in an action against the county treasurer to compel payment, he may allege in his defense the facts which show the warrant to be void. Stoddard v. Benton, 6 Colo. 508 (1883).

30-10-309. County commissioner vacancies. (Repealed)

Source: G.L. §§ 445, 473, 942. G.S. §§ 537, 552, 1166. R.S. 08: §§ 1202, 1239, 2334. C.L. §§ 7822, 8679, 8680. CSA: C. 45, §§ 22, 23. CSA: C. 59, § 311. CRS 53: § 35-3-9. C.R.S. 1963: § 35-3-9. L. 79: Entire section R&RE, p. 1142, § 1, effective March 13. L. 80: Entire section repealed, p. 418, § 38, effective January 1, 1981.

30-10-310. Committee of commissioners - report. If the board of county commissioners sees fit to refer any matter to a committee of its members, the actions of said committee shall not be final, but shall be reported to the board for its consideration, and the board's action thereon shall be placed in its records.

Source: L. 1891: p. 114, § 1. R.S. 08: § 1203. C.L. § 8681. CSA: C. 45, § 24. CRS 53: § 35-3-10. C.R.S. 1963: § 35-3-10.

30-10-311. Bonds or insurance of county commissioners. (1) Except as provided in subsection (2) of this section, each county commissioner of the several counties of this state is required to execute a bond, payable to the people of the state of Colorado, conditioned that the commissioner will faithfully and honestly discharge the duties of the office of county commissioner so long as the commissioner continues in office, and that the commissioner will not, either directly or indirectly, misappropriate, or permit to be misappropriated, any of the funds or property of said county while in office; that the commissioner will not, while in office, be interested or concerned in any manner, directly or indirectly, in any sale, purchase, bargain, or contract whereby any sum of money or thing in action becomes due to such commissioner from such county, or from any person from such county; and that the commissioner will at all times transact the business of such county economically, and to the best of the commissioner's ability, for the best interest of such county.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the county commissioner to protect the people of the county from any malfeasance on the part of the commissioner while in office.

Source: L. 1881: p. 96, § 1. G.S. § 564. R.S. 08: § 1244. C.L. § 8720. CSA: C. 45, § 67. CRS 53: § 35-3-11. C.R.S. 1963: § 35-3-11. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 557, § 5, effective August 11.

ANNOTATION

The object of this section is to require county commissioners to give bonds for the faithful discharge of their duties, and a provision for the recovery of such damages as the county shall sustain by reason of a breach of the conditions of the bond, and designating who might bring suit for such recovery, is certainly germane to the subject matter of such a title. *Patterson v. Watson*, 35 Colo. 502, 83 P. 958 (1906).

Subsequent bond not authorized. When a person duly elected to the office of county commissioner has executed his bond as required by law, when said bond has been approved by the judge of the proper district, and when the person so elected and qualified has actually entered upon the duties of his office, the district court or judge, thereafter, has no jurisdiction to order said commissioner to give a new bond with

further sureties to be approved by said court or judge, and, in default of compliance with such order, to declare such commissioner's office vacant. *People ex rel. Jones v. District Court*, 18 Colo. 293, 32 P. 819 (1893).

The approval by the judge of the district court of a bond of a county commissioner-elect, is not to be arbitrarily overturned or disregarded by the board. *People ex rel. Pauls v. District Court*, 46 Colo. 1, 101 P. 777 (1909).

No forfeiture of bond for compliance with unconstitutional statute. Compliance with the terms of a statute which may be unconstitutional will not, absent other evidence, be grounds for forfeiture of bond required by this section. *Bd. of County Comm'rs v. Fifty-First Gen. Ass'y*, 198 Colo. 302, 599 P.2d 887 (1979).

Applied in *Davison v. Bd. of County Comm'rs*, 41 Colo. App. 344, 585 P.2d 315 (1978).

30-10-312. Amount of bond or insurance - county commissioners. The bond executed by the county commissioners in counties with a population of ten thousand or more persons pursuant to section 30-10-311 (1) or the insurance purchased by the county on behalf of the county commissioners pursuant to section 30-10-311 (2) shall be in the sum of ten thousand dollars and in counties with a population under ten thousand persons shall be in the sum of five thousand dollars.

Source: L. 1881: p. 97, § 2. G.S. § 565. R.S. 08: § 1245. C.L. § 8721. CSA: C. 45, § 68. CRS 53: § 35-3-12. C.R.S. 1963: § 35-3-12. L. 73: p. 1401, § 25. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 558, § 6, effective August 11.

30-10-313. Bond executed or insurance purchased before duties assumed. No county commissioner shall enter upon the duties of the office of commissioner unless the commissioner has executed the bond described in section 30-10-311 (1) or the county has purchased the insurance described in section 30-10-311 (2).

Source: L. 1881: p. 97, § 3. G.S. § 566. R.S. 08: § 1246. C.L. § 8722. CSA: C. 45, § 69. CRS 53: § 35-3-13. C.R.S. 1963: § 35-3-13. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 558, § 7, effective August 11.

30-10-314. Where bond filed. If a county commissioner executes a bond pursuant to section 30-10-311 (1), the bond, after approval by the judge of the district court, shall be filed by the county clerk and recorder of such county and shall be recorded in the records of the county.

Source: L. 1881: p. 98, § 6. G.S. § 569. R.S. 08: § 1248. C.L. § 8724. CSA: C. 45, § 71. CRS 53: § 35-3-15. C.R.S. 1963: § 35-3-15. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 558, § 8, effective August 11.

30-10-315. Penalty for acting without bond or insurance. If any county commissioner acts as such officer, performs any of the duties, or exercises any of the rights or privileges of county commissioner without being bonded or insured pursuant to section 30-10-311, or after judgment of removal from such office has been entered, the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than five thousand dollars, and by imprisonment in the county jail for not less than thirty days nor more than six months.

Source: L. 1881: p. 98, § 5. G.S. § 568. R.S. 08: § 1247. C.L. § 8723. CSA: C. 45, § 70. CRS 53: § 35-3-14. L. 63: p. 326, § 15. C.R.S. 1963: § 35-3-14. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 558, § 9, effective August 11.

30-10-316. Suits on bond or insurance. Upon default or breach of any of the conditions of either the bond or the insurance policy required by section 30-10-311 by any county commissioner in this state, either the district attorney for the district in which such commissioner resided at the time of such breach, the county attorney of such county, or any taxpayer of the county who will become responsible for the costs of suit, may institute an action in any court of competent jurisdiction in such county in the name of the board of county commissioners of the county and against the principal and sureties upon the bond or the insurance policy for the damages such county has sustained by reason of the breach of any of the conditions contained in the bond or the insurance policy. When a suit is brought by any person other than the district or county attorney, the court may require surety for costs as in other civil cases.

Source: L. 1881: p. 98, § 7. G.S. § 570. L. 1885: p. 162, § 1. R.S. 08: § 1249. C.L. § 8725. CSA: C. 45, § 72. CRS 53: § 35-3-16. C.R.S. 1963: § 35-3-16. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 558, § 10, effective August 11.

ANNOTATION

Section germane. The provision for the recovery of such damages as the county shall sustain by reason of a breach of the conditions of a bond, and designating who might bring suit for such recovery, is certainly germane to the subject matter of the title. *Patterson v. Watson*, 35 Colo. 502, 83 P. 958 (1906).

Unless the right of the taxpayers to sue under this section be put in issue by a special plea, the question is waived. *Buckmaster v. Williams*, 72 Colo. 593, 212 P. 977 (1923); *Wakeman v. Norton*, 24 Colo. 192, 49 P. 283 (1897); *Hukill v. McGinnis*, 70 Colo. 455, 202 P. 110 (1921).

30-10-317. County to recover all damages - execution against body. In any action filed pursuant to section 30-10-316, the county shall recover all damages, both proximate and remote, that it may have sustained by reason of any breach of the conditions of the bond or the insurance policy required by section 30-10-311, as applicable; and if it appears on the trial of any such case that the breach was tortious, fraudulent, or willful, and that the county shall not be able to recover judgment against the sureties or, having recovered judgment, is unable to collect the same from the principal or the principal's sureties, the county may have execution against the body of such principal, who shall be confined in the county jail of the county until such judgment and costs are paid; except that such imprisonment shall not exceed one year.

Source: L. 1881: p. 98, § 8. G.S. § 571. R.S. 08: § 1250. C.L. § 8726. CSA: C. 45, § 73. CRS 53: § 35-3-17. C.R.S. 1963: § 35-3-17. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 559, § 11, effective August 11.

ANNOTATION

Body execution statute unconstitutional under the fourteenth amendment of the U.S. constitution as discriminatory against indigent debt-

ors. *Kinsey v. Preeson*, 746 P.2d 542 (Colo. 1987).

30-10-318. Recovery for all damage - liability. In all suits upon the official bonds or insurance policies required by section 30-10-311, the recovery against a member of the board of county commissioners shall not be limited to a proportionate amount of the damage proved, but the recovery on the bond of each shall be for the whole amount of damage proved. If any member of a board of county commissioners knowingly acquiesces in any misappropriation of the funds of a county, or in the allowance of bills that are not legally allowable, or in the payment thereof, the sureties or insurer of the county commissioner, as applicable, shall be liable for all damages, both proximate and remote, that the county sustains for reason thereof, to be recovered as provided.

Source: L. 1881: p. 99, § 9. G.S. § 572. R.S. 08: § 1251. C.L. § 8727. CSA: C. 45, § 74. CRS 53: § 35-3-18. C.R.S. 1963: § 35-3-18. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 559, § 12, effective August 11.

ANNOTATION

This section is not to be construed as a penal statute. *Morris v. Bd. of Comm'rs*, 25 Colo. App. 416, 139 P. 582 (1914); *Nordloh v. Bd. of Comm'rs*, 25 Colo. App. 457, 139 P. 585 (1914).

A mere mistake of judgment by the commissioners gives no action upon the bond, and tortious or fraudulent conduct of the commissioners must be shown. *Morris v. Bd. of Comm'rs*, 25 Colo. App. 416, 139 P. 582 (1914).

30-10-319. Clerk of board - duties. (1) It is the general duty of the clerk of the board of county commissioners:

(a) To record, in a book to be provided for that purpose, all proceedings of the board;

- (b) To make regular entries of all their resolutions and decisions on all questions concerning the raising of money;
- (c) To record the vote of each commissioner on any question submitted to the board, if required by any member;
- (d) Except when specifically provided otherwise by law, sign all orders issued by the board for the payment of money;
- (e) To preserve and file all accounts acted upon by the board, with their action thereon, and he shall perform such other duties as are required by law.

Source: G.L. § 469. G.S. § 554. R.S. 08: § 1252. C.L. § 8728. CSA: C. 45, § 75. CRS 53: § 35-3-19. C.R.S. 1963: § 35-3-19. L. 69: p. 223, § 1. L. 71: p. 324, § 1.

Cross references: For the county clerk being the clerk of the board of county commissioners, see § 30-10-402.

ANNOTATION

Power to issue county warrants only in board. While a county warrant is to be signed by the chairman of the board of county commissioners, and also to be signed and attested by the clerk, yet the power to issue a county warrant is vested alone in the board of commissioners and can be only exercised at a meeting of the board. Stoddard v. Benton, 6 Colo. 508 (1883).

Duty to be available to perform certain functions and duty to attend meetings of board of county commissioners. The responsibilities of the position of the clerk of the board of county commissioners includes either being available, or having a deputy available, during regular business hours to perform the constitu-

tional and statutory functions. Bd. of County Comm'rs v. Hatfield, 39 Colo. App. 548, 570 P.2d 1091 (1977).

Duty when clerk fails to attend meeting. Where the clerk is notified of a meeting of the board and fails to attend, the board necessarily has authority to record its own proceedings and thereafter approve those minutes. Upon being tendered such minutes, the clerk must record them in the proper book regardless of the fact that neither she nor her deputies actually recorded the proceedings. Bd. of County Comm'rs v. Hatfield, 39 Colo. App. 548, 570 P.2d 1091 (1977).

30-10-320. Clerk to designate amount - copies of records. It is the duty of such clerk to designate upon every account which is audited and allowed by the board the amount so allowed; and he shall also deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein, on receiving from such person the fees prescribed by law.

Source: G.L. § 470. G.S. § 555. R.S. 08: § 1253. C.L. § 8729. CSA: C. 45, § 76. CRS 53: § 35-3-20. C.R.S. 1963: § 35-3-20.

Cross references: For fees of county clerk and recorders for copies of records, see § 30-1-103.

30-10-321. Orders - dated and numbered - records of issuance. Such clerk shall not sign or issue any county order, unless ordered by the board of county commissioners authorizing the same; and every such order shall be numbered, and the date, amount, and number of the same, and the name of the person to whom it is issued, shall be entered in a book kept by him in his office for that purpose.

Source: G.L. § 471. G.S. § 556. R.S. 08: § 1254. C.L. § 8730. CSA: C. 45, § 77. CRS 53: § 35-3-21. C.R.S. 1963: § 35-3-21.

30-10-322. Penalty for failure to perform duty. If any commissioner refuses or neglects to perform any of the duties which are required of him by law as a member of the board of county commissioners, without just cause therefor, he shall, for each offense, forfeit a sum not less than twenty-five nor more than one hundred dollars.

Source: G.L. § 468. G.S. § 551. R.S. 08: § 1238. C.L. § 8715. CSA: C. 45, § 62. CRS 53: § 35-3-22. C.R.S. 1963: § 35-3-22.

ANNOTATION

Enforcement of statute which may be unconstitutional is not violation of this section.

Bd. of County Comm'rs v. Fifty-First Gen. Ass'y, 198 Colo. 302, 599 P.2d 887 (1979).

PART 4

COUNTY CLERK AND RECORDER

Cross references: For fees of county clerk and recorders, see § 30-1-103.

30-10-401. County clerk - term - bond - insurance. (1) A county clerk shall be elected in each county of this state for the term of four years and, except as provided in subsection (2) of this section, before entering upon the duties of the office, shall execute to the people of the state of Colorado, and file with the county clerk then in office, a bond with two or more sufficient sureties in the sum of not less than five thousand dollars, to be affixed and approved by the board of county commissioners according to law, with conditions in substance as follows: "Whereas, The above bounden was elected to the office of the county clerk of, on the day of, Now, therefore, if the said shall faithfully perform all the duties of the office, and shall pay over all moneys that may come into the hands of the clerk as required by law, and shall deliver to the clerk's successor in office all the books, records, papers, and other things belonging to said office, then the above obligation to be void, otherwise to remain in full force." The bond, after being recorded, shall be at once deposited with the county treasurer for safekeeping.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the county clerk to protect the people of the county from any malfeasance on the part of the clerk while in office.

Source: G.L. § 478. G.S. § 573. R.S. 08: § 1256. C.L. § 8731. CSA: C. 45, § 78. CRS 53: § 35-4-1. L. 56: p. 128, § 1. C.R.S. 1963: § 35-4-1. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 559, § 13, effective August 11.

Cross references: For the oath of civil officers, see § 8 of art. XII, Colo. Const.; for the election, term, and salary of county officers, see § 8 of art. XIV, Colo. Const.; for the election of county clerk, see § 1-4-206; for bonds executed by surety companies, see § 10-4-301; for the approval of official bonds, see § 24-13-116; for bonds of county officers, see § 30-10-110.

30-10-402. Clerk for board of commissioners. The county clerk shall be, in and for his county, clerk of the board of county commissioners.

Source: G.L. § 479. G.S. § 574. R.S. 08: § 1257. C.L. § 8732. CSA: C. 45, § 79. CRS 53: § 35-4-2. C.R.S. 1963: § 35-4-2.

30-10-403. Deputy clerk - duties. Every county clerk shall appoint a deputy, in writing, under the county clerk's hand, and shall file such appointment in the office of the county clerk; and such deputy, in case of the absence or disability of the county clerk, or in case of a vacancy in the office thereof, shall perform all the duties of the county clerk during such absence or until such vacancy is filled. Every county clerk may appoint other deputies and, if the county clerk has executed a bond pursuant to section 30-10-401 (1), the county clerk's sureties shall be responsible under the bond for the acts of all such deputies.

Source: G.L. § 480. G.S. § 575. R.S. 08: § 1258. C.L. § 8733. CSA: C. 45, § 80. CRS 53: § 35-4-3. C.R.S. 1963: § 35-4-3. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 560, § 14, effective August 11.

ANNOTATION

The deputy clerk is authorized to administer all oaths proper to be administered and taken in the transaction of official business pertaining to the office of county clerk and in performing the functions of clerk thereof. *Roberts v. People*, 9 Colo. 458, 13 P. 630 (1886).

He may take acknowledgment of tax deeds. *Waddingham v. Dickson*, 17 Colo. 223, 29 P. 177 (1892).

Attestation of a homestead entry, by the deputy county clerk, not using the name of his principal, is effective and sufficient. *Edson-Keith & Co. v. Bedwell*, 52 Colo. 310, 122 P. 392 (1912).

30-10-404. Vacancy in office - how filled. If a vacancy in the office of county clerk should occur by death, resignation, or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor is elected according to law.

Source: G.L. § 481. G.S. § 576. R.S. 08: § 1259. C.L. § 8734. CSA: C. 45, § 81. CRS 53: § 35-4-4. C.R.S. 1963: § 35-4-4.

30-10-405. Office at county seat - seal - records. (1) The county clerk and recorder shall keep his or her office at the county seat. The county clerk and recorder shall attend the sessions of the board of county commissioners either in person or by deputy, keep the county seal, records, and papers of the board of county commissioners, and keep a record of the proceedings of the board, as required by law, under the direction of the board of county commissioners. Records of such proceedings shall be kept in a visual text format that may be transmitted electronically.

(2) Notwithstanding the provisions of subsection (1) of this section, the county clerk and recorder may maintain his or her office at a location other than the county seat when authorized to do so pursuant to part 1 of article 5 of title 13, C.R.S.

Source: G.L. § 482. G.S. § 577. R.S. 08: § 1260. C.L. § 8735. CSA: C. 45, § 82. CRS 53: § 35-4-5. C.R.S. 1963: § 35-4-5. L. 93: Entire section amended, p. 92, § 3, effective July 1. L. 2009: (1) amended, (HB 09-1118), ch. 130, p. 561, § 5, effective August 5.

ANNOTATION

Duty of clerk to be available to perform certain functions. The responsibilities of the position of the clerk of the board of county commissioners includes either being available, or having a deputy available, during regular business hours to perform the constitutional and statutory functions. *Bd. of County Comm'rs v. Hatfield*, 39 Colo. App. 548, 570 P.2d 1091 (1977).

Duty to attend meetings of board of county commissioners. Upon receiving notice from the board, the clerk has the constitutional and statutory duty to attend the board's meetings, and she must respond immediately if such is the request of the board. *Bd. of County Comm'rs v. Hatfield*, 39 Colo. App. 548, 570 P.2d 1091 (1977).

30-10-405.5. Electronic filings. The county clerk and recorder may accept by electronic filing deeds and all other documents authorized by law to be recorded in his or her office. As used in this part 4, unless the context otherwise requires, "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. To the extent the provisions of this part 4 differ from the requirements of the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., the provisions of this part 4 are intended to modify, limit, or supercede the requirements of such act, as provided for in section 7002 (a) of such act.

Source: L. 2002: Entire section added, p. 789, § 1, effective August 7.

30-10-406. County clerk and recorder - duties - filing requirements. (1) The county clerk shall be ex officio recorder of deeds and shall have custody of and safely keep and preserve all the documents received for recording or filing in his or her office. As used in this part 4, unless the context otherwise requires, "document" includes electronic filings. During the hours the office is open for business, the clerk and recorder shall also record or cause to be recorded in print, or in a plain and distinct handwriting, or electronically, in suitable books or electronic records to be provided and kept in the clerk and recorder's office, all documents authorized by law to be recorded in his or her office and shall perform all other duties required by law.

(2) Upon recording any document to which a documentary fee applies, the clerk and recorder shall forward a clear, complete, and accurate copy of such document to the office of the county assessor. The clerk and recorder may forward the copy electronically to said office.

(3) (a) All documents received for recording or filing in the clerk and recorder's office, except a verification of application form as defined in section 38-29-102 (13), C.R.S., shall contain a top margin of at least one inch and a left, right, and bottom margin of at least one-half of an inch. The clerk and recorder may refuse to record or file any document that does not conform to the requirements of this paragraph (a).

(b) Repealed.

(4) The county clerk and recorder shall perform the duties prescribed in article 22 of title 15, C.R.S., with respect to the recording and processing of designated beneficiary agreements and revocations of such agreements.

Source: G.L. § 483. G.S. § 578. R.S. 08: § 1261. C.L. § 8736. CSA: C. 45, § 83. CRS 53: § 35-4-6. C.R.S. 1963: § 35-4-6. L. 76: Entire section amended, p. 753, § 1, effective June 10. L. 96: Entire section amended, p. 1557, § 4, effective July 1. L. 97: (3) added, p. 215, § 1, effective September 1. L. 2002: (1) and (2) amended, p. 789, § 2, effective August 7. L. 2009: (3)(a) amended, (SB 09-040), ch. 9, p. 62, § 1, effective July 1; (4) added, (HB 09-1260), ch. 107, p. 447, § 17, effective July 1.

Editor's note: Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective September 1, 1998. (See L. 97, p. 215.)

ANNOTATION

Duties imposed by general assembly. While the office of county clerk is created by the constitution, none of his duties are therein defined, but all the duties pertaining to the office, both in his capacity as clerk and as recorder of deeds, are to be prescribed and enjoined by the general assembly, and the duties he is to perform as recorder of deeds have been specifically defined and imposed by this and the following sections, and it was clearly within the province of the general assembly to impose upon the clerk in his capacity of recorder of deeds the duties enjoined upon him by this and the following sections. *People ex rel. Smith v. Crissman*, 41 Colo. 450, 92 P. 949 (1907).

The duty of the county clerk and recorder extends only to instruments "authorized by law to be recorded in his office". *Laughlin v. Hawley*, 9 Colo. 170, 11 P. 45 (1886).

Making the county recorder registrar of titles does not constitute him a new county officer, but simply changes his duties in this, that instead of recording the evidence of titles, as heretofore provided, he registers the ultimate

fact, or conclusion, that a certain party named has title to a particular tract of land as adjudged by the court. *People ex rel. Smith v. Crissman*, 41 Colo. 450, 92 P. 949 (1907).

Public record defined. It is said that a public record is one required by law to be kept, or necessary to be kept, in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done. *Treat v. McDonough*, 148 Colo. 603, 367 P.2d 587 (1961).

Tract indices kept by the county clerk and recorder for the purpose of preparing abstracts of title, even though not within the terms of the statute, constitute an appropriate mode of discharging the clerk's duties, hence, it was not only his right but his duty to keep them and having done so they became public property subject to public use as provided by statute. *Treat v. McDonough*, 148 Colo. 603, 367 P.2d 587 (1961).

What is a public record is a question of law. *Treat v. McDonough*, 148 Colo. 603, 367 P.2d 587 (1961).

General public right to inspect or copy public records. At common law, due to land ownership by a very limited number of people, there was no general public right to inspect or copy public records; however, this concept later gave way, particularly in the United States, to a recognition of such a right due to our belief in widespread ownership of real property. *Treat v. McDonough*, 148 Colo. 603, 367 P.2d 587 (1961).

But a wide discretion was necessarily vested in the county clerk with reference to permitting the examination of the records of his office by those other than employees thereof, because the liability of having the records mutilated, changed, or obliterated was always present when strangers were about the office; and while it was necessary, perhaps, that abstracters had to be allowed to examine and make copies from these records they were in so doing subjected to such reasonable regulations as the county clerk prescribed. *Upton v. Catlin*, 17 Colo. 546, 31 P. 172 (1892).

The right of an abstractor to inspect and make memoranda of the contents of the records, etc., in the county clerk's office, is subordinate to the right of the clerk and recorder so to regulate his office as to maintain the sanctity of the records, etc., pertaining thereto. *Upton v. Catlin*, 17 Colo. 546, 31 P. 172 (1892).

Reasonable regulation of access. A rule established by the county clerk and recorder provided that parties desiring to examine the records of the office for the purpose of making abstracts would be permitted to do so upon any day, when the office was required to be kept open under the law, between the hours of nine and twelve in the forenoon, and one and four in the afternoon; provided, that on the days when the county commissioners are in session in the office, said memoranda and copies may be made between the hours of nine and ten in the forenoon and four and five in the afternoon, and at no other times during said days, was held a reasonable regulation. *Upton v. Catlin*, 17 Colo. 546, 31 P. 172, (1892).

Mandamus proper. Mandamus is a proper remedy where, upon demand, a county clerk and recorder refuses to permit an abstractor to inspect and make memoranda of the contents of the records of his office. *Upton v. Catlin*, 17 Colo. 546, 31 P. 172 (1892).

Judgment of justice of the peace not required to be recorded. The court found no law requiring or authorizing the transcript of a judgment from a justice of the peace to be recorded or indexed, and if the clerk and recorder should keep any index or record of such judgments, it would be entirely voluntary. *Laughlin v. Hawley*, 9 Colo. 170, 11 P. 45 (1886).

30-10-407. Microfilm and optical imaging records - when - standards for optical imaging systems. (1) When authorized by the board of county commissioners, the county clerk and recorder in counties, or cities and counties, may record the documents lawfully filed for record in his or her office by making and preserving microfilm or optical images thereof. Such county clerk and recorder shall properly index the same in the manner required by law. When the microfilm or optical imaging method of recording has been approved by the board of county commissioners and adopted by the county clerk and recorder, at least one microfilm reader to make the microfilms legible or at least one computer terminal to access optical imaging records shall be provided, and as many more microfilm readers or computer terminals as may prove necessary to give reasonable service to the public shall also be provided.

(2) At least two microfilms or two optical imaging database records shall be made of each recorded document, which shall be kept in separate buildings as far as reasonably may be done in order that they may not be subject to the same hazards. All sets of the microfilm and all optical imaging computer data shall be constantly under the control of the county clerk and recorder. One set of microfilm or one copy of the optical imaging database shall always be kept by the county clerk and recorder, so that the same is available to the public during the hours that said county clerk and recorder's office is open for business and so that persons desiring to inspect or examine the record may do so by means of microfilm reader and facilities or by means of optical imaging computer terminals maintained in said county clerk and recorder's office. Said records shall not be removed from the county clerk and recorder's office at any time for any purpose, except the security copy, which shall be kept in a security vault approved by the board of county commissioners and the county clerk and recorder. The security copy of the microfilm or optical image media may be deposited in the county records section of the department of personnel.

(3) (Deleted by amendment, L. 2004, § 1, effective July 1, 2004.)

(4) Any document which cannot be satisfactorily recorded by microfilm or by optical imaging may be recorded by other methods of photographing or by transcribing by typewriter or by longhand.

(4.3) Regardless of the method by which a document is recorded, legible size prints shall be made on demand for the fee provided by law; except that the county clerk and recorder shall not be required to provide a print during the first three business days after a document is recorded.

(4.5) Any optical imaging system utilized by a county clerk and recorder shall, at minimum, produce permanent records which do not permit additions, deletions, or other changes to the original documents.

(5) Nothing in this section shall abridge or limit the power of any court to compel the production of any microfilm or optical imaging records in any proceeding.

Source: L. 51: p. 302, § 1. CSA: C. 45, § 83(1). L. 53: p. 222, § 1. CRS 53: § 35-4-7. C.R.S. 1963: § 35-4-7. L. 81: (2) amended, p. 1435, § 1, effective April 2. L. 92: Entire section amended, p. 960, § 1, effective March 25. L. 96: (2) amended, p. 1542, § 134, effective June 1. L. 2004: (1), (2), (3), and (4) amended and (4.3) added, p. 376, § 1, effective July 1.

ANNOTATION

Law reviews. For note on 1953 amendment to this section, see 30 Dicta 194 (1953).

30-10-408. Grantor and grantee indices to be kept by county clerk and recorder.
(1) (a) Every county clerk and recorder shall keep a grantor index and a grantee index in the clerk and recorder's office. The grantor index may be divided into seven columns, with heads to the respective columns as follows:

Time of Reception	Names of Grantors	Names of Grantees	Type of Document
Volume and Page Where Recorded	Remarks		Description of Tract

(b) The clerk and recorder shall make correct entries in the grantor index of every document filed or recorded, as required by law, concerning or affecting real estate, under the appropriate headings, entering the names of the grantors in alphabetical order.
(2) (a) The grantee index may be divided into seven columns, with heads to the respective columns as follows:

Time of Reception	Names of Grantors	Names of Grantees	Type of Document
Volume and Page Where Recorded	Remarks		Description of Tract

(b) The clerk and recorder shall make correct entries in the grantee index of every document filed or recorded, as required by law, concerning or affecting real estate under the appropriate heading, entering the names of the grantees in alphabetical order.

(2.5) The county clerk and recorder shall properly enter a recorded document in the grantor and grantee indices as soon as practicable but not later than seven business days after the date on which the document is recorded.

(3) (a) In counties with the capability, the county clerk and recorder may substitute printouts, microfiches, aperture cards, or other legible photographic or electronic processes for the books and indices required by subsections (1) and (2) of this section. The security and public inspection provisions of section 30-10-407 shall apply to all such printouts, microfiches, aperture cards, or other photographic or electronic records. Both the grantor and grantee indices may be combined in one alphabetical listing with proper coding to indicate grantor and grantee, with both the grantor and grantee appearing in proper alphabetical order.

(b) A general index of releases may be maintained on printouts, microfiches, or aperture cards, by other legible photographic or electronic process, or in a separate book of releases containing a space to enter new index numbers of releases on a numerical listing of the original recording information of the document being released.

(c) Records kept under the provisions of this subsection (3) may substitute reception or index numbers for volume, film, or page numbers, and any electronic records may contain indices for as many years as the county clerk and recorder may deem useful for public inspection.

Source: G.L. § 484. G.S. § 579. L. 1889: p. 105, § 1. R.S. 08: § 1262. C.L. § 8737. CSA: C. 45, § 84. CRS 53: § 35-4-8. C.R.S. 1963: § 35-4-8. L. 81: (2)(b) amended and (3) added, p. 1435, § 2, effective January 1, 1982. L. 82: (2)(b) amended, p. 625, § 30, effective April 2. L. 96: Entire section amended, p. 1557, § 5, effective July 1. L. 2002: (3) amended, p. 790, § 3, effective August 7. L. 2004: (2.5) added, p. 377, § 2, effective July 1.

ANNOTATION

The purpose of this and the following section is to furnish a ready and generally convenient means of reference to the matters contained in the books of record. People ex rel. Federal Land Bank v. Ginn, 106 Colo. 417, 106 P.2d 479 (1940).

This section requires every county clerk and recorder to maintain grantor-grantee indices. Guaranty Bank & Trust Co. v. LaSalle Nat'l Bank Ass'n, 111 P.3d 521 (Colo. App. 2004).

There is no mandatory requirement in this and the following section that a description of the property conveyed be noted therein. People ex rel. Federal Land Bank v. Ginn, 106 Colo. 417, 106 P.2d 479 (1940).

Correct entries in these books do not excuse a mistake made in transcribing an in-

strument on the record proper. People ex rel. Federal Land Bank v. Ginn, 106 Colo. 417, 106 P.2d 479 (1940).

The failure of an interested party to search and examine the reception book and indices does not release a clerk and recorder from liability for neglect in failing to correctly transcribe an instrument on the record proper. People ex rel. Federal Land Bank v. Ginn, 106 Colo. 417, 106 P.2d 479 (1940).

Nor does the mere constructive notice which the registration statutes impute from the filing of a conveyance for record, which is for the protection of those claiming under the conveyance, exist for the protection of the recording officer for nonperformance of official duty. People ex rel. Federal Land Bank v. Ginn, 106 Colo. 417, 106 P.2d 479 (1940).

30-10-409. Reception book - form - contents - acceptance for recording. (1) The county clerk and recorder shall also keep a reception book, each page of which shall be divided into five columns, with heads to the respective columns as follows:

Time of Reception	Names of Grantors	Names of Grantees	To Whom Delivered	Fees Received
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(2) When any document has been accepted by the clerk and recorder for recording and the proper fee has been paid, such document shall be deemed to be recorded for all purposes. After a document has been received, the clerk and recorder shall endorse upon such document information, which may be in electronic form, noting the day, hour, and minute of its acceptance for recording, the index or reception number, the volume, film or page where recorded, if such are used, and the fee received for recording the same and shall immediately make an entry of the same in the reception book, under the appropriate heading, with the amount paid as fee for recording the same. A document shall be deemed accepted as of the date and time of its endorsement. The clerk and recorder's endorsement may be done electronically. When such endorsement is made electronically, the endorsement shall be immediately perceptible and reproducible. Any document, except those filed and recorded pursuant to section 38-29-205, C.R.S., that is received by 1 p.m. on a business day shall be endorsed by the end of that day. Any document that is received after 1 p.m. on a business day shall be endorsed by 5 p.m. on the following business day. Those documents received pursuant to section 38-29-205, C.R.S., shall be endorsed by the clerk and recorder within three business days. After a document has been endorsed and processed for recording, the clerk and recorder, without additional fee or charge, shall deliver it by regular mail, electronic delivery, or personal delivery to the person authorized to receive the same, writing the name of the person to whom it is delivered in an appropriate column in the reception book.

(3) In counties with the capability, the county clerk and recorder may substitute printouts, microfiches, aperture cards, or other legible photographic or electronic processes for the reception book required by this section; except that proper audit controls of cash receipts shall be maintained in compliance with governmental audit procedures.

(4) No clerk and recorder shall be bound to perform any of the duties required to be performed for which a fee is required unless such fee has been paid or tendered.

(5) A clerk and recorder who decides to accept electronic filings shall establish procedures for such electronic filings that are consistent with the rules promulgated by the secretary of state pursuant to section 30-10-424 (1) (e) (II). No electronic filings shall be accepted by the clerk and recorder until the clerk and recorder has established and made publically available the procedures for electronic filings. Nothing in this article shall be interpreted to require any clerk and recorder to accept electronic filings. Nothing in this article shall abridge the power of any clerk and recorder to accept or reject electronic filings in accordance with the provisions of section 38-35-202, C.R.S.

(6) (a) The deadlines set forth in sections 30-10-407 (4.3) and 30-10-408 (2.5) and subsection (2) of this section shall be extended for a reasonable period of time if an extenuating circumstance prevents the clerk and recorder from meeting such deadlines.

(b) As used in this subsection (6), "extenuating circumstance" means a disaster, as defined in section 24-32-2103 (1.5), C.R.S., or a technical difficulty related to computer hardware or software that is outside the control of the clerk and recorder.

(c) No deadline shall be extended pursuant to this subsection (6), unless the clerk and recorder makes a written finding of extenuating circumstances that is available to the public. Such finding shall include the deadline that has been extended, the reason for the extension, and the period of the extension.

(d) In the case of an extension related to a technical difficulty related to computer hardware or software, the period of extension shall not exceed seven days.

Source: G.L. § 485. G.S. § 580. R.S. 08: § 1263. C.L. § 8738. CSA: C. 45, § 85. CRS 53: § 35-4-9. C.R.S. 1963: § 35-4-9. L. 81: (3) added, p. 1436, § 3, effective January 1, 1982. L. 96: Entire section amended, p. 1559, § 6, effective July 1. L. 2002: (2) and (3) amended and (5) added, p. 790, § 4, effective August 7. L. 2004: (2) amended and (6) added, p. 377, § 3, effective July 1; (5) amended, p. 1157, § 1, effective July 1. L. 2009: (2) amended, (SB 09-040), ch. 9, p. 62, § 2, effective July 1.

30-10-410. File of plats or maps - index - names. The clerk and recorder shall maintain a file of all subdivision plats presented for recording in accordance with law and all common interest community plats or maps presented for recording in accordance with

section 38-33.3-201, C.R.S. Subdivision plats shall be indexed in the grantor index under the name of the person that signs and acknowledges the plat as the owner and dedicator and in the grantee index under the name of the plat shown thereon. The clerk and recorder shall also keep an alphabetical index of such subdivision plats by the name of the plat. Common interest community plats or maps shall be indexed in the same manner as the declaration for such community, as provided in section 38-33.3-201, C.R.S.

Source: G.L. § 486. G.S. § 581. R.S. 08: § 1264. C.L. § 8739. CSA: C. 45, § 86. CRS 53: § 35-4-10. C.R.S. 1963: § 35-4-10. L. 96: Entire section amended, p. 1559, § 7, effective July 1.

30-10-411. Index of records - grantors - grantees. (Repealed)

Source: G.L. § 487. G.S. § 582. R.S. 08: § 1265. C.L. § 8740. CSA: C. 45, § 87. CRS 53: § 35-4-11. C.R.S. 1963: § 35-4-11. L. 96: Entire section repealed, p. 1560, § 8, effective July 1.

30-10-412. Recording of papers in bankruptcy. (Repealed)

Source: L. 39: p. 236, § 1. CSA: C. 45, § 87(1). CRS 53: § 35-4-12. C.R.S. 1963: § 35-4-12. L. 96: Entire section repealed, p. 1560, § 9, effective July 1.

30-10-413. Certified copies prima facie evidence. Copies of all documents recorded or filed in the office of the clerk and recorder and transcripts from the records kept therein, certified by the clerk and recorder under the seal of his or her office, shall be prima facie evidence in all cases.

Source: G.L. § 488. G.S. § 583. R.S. 08: § 1266. C.L. § 8741. CSA: C. 45, § 88. CRS 53: § 35-4-13. C.R.S. 1963: § 35-4-13. L. 96: Entire section amended, p. 1560, § 10, effective July 1.

ANNOTATION

Public record is prima facie evidence of collateral matters appropriately incorporated therein when the document has been signed under oath and properly attested to, as such precautions afford at least a presumption of trustworthiness with respect to matters contained within the document. Oak Creek Power Co. v. Colo. River Water Conservation Dist., 182 Colo. 389, 514 P.2d 323 (1973).

Under this section, articles of incorporation, when so recorded, may be used in evidence for the purpose of establishing any fact

other than that of corporate existence; and, even without this provision of the law, it is held that where the record or document appointed by law is not part of the fact to be proved, but is merely a collateral or subsequent memorial of the fact, it has not this exclusive character, but any other legal proof is admitted. Thus, the date of incorporation is a secondary fact, and could be proved by collateral circumstances or parol evidence. Schiffer v. Adams, 13 Colo. 572, 22 P. 964 (1889).

30-10-414. Abstract of deeds - contents. (Repealed)

Source: L. 1874: p. 50, § 1. G.L. § 424. G.S. § 584. R.S. 08: § 1267. C.L. § 8742. CSA: C. 45, § 89. L. 51: p. 301, § 1. CRS 53: § 35-4-14. L. 59: p. 345, § 1. C.R.S. 1963: § 35-4-14. L. 83: Entire section repealed, p. 513, § 4, effective May 16.

30-10-415. Tax sales excepted. Nothing in this article shall be construed to require the recording of certificates of sale or redemption of land for taxes.

Source: L. 1879: p. 49, §§ 1, 2. G.S. §§ 585, 586. R.S. 08: §§ 1268, 1269. C.L. §§ 8743, 8744. CSA: C. 45, §§ 90, 91. CRS 53: § 35-4-15. C.R.S. 1963: § 35-4-15. L. 73: p. 1156, § 2. L. 96: Entire section amended, p. 1561, § 11, effective July 1.

ANNOTATION

The clerk is required to keep indices of a certain character. Treat v. McDonough, 148 Colo. 603, 367 P.2d 587 (1961).

Right of general public to inspect and copy. At common law, due to land ownership by a very limited number of people, there was no general public right to inspect or copy public

records; however, this concept later gave way, particularly in the United States, to a recognition of such a right due to our belief in widespread ownership of real property. Treat v. McDonough, 148 Colo. 603, 367 P.2d 587 (1961).

30-10-416. Clerk to administer oaths - take affidavit or deposition. The county clerks and recorders of the several counties in the state of Colorado are authorized, within their respective counties, to administer all oaths of office, and other oaths required to be taken by any person upon any lawful occasion, and to take affidavits and depositions concerning any matter or thing, process, or proceeding pending or to be commenced in any court, or any occasion wherein such affidavit or deposition is authorized or required by law to be taken.

Source: G.L. § 425. G.S. § 587. R.S. 08: § 1270. C.L. § 8745. CSA: C. 45, § 92. CRS 53: § 35-4-16. C.R.S. 1963: § 35-4-16. L. 64: p. 382, § 6.

30-10-417. False oaths, perjury. Oaths and affirmations, affidavits, and depositions administered or taken as provided in section 30-10-416 shall subject any person, who falsely swears or affirms to matters material to any issue or point in question, to the penalties provided by law for persons guilty of perjury in the second degree.

Source: G.L. § 426. G.S. § 588. R.S. 08: § 1271. C.L. § 8746. CSA: C. 45, § 93. CRS 53: § 35-4-17. C.R.S. 1963: § 35-4-17. L. 72: p. 557, § 11.

Cross references: For perjury in the second degree, see § 18-8-503.

30-10-418. Fees of county clerk and recorder for administering oaths. For administering oaths and taking affidavits or depositions, as provided in section 30-10-416, county clerk and recorders shall receive the fee prescribed by section 30-1-103 (2) (a).

Source: G.L. § 427. G.S. § 589. R.S. 08: § 1272. C.L. § 8747. CSA: C. 45, § 94. CRS 53: § 35-4-18. C.R.S. 1963: § 35-4-18. L. 83: Entire section amended, p. 1226, § 6, effective July 1.

30-10-419. Writs of attachment recorded. (Repealed)

Source: L. 1887: p. 127, § 105. Code 08: § 116. CRS 53: § 35-4-19. C.R.S. 1963: § 35-4-19. L. 83: Entire section amended, p. 1226, § 7, effective July 1. L. 96: Entire section repealed, p. 1561, § 12, effective July 1.

30-10-420. Maintenance of trade name registration. Every county clerk and recorder shall maintain trade name registration records provided by the department of revenue.

Source: L. 83: Entire section added, p. 984, § 4, effective July 1, 1985.

30-10-421. Filing surcharge - definitions. (1) (a) Beginning September 1, 2002, and through June 30, 2004, the county clerk and recorder shall collect a surcharge of one

dollar for each document received for recording or filing in his or her office. The surcharge shall be in addition to any other fees permitted by statute.

(b) On and after July 1, 2004, and through June 30, 2017, the county clerk and recorder shall collect a surcharge of one dollar for each document received for recording or filing in his or her office. The surcharge shall be in addition to any other fees permitted by statute.

(1.5) The surcharge described in subsection (1) of this section shall not be collected on any filing received by the county clerk and recorder as an authorized agent of the executive director of the department of revenue pursuant to section 38-29-128 or 42-6-121, C.R.S.

(2) The county clerk and recorder shall transmit fifty cents out of each dollar collected pursuant to paragraph (a) of subsection (1) of this section to the secretary of state, who shall transmit such moneys to the state treasurer who shall credit the same to the clerk and recorder technology fund created in section 30-10-422.

(3) (a) The county clerk and recorder may retain the remaining fifty cents out of each dollar collected pursuant to paragraph (a) of subsection (1) of this section. If the clerk and recorder elects not to retain any portion of the fifty cents, he or she shall transmit such unused portion to the secretary of state, who shall transmit such moneys to the state treasurer who shall credit the same to the clerk and recorder technology fund.

(b) The county clerk and recorder shall retain the proceeds of the surcharge collected pursuant to paragraph (b) of subsection (1) of this section. Such proceeds, along with the proceeds from the portion of the surcharge collected pursuant to paragraph (a) of subsection (1) of this section that the clerk and recorder elects to retain, shall be utilized to defray the costs of:

(I) Establishing, maintaining, or improving an electronic filing system; or

(II) Establishing, maintaining, or improving a core filing system.

(c) The county clerk and recorder shall place all surcharges that he or she retains pursuant to this subsection (3) in a separate, segregated account.

(4) County governments shall be exempt from all fees authorized to be collected under the provisions of this section if the county or any agency thereof is the grantor or grantee of the document being recorded or if a delegate child support enforcement unit files or records documents for the purpose of collecting child support, child support arrears, maintenance, maintenance when combined with child support, retroactive support, or child support debt.

(5) (Deleted by amendment, L. 2004, p. 748, § 1, effective May 12, 2004.)

(6) As used in this part 4, unless the context otherwise requires:

(a) "Core filing system" means the document management system used by the clerk and recorder to comply with the statutory requirements set forth in this part 4 related to paper documents received for recording or filing in his or her office.

(b) "Electronic filing system" means the document management system used by the clerk and recorder to comply with the statutory requirements set forth in this part 4 related to electronic documents received for recording or filing in his or her office.

(c) "Necessary improvements to the core filing system" means any change to the core filing system that is required in order to establish an electronic filing system.

Source: L. 2002: Entire section added, p. 791, § 5, effective August 7. L. 2003: (1.5) added, p. 966, § 1, effective April 17. L. 2004: (1), (2), (3), and (5) amended, p. 748, § 1, effective May 12; (1)(b), (2), and (3) amended and (6) added, p. 1157, § 2, effective July 1. L. 2006: (1)(b) and (3)(b)(II) amended, p. 298, § 1, effective August 7. L. 2011: (1)(b) amended, (HB 11-1313), ch. 226, p. 971, § 1, effective August 10.

30-10-422. Clerk and recorder technology fund. (1) There is hereby created a fund to be known as the clerk and recorder technology fund, referred to in this section as the "fund". The fund shall be administered by the clerk and recorder technology panel created in section 30-10-423 and the secretary of state as set forth in section 30-10-424. The fund shall consist of all moneys received pursuant to section 30-10-421.

(2) Except as otherwise provided in section 30-10-424, the moneys in the fund shall be used by the clerk and recorder technology panel to make grants to counties that apply for such grants. It is the intent of the general assembly that the grants shall be given to counties

that otherwise lack sufficient resources either to purchase the technology necessary for the clerk and recorders to accept electronic filings or to provide the necessary training related to such technology. It is the further intent of the general assembly that the grants be used for the purposes established in section 30-10-423.

(3) The moneys in the fund shall not be deposited in or transferred to the general fund of this state or any other fund. Any interest earned on the investment or deposit of moneys in the fund shall be credited to and used for the same purpose as other moneys in said fund.

(4) In addition to the appropriations authorized in section 30-10-423 (6), the moneys in the fund shall be subject to annual appropriation by the general assembly to the secretary of state for the administration of section 30-10-424.

Source: L. 2002: Entire section added, p. 792, § 5, effective August 7. **L. 2004:** (1) and (2) amended and (4) added, p.1159, § 3, effective July 1.

30-10-423. Clerk and recorder technology panel - creation - powers - repeal. (Repealed)

Source: L. 2002: Entire section added, p. 792, § 5, effective August 7. **L. 2004:** (1), (4), (5), (6), (7), and (8) amended, p. 1159, § 4, effective July 1. **L. 2006:** (2)(a)(III) amended, p. 1736, § 26, effective June 6; (5)(a)(II) amended, p. 298, § 2, effective August 7.

Editor's note: Subsection (8) provided for the repeal of this section, effective July 1, 2008. (See L. 2004, p.1159.)

30-10-424. Uniform administration - secretary of state. (1) In order to ensure uniformity among electronic filing systems, and in addition to any other powers prescribed by law, the secretary of state shall have the following powers to:

(a) Assist a county clerk and recorder in conducting an assessment of the core filing system to identify necessary improvements to the core filing system;

(b) Provide training to assist a clerk and recorder in establishing, maintaining, or improving an electronic filing system;

(c) Provide training related to necessary improvements to the core filing system;

(d) Provide accounting services and staffing for the clerk and recorder technology panel created in section 30-10-423;

(e) Establish a statewide purchasing network for the acquisition of hardware, software, and services related to an electronic filing system, which shall include all eligible clerk and recorders, and, in connection therewith:

(I) Establish eligibility requirements for the statewide purchasing network;

(II) Issue requests for information or requests for proposals or use any other standard vendor selection practices determined to be best suited for selecting appropriate contractors for the statewide purchasing network; and

(III) Establish standards by which a county officer other than a county clerk and recorder may voluntarily become part of the statewide purchasing network for the acquisition of hardware, software, and services related to the administration of the duties for his or her office;

(f) Promulgate rules that establish:

(I) Standards for necessary improvements to the core filing systems;

(II) Standards for all electronic filing systems, including but not limited to a minimum standard for integration and coordination of information between counties and the methods by which the clerk and recorder will accept payment of fees for electronic filings; and

(III) An application process for grants made pursuant to section 30-10-423 (5) (a); and

(g) Promulgate any other rules necessary to supervise the clerk and recorder technology panel or to administer the provisions of this section or sections 30-10-421, 30-10-422, and 30-10-423.

Source: L. 2004: Entire section added, p. 1160, § 5, effective July 1.

PART 5

SHERIFF

Cross references: For sheriffs' fees, see § 30-1-104.

Law reviews: For article, "County Sheriffs in Colorado: Beyond the Myth", see 38 Colo. Law. 19 (February 2009).

30-10-501. Sheriff - election - bond - insurance. (1) A sheriff shall be elected in each county for the term of four years and, except as provided in subsection (2) of this section, before entering upon the duties of office, shall execute to the people of the state of Colorado a bond, with at least three sufficient sureties, in the sum of not less than five thousand nor more than twenty thousand dollars, which the board of county commissioners, or, if it is not in session, the county clerk and recorder, subject to the approval of such board at its next session thereafter, shall specify and approve. When approved, the bond shall be filed in the office of the county clerk and recorder, and no person shall be received as surety who is not worth at least two thousand dollars over and above the surety's just debts.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the sheriff to protect the people of the county from any malfeasance on the part of the sheriff while in office.

Source: G.L. § 489. G.S. § 593. R.S. 08: § 1273. C.L. § 8748. CSA: C. 45, § 95. CRS 53: § 35-5-1. L. 56: p. 128, § 2. C.R.S. 1963: § 35-5-1. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 560, § 15, effective August 11.

Cross references: For the election of county officers, see § 8 of art. XIV, Colo. Const., and § 1-4-206; for bonds executed by surety companies, see § 10-4-301; for the approval of official bonds, see § 24-13-116; for bonds of county officers, see § 30-10-110.

ANNOTATION

County sheriff is a "person" for the purposes of a civil rights action for damages under 42 U.S.C. § 1983. Wigger v. McKee,

809 P.2d 999 (Colo. App. 1990); Cortese v. Black, 838 F. Supp. 485 (D. Colo. 1993).

30-10-501.5. Qualifications. (1) No person shall be eligible for nomination, election, or appointment to the office of sheriff unless such person:

(a) Is a citizen of the United States, is a citizen of the state of Colorado, and is a resident of the county to which the person is to be appointed or elected;

(b) Possesses a high school diploma or its equivalent or a college degree;

(c) Has had a complete set of fingerprints taken by a qualified law enforcement agency and submitted a receipt evidencing such fingerprinting at the time of filing his or her written acceptance pursuant to section 1-4-601 (3), 1-4-906, or 1-4-1002 (5), C.R.S., or a candidate filing an affidavit of intent pursuant to section 1-4-1101, C.R.S. Such law enforcement agency shall forward the fingerprints to the Colorado bureau of investigation. The bureau shall utilize such fingerprints, its files and records, and those of the federal bureau of investigation for the purpose of determining whether the person has ever been convicted of or pleaded guilty or entered a plea of nolo contendere to any felony charge under federal or state laws. The Colorado bureau of investigation shall notify the county clerk and recorder of the county wherein the person is a candidate of the results of the fingerprint analysis. In the event that a conviction or plea is disclosed, such person shall be deemed unqualified for the office of sheriff, unless pardoned. The results of such fingerprint analysis shall be confidential; except that the county clerk and recorder may divulge whether such person is qualified or unqualified for the office of sheriff.

Source: **L. 90:** Entire section added, p. 1444, § 1, effective April 5; (1)(c) and IP(2) amended, p. 303, § 4, effective June 8. **L. 95:** (1)(c) amended, p. 1106, § 46, effective May 31. **L. 97:** Entire section R&RE, p. 925, § 1, effective May 21.

ANNOTATION

When the general assembly enacted the original sheriff training statute in 1990, § 30-10-101.5, it lacked authority to impose any qualifications on the constitutionally created office of county sheriff. *Jackson v. State*, 966 P.2d 1046 (Colo. 1998).

Because the original sheriff training statute sought to impose qualifications for the job of sheriff in the form of certification requirements, it was unconstitutional. *Jackson v. State*, 966 P.2d 1046 (Colo. 1998).

The training and certification requirements contained in the reenacted sheriff training statute passed by the general assembly in 1996 could not be applied to county sheriffs during a term of office that began before the effective date of the new requirements. *Jackson v. State*, 966 P.2d 1046 (Colo. 1998).

30-10-501.6. Training. (1) Every person elected or appointed to the office of sheriff for the first time shall:

(a) Attend a minimum of eighty clock hours at a new sheriff training course developed and facilitated either by the county sheriffs of Colorado, incorporated, or any other training resource agency approved by the Colorado peace officers standards and training board, the first time such training course is given after the person's election or appointment. The Colorado peace officers standards and training board shall have discretion to allow the substitution of any combination of education, experience, and training deemed by the board to be equivalent to such new sheriff training course.

(b) Obtain basic peace officer certification within one year of taking office. An extension may be granted by the Colorado peace officers standards and training board of up to one year to obtain such certification upon just cause shown. The Colorado peace officers standards and training board shall issue written findings of fact supporting such an extension.

(2) Every sheriff must possess basic peace officer certification and shall undergo at least twenty clock hours of in-service training provided by the county sheriffs of Colorado, incorporated, every year during such sheriff's term. The Colorado peace officers standards and training board shall have discretion to waive in-service training upon presentation of evidence by the sheriff demonstrating just cause for noncompletion of such training. The Colorado peace officers standards and training board shall have discretion to allow the substitution of any combination of education, experience, and training deemed by the board to be equivalent to such in-service training of at least twenty clock hours annually.

(3) The county shall only pay all reasonable costs and expenses of new sheriff and in-service training.

Source: **L. 97:** Entire section added, p. 926, § 2, effective May 21.

30-10-501.7. Enforcement. (1) In the event a sheriff fails to comply with the requirements set forth in section 30-10-501.6, such sheriff's pay must be suspended by the board of county commissioners in accordance with subsection (2) of this section. Such sheriff's pay shall be reinstated with back pay by the board of county commissioners upon completion of said requirements in accordance with subsection (2) of this section.

(2) In any circumstances set forth in subsection (1) of this section, the Colorado peace officers standards and training board shall notify the board of county commissioners of the sheriff's failure to comply with the requirements of said subsection (1) and that state law requires the county commissioners to immediately suspend such sheriff's pay until the requirements of section 30-10-501.6 have been complied with. After the sheriff's compliance with the provisions of section 30-10-501.6, the Colorado peace officers standards and

training board shall immediately notify the board of county commissioners of the sheriff's compliance and that state law requires the board of county commissioners to reinstate such sheriff's pay and provide him or her any back pay.

Source: L. 97: Entire section added, p. 926, § 2, effective May 21.

30-10-502. Form of bond. If a sheriff executes a bond pursuant to section 30-10-501 (1), the condition of the bond shall be in substance as follows: "Whereas, the above bounden was elected to the office of sheriff of the county of, on the day of; Now, the condition of this obligation is such that if the said shall well and faithfully perform and execute the duties of the office of sheriff of said county of while in office by virtue of said election without fraud, deceit, or oppression, shall pay over all moneys that may come into the hands of the sheriff, and shall deliver to the sheriff's successor in office all writs, papers, and other things pertaining to the office that may be so required by law, then the above obligations shall be void, otherwise to be and remain in full force and effect."

Source: G.L. § 490. G.S. § 594. R.S. 08: § 1274. C.L. § 8749. CSA: C. 45, § 96. CRS 53: § 35-5-2. C.R.S. 1963: § 35-5-2. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 560, § 16, effective August 11.

ANNOTATION

There can be no recovery upon an official bond outside its terms. Tate v. People ex rel. Dewees, 6 Colo. App. 202, 40 P. 471 (1895).

And it is the second condition of the statutory bond which applies to money collected by the sheriff, and it is the second condition of the bond in suit which undertakes to direct the

disposition to be made by the sheriff of money received by him as an officer, and it requires him to turn the money over, not to the party entitled to it, but to his successors in office, so that the condition was not broken by his failure to pay it to the judgment creditor. Tate v. People ex rel. Dewees, 6 Colo. App. 202, 40 P. 471 (1895).

30-10-503. Sheriff assumes duties - when. When the term of office of any sheriff expires and the sheriff-elect qualifies according to law, the county clerk and recorder shall issue a notice setting forth that said sheriff-elect has qualified according to law, which notice shall be served by the new sheriff on the former sheriff, whereupon such former sheriff shall immediately transfer and deliver to the new sheriff all the writs, processes, books, and papers belonging to the office, except as otherwise excepted in this part 5, and also the possession of the courthouse and jail of the county, and shall take from the new sheriff a receipt specifying the papers so delivered over and the prisoners in custody, if any, which receipt shall be sufficient indemnity to the person taking the same.

Source: G.L. § 498. G.S. § 602. R.S. 08: § 1285. C.L. § 8760. CSA: C. 45, § 107. CRS 53: § 35-5-3. C.R.S. 1963: § 35-5-3. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 561, § 17, effective August 11.

30-10-504. Undersheriff - duties - vacancy. The sheriff of each county, as soon as may be after entering upon the duties of his office, shall appoint some proper person undersheriff of said county, who shall also be a general deputy, to serve during the pleasure of the sheriff. As often as a vacancy occurs in the office of such undersheriff, or he becomes incapable of executing the same, another shall in like manner be appointed in his place.

Source: G.L. § 491. G.S. § 595. R.S. 08: § 1275. C.L. § 8750. CSA: C. 45, § 97. CRS 53: § 35-5-9. C.R.S. 1963: § 35-5-9.

Cross references: For substitute officers having the same powers and compensation, see § 30-10-106.

ANNOTATION

Under this and the two following sections, the sheriff is primarily liable to any person who may be damaged by the improper official acts of his undersheriff, because in legal contemplation, all the acts of the undersheriff are the acts of the principal, for which he and his bondsmen are liable, while he has his remedy over against the undersheriff and his bondsmen; this being the law, the acts and doings of one as undersheriff could only be regarded by the defendant as those of the sheriff, insofar as they were the official acts of the office. *Barton v. Continental Oil Co.*, 5 Colo. App. 341, 38 P. 432 (1894).

And where a deputy sheriff is acting in his official capacity and under color of his office, if in the performance thereof, he exceeds the limit of his authority, not only is the deputy himself liable to one injured thereby, but the sheriff and the latter's official surety are also liable. *Corder v. People ex rel. Smiley*, 87 Colo. 251, 287 P. 85 (1930).

But the sheriff is not responsible for the unofficial or extra-official acts of his deputy. *Barton v. Continental Oil Co.*, 5 Colo. App. 341, 38 P. 432 (1894).

Nor are sureties of sheriff. For an unlawful act of a deputy sheriff, which is not committed by him in the discharge of his official duties,

while he himself is liable to damages to one injured thereby, sureties on the official bond of a sheriff may not be held. *Corder v. People ex rel. Smiley*, 87 Colo. 251, 287 P. 85 (1930).

Thus, the act of an undersheriff in entering satisfaction and releasing an attachment of real estate is unofficial and void. *Barton v. Continental Oil Co.*, 5 Colo. App. 341, 38 P. 432 (1894).

If the sheriff or undersheriff retains money received officially, the sheriff, as an officer of court, may be held liable to a proceeding for contempt, but such summary proceedings for the collection of a debt should be discouraged. *Barton v. Continental Oil Co.*, 5 Colo. App. 341, 38 P. 432 (1894).

The service of garnishee process on a deputy does not act upon a fund in his hands collected under execution, because, in law, it is in the possession of the sheriff; neither does it relieve his principal from accounting for the money. *Tate v. People ex rel. Dewees*, 6 Colo. App. 202, 40 P. 471 (1895).

No estoppel as to sheriff. A sheriff is not, by the extra-official and unwarranted acts of his undersheriff in entering satisfaction and release of attachment of real estate, estopped to deny the receipt of the money. *Tate v. People ex rel. Dewees*, 6 Colo. App. 202, 40 P. 471 (1895).

30-10-505. Vacancy in office - powers of undersheriff. When a vacancy occurs in the office of sheriff of any county, the undersheriff of such county shall in all things execute the office of sheriff until a sheriff is appointed or elected and qualified. Any default or misfeasance in office of such undersheriff in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed the undersheriff or the insurance policy purchased by the county on the sheriff's behalf.

Source: G.L. § 492. G.S. § 596. R.S. 08: § 1276. C.L. § 8751. CSA: C. 45, § 98. CRS 53: § 35-5-4. C.R.S. 1963: § 35-5-4. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 561, § 18, effective August 11.

Cross references: For powers, duties, and compensation of person acting as sheriff when the office is vacant, see §§ 30-10-106, 30-10-518, and 30-10-604.

30-10-506. Deputies. Each sheriff may appoint as many deputies as the sheriff may think proper and may revoke such appointments at will; except that a sheriff shall adopt personnel policies, including policies for the review of revocation of appointments. Before revoking an appointment of a deputy, the sheriff shall notify the deputy of the reason for the proposed revocation and shall give the deputy an opportunity to be heard by the sheriff. Persons may also be deputized by the sheriff or undersheriff in writing to do particular acts.

Source: G.L. § 493. G.S. § 597. R.S. 08: § 1277. C.L. § 8752. CSA: C. 45, § 99. CRS 53: § 35-5-5. C.R.S. 1963: § 35-5-5. L. 2006: Entire section amended, p. 133, § 1, effective August 7.

ANNOTATION

- I. General Consideration.
- II. Appointment of Deputies.
- III. Liability of Sheriff.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Torts", see 40 Den. L. Ctr. J. 160 (1963).

Sheriff's authority over deputies. This section and § 30-2-106 indicate that the general assembly intended to grant the sheriff exclusive power to appoint deputies and to fix their salaries, subject to the board of county commissioners' approval. *Tihonovich v. Williams*, 191 Colo. 144, 582 P.2d 1051 (1978).

The sheriff, not the county or the board of county commissioners, has the right of control with respect to deputies. *Tunget v. Bd. of County Comm'rs*, 992 P.2d 650 (Colo. App. 2000); *Bristol v. Bd. of County Comm'rs of Clear Creek*, 312 F.3d 1213 (10th Cir. 2002).

Statute supersedes manual. An employee may not insist upon adherence to county or departmental policies and procedures regarding termination when this section specifically provides that the employee serves only at the will of an elected official. Therefore, a policy manual did not preclude a sheriff from exercising his statutory prerogative to terminate an employee. *Seeley v. Bd. of County Comm'rs*, 771 P.2d 21 (Colo. App. 1989), *aff'd*, 791 P.2d 696 (Colo. 1990); *Jackson v. Johns*, 714 F. Supp. 1126 (D. Colo. 1989).

Responsibility of sheriffs. Because this section makes sheriffs responsible for the official acts of their deputies and undersheriffs, it is consistent that it grants authority to the sheriffs to dismiss deputy sheriffs at their pleasure. Therefore, a sheriff cannot limit his power to terminate deputy sheriffs because that would forbid something the state expressly authorized. *Seeley v. Bd. of County Comm'rs*, 791 P.2d 696 (Colo. 1990).

Applied in *Bailey v. Clausen*, 192 Colo. 297, 557 P.2d 1207 (1976).

II. APPOINTMENT OF DEPUTIES.

This section provides that sheriffs may appoint deputies and revoke the appointment at their pleasure. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

But it is not an unrestricted right. The fact that this section makes the sheriff liable for the acts of his deputies does not guarantee the unrestricted right to hire or discharge his employees without regard to the merit system of the city and county of Denver. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

Sheriff acts under color of state law when he suspends deputy in reliance upon this sec-

tion. *Lontine v. VanCleave*, 483 F.2d 966 (10th Cir. 1973).

Methods of concern to people. Because the office of sheriff is a county office and not a state office, the method of selection and tenure of the officer designated to carry out the duties of the position became the concern of the people of Denver by authority expressly granted to them by all of the people of the state under art. XX, Colo. Const., and this is true even though those officers might be required to perform duties which were of statewide concern such as the duties imposed by constitution upon the county clerk and recorder, county sheriff, treasurer or assessor. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

Appointment and removal upon merit and fitness in Denver. The people of Denver, acting under the powers given them by art. XX, Colo. Const., have so changed the method of appointment and removal of deputies by sheriffs so that in Denver the appointment and removal of such deputies is upon merit and fitness to perform the work. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

The career service amendment to the charter of the city and county of Denver encompasses within its scope the positions of deputy sheriffs and jailers. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

Sheriffs and jailers employees in Denver. Since in the city and county of Denver, the salaries of deputy sheriffs and jailers are not set by the charter they are therefore, by charter definition, employees. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

Sheriff must comply with home rule charter of Weld County in appointing and dismissing deputies where deputy sheriffs are subject to county personnel system as set forth in county policy manual. *Bd. of County Comm'rs v. Andrews*, 687 P.2d 457 (Colo. App. 1984).

Deputy could not be suspended for joining police union. Although a deputy sheriff may not have had a right, per se, to continued public employment under applicable Colorado law as a sheriff's deputy, and may not have been entitled to any form of notice or hearing either under the Colorado administrative procedure act, or under constitutional principles, he could not be suspended or dismissed for joining a police officers' union. *Lontine v. VanCleave*, 483 F.2d 966 (10th Cir. 1973).

III. LIABILITY OF SHERIFF.

Under this section a sheriff is liable only for the official acts of his deputies. *McCartney v. Forster*, 150 Colo. 537, 374 P.2d 704 (1962).

Also, by this section sheriffs are made liable for the torts of their deputies. *City &*

County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961); Seeley v. Bd. of County Comm'rs, 791 P.2d 696 (Colo. 1990); Tunget v. Bd. of County Comm'rs, 992 P.2d 650 (Colo. App. 1999); Peterson v. Arapahoe County Sheriff, 72 P.3d 440 (Colo. App. 2003).

Board of county commissioners cannot be held liable for actions of a sheriff's deputy under the doctrine of respondeat superior. Tunget v. Bd. of County Comm'rs, 992 P.2d 650 (Colo. App. 1999).

This section does not afford a basis for holding a sheriff liable, on a respondeat superior theory, for the willful and wanton conduct of a deputy in circumstances in which sovereign immunity has not been waived. Carothers v. Archuleta County Sheriff, 159 P.3d 647 (Colo. App. 2006).

If the arrest of the prisoner was not a lawful one, if made under a void warrant, or without a warrant in a case where a warrant is required, or if not made in such circumstances as justify the arrest without warrant, the officer was not acting in his official capacity,

either by virtue of, or under color of, office. Johnson v. Enlow, 132 Colo. 101, 286 P.2d 630 (1955).

Where the acts of a public officer are done without any legal process, or authority of law, they are not his official acts, but merely his private or personal acts, for which his sureties are not liable. Johnson v. Enlow, 132 Colo. 101, 286 P.2d 630 (1955).

Where an alleged wrongful taking of property by a deputy was not in performance of any official duty as deputy sheriff, the sheriff was not liable. McCartney v. Foster, 150 Colo. 537, 374 P.2d 704 (1962).

In an action for damages for death of re-actor's son while confined in jail, and caused, as alleged, by conduct of the officials in charge thereof, complaint was considered and held not vulnerable to a general demurrer, and the trial court's ruling in sustaining the demurrer and dismissing the case was reversed. People ex rel. Coover v. Gunther, 105 Colo. 37, 94 P.2d 699 (1939).

30-10-507. Liability of sheriff for deputy. (Repealed)

Source: G.L. § 501. G.S. § 605. R.S. 08: § 1288. C.L. § 8763. CSA: C. 45, § 110. CRS 53: § 35-5-6. C.R.S. 1963: § 35-5-6. L. 2006: Entire section repealed, p. 133, § 2, effective August 7.

30-10-508. Executor of sheriff liable. (Repealed)

Source: G.L. § 502. G.S. § 606. R.S. 08: § 1289. C.L. § 8764. CSA: C. 45, § 111. CRS 53: § 35-5-7. C.R.S. 1963: § 35-5-7. L. 2006: Entire section repealed, p. 134, § 3, effective August 7.

30-10-509. Liability of sheriff for neglect. When any sheriff neglects to make due return of any writ of process delivered to the sheriff to be executed, or is guilty of any default or misconduct in relation thereto, the sheriff is liable to fine or attachment or both, at the discretion of the court, subject to appeal. The fine, however, shall not exceed two hundred dollars.

Source: G.L. § 505. G.S. § 609. R.S. 08: § 1292. C.L. § 8767. CSA: C. 45, § 114. CRS 53: § 35-5-8. C.R.S. 1963: § 35-5-8. L. 2006: Entire section amended, p. 134, § 4, effective August 7.

30-10-510. Appointment and revocation. (Repealed)

Source: G.L. § 494. G.S. § 598. R.S. 08: § 1278. C.L. § 8753. CSA: C. 45, § 100. CRS 53: § 35-5-10. C.R.S. 1963: § 35-5-10. L. 2006: Entire section repealed, p. 134, § 5, effective August 7.

30-10-511. Sheriff custodian of jail. Except as provided in section 16-11-308.5, C.R.S., the sheriff shall have charge and custody of the jails of the county, and of the prisoners in the jails, and shall supervise them himself or herself or through a deputy or jailer.

Source: G.L. § 495. G.S. § 599. R.S. 08: § 1279. C.L. § 8754. CSA: C. 45, § 101. CRS 53: § 35-5-11. C.R.S. 1963: § 35-5-11. L. 88: Entire section amended, p. 677, § 4, effective July 1; entire section amended, p. 711, § 11, effective July 1. L. 2006: Entire section amended, p. 134, § 6, effective August 7.

ANNOTATION

Law reviews. For note, "Prisoners' Rights: Personal Security", see 42 U. Colo. L. Rev. 305 (1970).

Under this section, the general assembly has imposed the following duties upon a sheriff: The sheriff shall have charge and custody of the jails of his county, and of the prisoners in the same, and shall keep them himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable. *McMillan v. Hammond*, 158 Colo. 40, 404 P.2d 549 (1965).

A jailer or warden may be liable for an injury proximately resulting to a prisoner from a breach of duty with respect to such prisoner. *McMillan v. Hammond*, 158 Colo. 40, 404 P.2d 549 (1965).

As, for example, a breach of duty to exercise due care for the safety of a prisoner generally, to keep the jail sanitary and warm, or to furnish food. *McMillan v. Hammond*, 158 Colo. 40, 404 P.2d 549 (1965).

A county sheriff was entitled to possession of a room in the jail for his use as living quarter, notwithstanding the county commissioners had designated it for another purpose. *Richart v. Bd. of Comm'rs*, 95 Colo. 153, 33 P.2d 971 (1934).

When a sheriff knows that his prisoner has been refused bail, it is a contempt of the court refusing the bail for the sheriff wilfully to permit the prisoner to be at large. *Robran v. People*, 173 Colo. 378, 479 P.2d 976 (1971).

Sheriff must comply with home rule charter of Weld County in appointing and dismissing deputies where deputy sheriffs are subject to county personnel system as set forth in county policy manual. *Bd. of County Comm'rs v. Andrews*, 687 P.2d 457 (Colo. App. 1984).

Applied in *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

30-10-512. Sheriff to act as fire warden. Subject to the provisions of the community wildfire protection plan prepared by the county in accordance with section 30-15-401.7, the sheriff of every county, in addition to other duties, shall act as fire warden of his or her respective county and is responsible for the coordination of fire suppression efforts in case of prairie, forest, or wildland fires or wildfires occurring in the unincorporated area of the county outside the boundaries of a fire protection district or that exceed the capabilities of the fire protection district to control or extinguish.

Source: L. 03: p. 176, § 1. R.S. 08: § 1280. C.L. § 8755. CSA: C. 45, § 102. CRS 53: § 35-5-12. C.R.S. 1963: § 35-5-12. L. 2009: Entire section amended, (SB 09-020), ch. 189, p. 829, § 4, effective April 30; entire section amended, (SB 09-001), ch. 30, p. 128, § 4, effective August 5.

Editor's note: Amendments to this section by Senate Bill 09-001 and Senate Bill 09-020 were harmonized.

Cross references: For duty of sheriff to report fires, see § 23-31-204.

30-10-513. Duties of sheriff - coordination of fire suppression efforts for forest, prairie, or wildland fire - expenses. (1) (a) Subject to the provisions of the community wildfire protection plan prepared by the county in accordance with section 30-15-401.7, it is the duty of the sheriff to assume the responsibility for coordinating fire suppression efforts in case of any prairie, forest, or wildland fire or wildfire occurring in the unincorporated area of the county outside the boundaries of a fire protection district or that exceed the capabilities of the fire protection district to control or extinguish.

(b) In the case of a prairie, forest, or wildland fire occurring within the boundaries of one or more fire protection districts that does not exceed the capabilities of the fire protection district to control or extinguish, the sheriff may assist the chief of the fire protection district in controlling or extinguishing such fire, and, in connection with such assistance, the sheriff may solicit such additional assistance from such persons as the sheriff

and the fire chief deem necessary. The sheriff may assume command of such incidents with the concurrence of the fire chief.

(c) In the case of a prairie, forest, or wildland fire that exceeds the capabilities of the fire protection district to control or extinguish and that requires mutual aid and outside resources, the sheriff shall appoint a local incident management team to provide the command and control infrastructure required to manage the fire. The sheriff shall assume financial responsibility for fire fighting efforts on behalf of the county and the authority for the ordering and monitoring of resources.

(d) When a wildfire exceeds the capability of the county to control or extinguish, the sheriff shall be responsible for seeking the assistance of the state by requesting assistance from the forest service. The sheriff and the state forester shall enter into an agreement concerning the transfer of authority and responsibility for fire suppression and the retention of responsibilities under a unified command structure.

(2) The state forester may assume any duty or responsibility given to the sheriff under this section with the concurrence of the sheriff.

(3) The board of county commissioners of any county may allow the sheriff, undersheriffs, deputies, municipal or county fire departments, fire protection districts, fire authorities, and such other persons as may be called upon to assist in controlling or extinguishing a prairie, forest, or wildland fire such compensation and reimbursement for other expenses necessarily incurred as the board deems just.

(4) The board of county commissioners of any county in the state may make such appropriation as it may deem proper for the purpose of controlling fires in its county. The board of county commissioners is authorized to levy a special tax subject to approval of the voters upon every dollar of valuation of assessment of the taxable property within the county for the purpose of creating a fund that shall be appropriated, after consultation with representatives of fire departments, fire protection districts, and fire authorities in the county, to prevent, control, or extinguish such fires anywhere in the county and to fix the rate of levy.

Source: L. 03: p. 176, § 2. R.S. 08: § 1281. C.L. § 8756. CSA: C. 45, § 103. L. 45: p. 299, § 1. CRS 53: § 35-5-13. C.R.S. 1963: § 35-5-13. L. 65: p. 925, § 4. L. 96: Entire section amended, p. 673, § 1, effective May 2. L. 2000: Entire section amended, p. 1303, § 6, effective May 26. L. 2009: Entire section amended, (SB 09-105), ch. 190, p. 831, § 1, effective April 30; entire section R&RE, (SB 09-020), ch. 189, p. 829, § 5, effective April 30; entire section amended, (SB 09-001), ch. 30, p. 128, § 5, effective August 5. L. 2010: (1)(b) amended, (HB 10-1422), ch. 419, p. 2119, § 163, effective August 11.

Editor's note: (1) Amendments to this section by Senate Bill 09-001 and Senate Bill 09-020 were harmonized.

(2) This section was amended in Senate Bill 09-105. Those amendments were superseded by the repeal and reenactment of this section in Senate Bill 09-020. However, the intent of Senate Bill 09-105 was realized by the adoption the House Local Government committee of reference report to Senate Bill 09-020. (See the House Journal for March 18, 2009, page 770.)

Cross references: For the legislative declaration contained in the 2000 act amending this section, see section 6 of chapter 272, Session Laws of Colorado 2000.

30-10-513.5. Authority of sheriff relating to fires within unincorporated areas of county - liability for expenses.

(1) (a) The sheriff of any county may request assistance from a fire protection district or municipality in controlling or extinguishing a fire occurring on private property if, in the judgment of such sheriff, the fire constitutes a danger to the health and safety of the public or a risk of serious damage to property. Except as provided in subsection (3) of this section, any fire protection district or municipality assisting in controlling or extinguishing such fire is entitled to reimbursement from the property owner on whose property the fire occurred or from the party responsible for the occurrence of such fire for the reasonable and documented costs resulting from such assistance. The fire protection district or municipality may recover the costs incurred in a civil action against the

property owner or the responsible party or may, by resolution of its board or governing body adopted at a public hearing after notice to the affected parties, certify to the county treasurer the amount of any costs incurred that remains uncollected after diligent effort for a period greater than one hundred eighty days. Such certification is subject to the appeal process and all other remedies, if any, provided in the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If the fire protection district or municipality prevails, the amount certified shall be collected by the treasurer in the same manner as taxes are authorized to be collected pursuant to section 39-10-107, C.R.S. To defray the costs of collection, the treasurer shall be authorized to charge an amount equal to ten percent of the amount collected.

(b) For purposes of this subsection (1), "fire occurring on private property" means:

(I) A fire occurring on property not located within a fire protection district or municipality providing fire protection services.

(II) (Deleted by amendment, L. 93, p. 1253, § 1, effective July 1, 1993.)

(2) (a) An owner of private property who has contracted with a fire protection district for fire protection services shall advise the sheriff of such contract and any fire protection districts with which such district has mutual aid agreements. In the event that a fire occurs on such property, the sheriff shall make a reasonable attempt to secure the services from such district. If the district does not respond, he shall make a reasonable attempt to secure such services from any of the districts with which such district has mutual aid agreements. If services cannot be secured, the sheriff, in his discretion, may attempt to secure fire protection services from any other district or municipality, and, if services are provided, the owner of the property or the party responsible for the fire shall be liable for the costs incurred by such district or municipality. Such costs may be assessed and collected in the manner provided in subsection (1) of this section.

(b) No sheriff shall be held liable for failure to secure fire protection services as required by paragraph (a) of this subsection (2) unless the failure was due to willful misconduct, gross negligence, or bad faith.

(3) Any property owner who desires to conduct a controlled burn of a structure or building located on such property shall notify the county sheriff of the date when such controlled burn will be conducted. Any property owner providing such notification shall not be liable for any costs under this section resulting from the response by a fire protection district or municipality to such controlled burn due to any person informing or warning such district or municipality of the fire arising from such burn.

Source: L. 89: Entire section added, p. 1279, § 1, effective April 26. L. 93: (1) amended and (3) added, p. 1253, § 1, effective July 1. L. 2000: (1)(a) amended, p. 1304, § 7, effective May 26.

Cross references: For the legislative declaration contained in the 2000 act amending subsection (1)(a), see section 7 of chapter 272, Session Laws of Colorado 2000.

30-10-514. Sheriff to transport prisoners. It is the duty of any sheriff transporting prisoners to a correctional facility, as defined in section 17-1-102, C.R.S., or other place of confinement to convey to such facility or other place of confinement at one time all prisoners who may have been convicted and sentenced and who are ready for such transportation. If any sheriff fails or neglects to carry out the provisions of this section, the boards of county commissioners may disallow any such sheriff's bill for such extra trips as in their discretion are unnecessary. This section shall not apply to the transportation of the insane.

Source: L. 1897: p. 256, § 1. R.S. 08: § 1282. C.L. § 8757. CSA: C. 45, § 104. CRS 53: § 35-5-14. C.R.S. 1963: § 35-5-14. L. 79: Entire section amended, p. 704, § 83, effective July 1.

Cross references: For necessary expenses of and mileage allowance to sheriffs for transporting prisoners, see § 30-1-104 (1)(w).

ANNOTATION

The sheriff conveying several prisoners to the penitentiary or other place of detention is entitled to but one mileage for the service of the mittimus, no matter what may be the number of his prisoners, so he is entitled to but one mittimus mileage for all prisoners, who, being convicted and sentenced, are ready to be transported at the same time, however transported,

whether by separate trips, or otherwise, but he is entitled to mileage for each prisoner so transported, whether in one or several trips. *Bd. of Comm'rs v. Campbell*, 52 Colo. 440, 123 P. 317 (1912).

Applied in *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

30-10-515. Sheriff to execute writs - attend court. The sheriff, in person or by his undersheriff or deputy, shall serve and execute, according to law, all processes, writs, precepts, and orders issued or made by lawful authority and to him directed, and shall serve the several courts of record held in his county.

Source: G.L. § 496. G.S. § 600. R.S. 08: § 1283. C.L. § 8758. CSA: C. 45, § 105. CRS 53: § 35-5-15. C.R.S. 1963: § 35-5-15.

Cross references: For sheriff's duty to serve on tender of fee, see § 30-1-106.

ANNOTATION

A sheriff is an officer of the court charged with the duty of carrying out the orders and decrees of the court. *Struble v. Barger*, 128 Colo. 188, 261 P.2d 497 (1953).

But sheriffs are not required to be learned in the law and when the sheriff obeys the order of the judge, he is not liable for so doing. *Struble v. Barger*, 128 Colo. 188, 261 P.2d 497 (1953).

Because the sheriff is "an executive officer, whose sole duty is to execute, and not to decide on the truth or sufficiency of the processes committed to him for service". *Struble v. Barger*, 128 Colo. 188, 261 P.2d 497 (1953).

Also, the sheriff is protected because it would be inequitable and unjust to hold him responsible for acts of others over whom he has no control and for defects of which he had no notice; to hold otherwise would mean that the officer must act at his peril or delay until he has had an opportunity to search out legal niceties of procedure or substantive law. *Struble v. Barger*, 128 Colo. 188, 261 P.2d 497 (1953).

In the execution of process, the power possessed by the sheriff is conferred by the statutes, and no power exists in him except such as is expressly so conferred or may be fairly implied. *McArthur v. Boynton*, 19 Colo. App. 234, 74 P. 540 (1903).

The sheriff is the only officer to whom processes, writs, and orders of courts may be directed. *Blitz v. Moran*, 17 Colo. App. 253, 67 P. 1020 (1902).

In a judicial foreclosure of a mortgage the sheriff alone is authorized to execute the decree of foreclosure and sell the land, and it is error for the court to appoint a commissioner, other than the sheriff, to make such foreclosure sale, where

such appointment is at the time objected to. *Blitz v. Moran*, 17 Colo. App. 253, 67 P. 1020 (1902).

An officer cannot execute process unless it is directed to him for service, or to the class of officers to which he belongs, and no statute authorized the execution of process issuing from justices' courts in civil actions, by sheriffs or their deputies, as such. *Porter v. Stapp*, 6 Colo. 32 (1881).

Where a writ of attachment directed to the sheriff of one county was attempted to be executed by the sheriff of another county levying it upon property in his county, the levy was void and could not be cured by amendment after the attempted levy by changing the direction of the writ to the county in which the levy was made. *McArthur v. Boynton*, 19 Colo. App. 234, 74 P. 540 (1903).

Since a distraint warrant was a nonjudicial process, precept, or order made by lawful authority, it was the duty of the sheriff to serve and execute the same according to law. *Goldsmith v. McAnally*, 92 Colo. 384, 20 P.2d 1009 (1933).

And the issuance of a distraint warrant did not constitute a delegation of power to collect by the treasurer to the sheriff; in rendering the services, the sheriff merely acted as a peace officer in the performance of his duty. *Goldsmith v. McAnally*, 92 Colo. 384, 20 P.2d 1009 (1933).

A scire facias or summons to hear errors issued by the clerk of the supreme court must be directed to the sheriff of the county where the defendant in error resides or may be found, and no other person than such sheriff or his authorized deputy has authority to serve such summons; an attempted service of such sum-

mons made by a person not authorized by law to make such service is a nullity. *Wellington v. Beck*, 29 Colo. 73, 66 P. 881 (1901).

Applied in *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

30-10-516. Sheriffs to preserve peace - command aid. It is the duty of the sheriffs, undersheriffs, and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections. For that purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner, may call to their aid such person of their county as they may deem necessary.

Source: G.L. § 497. G.S. § 601. R.S. 08: § 1284. C.L. § 8759. CSA: C. 45, § 106. CRS 53: § 35-5-16. C.R.S. 1963: § 35-5-16. L. 64: p. 383, § 7.

Cross references: For authority of a peace officer to command aid, see §§ 16-3-202 and 18-8-107.

ANNOTATION

It is the duty of sheriffs to preserve peace and quiet, prevent acts of malicious mischief, disperse unlawful assemblages, and arrest, without warrant, persons violating the laws relative to such acts. *Corder v. People ex rel. Smiley*, 87 Colo. 251, 287 P. 85 (1930).

Denver deputies not granted same police powers as other deputies. There is no authority, constitutional or statutory, granting to deputy sheriffs of the city and county of Denver the same general police powers given sheriffs and their deputies in other counties. *Int'l. Bhd. of Police Officers, Local 127 v. City & County of Denver*, 185 Colo. 50, 521 P.2d 916 (1974).

Departmental rules and directives of the manager of safety govern a deputy sheriff's duties in Denver. *Int'l. Bhd. of Police Officers, Local 127 v. City & County of Denver*, 185 Colo. 50, 521 P.2d 916 (1974).

Jury questions. Whether or not certain acts in the nature of Halloween pranks constituted a disturbance, and whether an assemblage of boys was unlawful, was held for the jury to determine. *Corder v. People ex rel. Smiley*, 87 Colo. 251, 287 P. 85 (1930).

Applied in *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978).

30-10-517. Outgoing sheriff may proceed with writs. Every sheriff going out of office at the expiration of the sheriff's term and having any order of fieri facias or fee bill that the sheriff has levied but not collected shall collect such execution or fee bill in the same manner as if the sheriff's term of office had not expired.

Source: G.L. § 499. G.S. § 603. R.S. 08: § 1286. C.L. § 8761. CSA: C. 45, § 108. CRS 53: § 35-5-17. C.R.S. 1963: § 35-5-17. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 561, § 19, effective August 11.

ANNOTATION

Which surety liable. Where money came into the hands of a sheriff by sale of perishable property under a writ of attachment and, pending the litigation in the attachment suit but after the sale of the property, the sheriff's term of office expired and he was reelected and gave a new official bond and when the attachment suit was ended the sheriff defaulted in the payment of the attachment fund, the sureties on his official bond at the time of the execution of the writ and sale of the property were liable for his default. *People ex rel. Schayer v. Kendall*, 14 Colo. App. 175, 59 P. 409 (1899).

Running of statute of limitations. Where a sheriff converted to his own use of money re-

ceived from the sale of property under a writ of attachment, the statute of limitations would not begin to run against an action by the attachment plaintiff on the official bond of the sheriff to recover the money converted until final judgment was entered in the attachment suit in favor of plaintiff, both as to the attachment defendant and an intervener claiming the property. *People ex rel. Tritch v. Cramer*, 15 Colo. 155, 25 P. 302 (1890); *People ex rel. Schayer v. Kendall*, 14 Colo. App. 175, 59 P. 409 (1899); *Rose v. Dunklee*, 12 Colo. App. 403, 56 P. 342 (1899).

30-10-518. Coroner when acting as sheriff. The provisions of sections 30-10-503 and 30-10-517 shall apply to all coroners when by virtue of the laws of the state they are required to perform the duties of sheriff.

Source: G.L. § 500. G.S. § 604. R.S. 08: § 1287. C.L. § 8762. CSA: C. 45, § 109. CRS 53: § 35-5-18. C.R.S. 1963: § 35-5-18.

30-10-519. Service on sheriff, made how. Every paper required by law to be served on the sheriff may be served on him in person or left at his office during business hours.

Source: G.L. § 503. G.S. § 607. R.S. 08: § 1290. C.L. § 8765. CSA: C. 45, § 112. CRS 53: § 35-5-19. C.R.S. 1963: § 35-5-19.

30-10-520. Sheriff not to act as attorney. No sheriff, undersheriff, or deputy shall appear or advise as attorney or counselor in any case in any court.

Source: G.L. § 504. G.S. § 608. R.S. 08: § 1291. C.L. § 8766. CSA: C. 45, § 113. CRS 53: § 35-5-20. C.R.S. 1963: § 35-5-20.

30-10-521. Illegal fees - penalty. No sheriff shall directly or indirectly ask, demand, or receive for any service to be performed by him in the discharge of any of his official duties any greater fees than are allowed by law, on penalty of forfeiture of treble damages to the party aggrieved, and being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

Source: G.L. § 506. G.S. § 610. R.S. 08: § 1293. C.L. § 8768. CSA: C. 45, § 115. CRS 53: § 35-5-21. C.R.S. 1963: § 35-5-21.

ANNOTATION

Under this section the proceedings are against the sheriff personally, and there is no provision making the sureties liable upon the official bond in treble damages for a crime or misdemeanor of the principal. State Bank v. Brennan, 7 Colo. App. 427, 43 P. 1050 (1896).

This section refers only to fees, and not to actual reasonable expenses incurred in caring for the property held by the sheriff under attachment, and the court has determined that the sheriff is entitled to reimbursement for reasonable charges incurred in taking possession of, removing and keeping property taken on a writ of attachment. Cramer v. Brasher, 15 Colo. 216, 25 P. 180 (1890).

The sheriff may be reimbursed for money expended in taking and preserving property seized under valid process, but such costs are allowable only to the extent of reasonable and actual as well as necessary expenditures. Cramer v. Oppenstein, 16 Colo. 495, 27 P. 713 (1891).

But for the making of an inventory of attached property which is not a matter necessarily involving the expenditure of money out of pocket and thus the sheriff is not entitled to

costs therefor in addition to the statutory fees. Cramer v. Oppenstein, 16 Colo. 495, 27 P. 713 (1891).

The sheriff has an insurable interest in property seized in execution; but he cannot subject the execution debtor to the cost of insurance without his express consent. Cramer v. Oppenstein, 16 Colo. 495, 27 P. 713 (1891).

Where the sheriff retains moneys above his proper fees and costs, the party entitled to the surplus may recover the same by action, and the remedy in such cases is not limited to a proceeding to retax the sheriff's fees and costs, though that course may be pursued, and though the suit may be for treble damages under this section, still, under appropriate allegations, there may be a recovery as for money had and received. Cramer v. Oppenstein, 16 Colo. 495, 27 P. 713 (1891).

No commission. Where money, received as the proceeds of an execution sale, exceeds the amount necessary to satisfy the execution, the sheriff is not entitled to charge commissions on such excess. Cramer v. Oppenstein, 16 Colo. 495, 27 P. 713 (1891).

30-10-522. Actions against sheriff - sureties liable - when. Except in the case of a sheriff covered by insurance purchased pursuant to section 30-10-501 (2), in an action

brought against a sheriff for an action done by virtue of the sheriff's office, if the sheriff gives notice thereof to the sureties on any bond of indemnity given by the sheriff, the judgment recovered therein shall be sufficient evidence of the sheriff's right to recover against such sureties, and the court, on motion, upon notice of five days, may order judgment to be entered against them for the amount so recovered, including costs.

Source: L. 1887: p. 214, § 419. **Code 08:** § 454. **Code 21:** § 456. **Code 35:** § 456. **CRS 53:** § 35-5-22. **C.R.S. 1963:** § 35-5-22. **L. 2010:** Entire section amended, (HB 10-1062), ch. 161, p. 561, § 20, effective August 11.

ANNOTATION

This section of the code does not change the rule which exists in the absence of a statute except insofar as it provides for the entering of judgment upon the bond, and in the absence of a statute the rule is that to entitle the obligee to maintain an action upon a general promise of indemnity against damages of liability, it is not necessary that he should have given notice of a suit against him in which the judgment upon

which the breach is predicated was rendered, if, however, no notice is given, the judgment is only prima facie evidence against the obligors and may be attacked on the ground that the obligee failed to avail himself of a good defense or that it was obtained by fraud or collusion. *Whinnery v. Wiley*, 38 Colo. 203, 88 P. 171 (1906).

30-10-523. Sheriff - permits for concealed handguns. The sheriff of each county and the official who has the duties of a sheriff in each city and county shall issue written permits to carry concealed handguns as provided in part 2 of article 12 of title 18, C.R.S.

Source: L. 81: Entire section added, p. 1437, § 1, effective June 8. **L. 2003:** Entire section amended, p. 650, § 8, effective May 17.

PART 6

CORONER

Cross references: For fees and compensation of coroners, see § 30-2-108.

30-10-601. Coroner - election - bond - insurance - authority.

(1) (a) Repealed.

(b) A coroner shall be elected in each county for the term of four years, who, except as provided in subsection (1.5) of this section, before entering upon the duties of office, shall give bond to the people of the state of Colorado of not less than twenty-five thousand dollars, with sufficient sureties, to be approved by the board of county commissioners or, if the board is not in session, by the county clerk and recorder, subject to the approval of such board, the condition of which bond shall be in substance the same as that given by the sheriff. Such bond shall be filed with the county clerk and recorder of the proper county.

(1.5) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than twenty-five thousand dollars on behalf of the coroner to protect the people of the county from any malfeasance on the part of the coroner while in office.

(2) The coroner may declare an individual dead if the coroner finds the individual has sustained irreversible cessation of circulatory and respiratory function.

Source: G.L. § 507. G.S. § 611. **R.S. 08:** § 1294. **C.L.** § 8769. **CSA:** C. 45, § 116. **CRS 53:** § 35-6-1. **L. 56:** p. 129, § 3. **C.R.S. 1963:** § 35-6-1. **L. 81:** Entire section amended, p. 1439, § 1, effective June 4. **L. 89:** (1) amended, p. 1275, § 2, effective April 18. **L. 2003:** (1)(a) repealed, p. 1834, § 4, effective August 6; (1)(a)(II) added by revision, pp. 1834, 1835, §§ 4, 5. **L. 2010:** Entire section amended, (HB 10-1062), ch. 161, p. 561, § 21, effective August 11.

Cross references: For the definition of death, see § 12-36-136.

30-10-601.5. Qualifications - fingerprints. (1) A person is eligible to hold the office of coroner if the person:

(a) Is a citizen of the United States and a resident of the state of Colorado and of the county in which the person will hold the office of coroner;

(b) Has earned a high school diploma or its equivalent or a college degree; and

(c) Has given a set of fingerprints in accordance with subsection (2) of this section.

(2) (a) A person who is nominated by a political party or for whom a nominating petition is filed for the office of coroner shall have a complete set of fingerprints taken by a qualified law enforcement agency and submit proof of such fingerprinting when filing a written acceptance pursuant to section 1-4-601 (3), 1-4-906, or 1-4-1002 (5), C.R.S.

(b) A person wishing to be a write-in candidate for the office of coroner shall have a complete set of fingerprints taken by a qualified law enforcement agency and submit proof of such fingerprinting when filing an affidavit of intent pursuant to section 1-4-1101, C.R.S.

(c) A board of county commissioners shall not appoint a person to fill a vacancy in the office of coroner unless the person has had a complete set of fingerprints taken by a qualified law enforcement agency and has submitted proof of such fingerprinting to the board.

(3) (a) A law enforcement agency that takes fingerprints in accordance with subsection (2) of this section shall forward the fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado bureau of investigation and the federal bureau of investigation. The Colorado bureau of investigation shall report the results of the criminal history record check to the county clerk and recorder of the county in which the person has been nominated for or is to be appointed to the office of coroner.

(b) A person who has been convicted of or pleaded guilty or entered a plea of nolo contendere to any felony charge under federal or state law is unqualified for the office of coroner unless pardoned. The results of the criminal history record check performed in accordance with this subsection (3) shall be confidential; except that the county clerk and recorder may disclose whether a person is qualified or unqualified for the office of coroner.

Source: L. 2003: Entire section added, p. 1831, § 3, effective August 6.

30-10-601.6. Coroners standards and training board. (1) There is hereby created in the department of public health and environment the Colorado coroners standards and training board, referred to in this part 6 as the "C.C.S.T. board".

(2) The C.C.S.T. board shall exercise its powers and perform its duties and functions under the department of public health and environment as if transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(3) (a) The C.C.S.T. board shall consist of eight members. The chairperson and the vice-chairperson of the C.C.S.T. board shall be elected annually by the members of the C.C.S.T. board.

(b) The members of the C.C.S.T. board shall be:

(I) A coroner of a county with a population of fifty thousand or more;

(II) A coroner of a county with a population of less than fifty thousand but more than fifteen thousand;

(III) A coroner of a county with a population of fifteen thousand or less;

(IV) A county commissioner of a county with a population of fifty thousand or more;

(V) A county commissioner of a county with a population of less than fifty thousand;

(VI) A pathologist who is actively engaged in performing postmortem examinations for a county in this state and who is a member of the Colorado medical society;

(VII) A chief of police from a municipality in this state or a county sheriff; and

(VIII) A district attorney from a judicial district in this state.

(c) The governor shall appoint each member of the C.C.S.T. board for a term of three years; except that, of the members initially appointed, three members shall be appointed for a term of three years, three members shall be appointed for a term of two years, and two members shall be appointed for a term of one year.

(d) If a county coroner, county commissioner, county sheriff, chief of police, or district attorney leaves that office, that person's term on the C.C.S.T. board shall expire. The governor shall appoint a suitable person to fill the vacancy on the C.C.S.T. board for the unexpired term.

(4) The members of the C.C.S.T. board shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(5) (a) On and after August 6, 2003, the executive director of the department of public health and environment may accept gifts, grants, and donations to cover the costs incurred in the establishment and operation of the C.C.S.T. board. Such gifts, grants, and donations received shall be transmitted to the state treasurer, who shall credit the moneys to the coroner training fund created in section 30-10-601.8 (5). Any unencumbered moneys remaining in the fund upon the repeal of this section shall be transferred to the general fund.

(b) (Deleted by amendment, L. 2011, (HB 11-1303), ch. 264, p. 1173, § 85, effective August 10, 2011.)

(6) The department of public health and environment in coordination with the C.C.S.T. board shall hire an independent contractor to perform administrative duties related to the establishment and operation of the C.C.S.T. board.

Source: L. 2003: Entire section added, p. 1831, § 3, effective August 6. L. 2011: (5) amended, (HB 11-1303), ch. 264, p. 1173, § 85, effective August 10.

Editor's note: The revisor of statutes was notified that the department of public health and environment received sufficient funding from the department of local affairs to implement this section and §§ 30-10-601.7, 30-10-601.8, and 30-10-601.9.

30-10-601.7. Duties of the Colorado coroners standards and training board.

(1) In addition to its other duties set forth in this part 6, the C.C.S.T. board shall:

(a) Develop a curriculum for a forty-hour training course for new coroners and approve the qualifications of the instructors who teach the course;

(b) Approve training providers to certify coroners in basic medical-legal death investigation pursuant to section 30-10-601.8 (2); and

(c) Approve training providers and programs used to fulfill the annual sixteen-hour in-service training requirement specified in section 30-10-601.8 (3).

Source: L. 2003: Entire section added, p. 1833, § 3, effective August 6.

30-10-601.8. Training - fees - coroner training fund. (1) A person who is elected or appointed to the office of coroner for the first time shall attend, at the first opportunity after the election or appointment, a training course for new coroners of at least forty hours using the curriculum developed by the C.C.S.T. board. The course shall be prepared and presented by qualified instructors from the Colorado coroners association or another training provider approved by the C.C.S.T. board. At the request of a new coroner, the C.C.S.T. board may decide that a combination of education, experience, and training satisfies the requirement to complete the training course for new coroners.

(2) A person who is elected or appointed to the office of coroner for the first time shall, within one year of taking office, obtain certification in basic medical-legal death investigation from the Colorado coroners association or another training provider approved by the C.C.S.T. board. The C.C.S.T. board may grant an extension of up to one year to obtain such certification for just cause. The C.C.S.T. board shall issue written findings of fact supporting the extension.

(3) Each coroner shall complete a minimum of sixteen hours of in-service training provided by the Colorado coroners association or by another training provider approved by the C.C.S.T. board during each year of the coroner's term. At the request of a coroner, the C.C.S.T. board may decide that a combination of education, experience, and training satisfies the requirement to complete sixteen hours of in-service training annually.

(4) The county shall pay the costs of new coroner and in-service training. The fees charged by the C.C.S.T. board for training programs may include costs incurred in the establishment and operation of the C.C.S.T. board.

(5) The C.C.S.T. board shall by rule establish fees for training programs. All fees collected shall be transmitted to the state treasurer, who shall credit the same to the coroner training fund, which fund is hereby created. The moneys in the fund are hereby continuously appropriated to the C.C.S.T. board for the purposes of this part 6. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund.

Source: L. 2003: Entire section added, p. 1833, § 3, effective August 6.

30-10-601.9. Enforcement. (1) If a coroner fails to comply with the requirements of section 30-10-601.8, the C.C.S.T. board shall notify the board of county commissioners that the coroner is not in compliance with the training requirements of section 30-10-601.8 and that state law requires the county commissioners to suspend the coroner's salary. Upon receipt of such notice, the board of county commissioners shall suspend the coroner's salary.

(2) If the C.C.S.T. board determines that a coroner whose salary has been suspended in accordance with subsection (1) of this section is in compliance with the training requirements of section 30-10-601.8, the C.C.S.T. board shall notify the board of county commissioners that the coroner is in compliance with the training requirements and that state law requires the board of county commissioners to reinstate the coroner's salary with back pay. Upon receipt of such notice, the board of county commissioners shall reinstate the coroner's salary with back pay.

Source: L. 2003: Entire section added, p. 1834 § 3, effective August 6.

30-10-602. Deputy coroner - duties - oath - bond - insurance. (1) The coroner of each county is authorized to appoint a deputy. Any such appointment shall be in writing and shall be filed in the office of the coroner. The coroner of each county may delegate any of the coroner's powers to one or more deputies who shall then have the same duties with respect thereto as the coroner has. Any act of a deputy shall be done in the name of the coroner and signed by the deputy performing such act. A deputy coroner shall hold office during and subject to the pleasure of the coroner. Except as provided in subsection (2) of this section, each deputy coroner, before entering the duties of office, shall file with the county clerk and recorder of the county the bond and oath of office required by law to be filed by the coroner.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the deputy coroner to protect the people of the county from any malfeasance on the part of the deputy coroner while in office.

Source: L. 07: p. 307, § 1. **R.S. 08:** § 1295. **C.L.** § 8770. **CSA:** C. 45, § 117. **L. 53:** p. 224, § 1. **CRS 53:** § 35-6-2. **L. 57:** p. 310, § 1. **C.R.S. 1963:** § 35-6-2. **L. 2010:** Entire section amended, (HB 10-1062), ch. 161, p. 562, § 22, effective August 11.

30-10-603. Deputy coroner - appointment. Every appointment of a deputy coroner and every revocation thereof shall be in writing, under the hand of the coroner, and shall be filed in the office of the county clerk and recorder of the county wherein such appointment or revocation is made.

Source: L. 07: p. 307, § 2. **R.S. 08:** § 1296. **C.L.** § 8771. **CSA:** C. 45, § 118. **CRS 53:** § 35-6-3. **C.R.S. 1963:** § 35-6-3.

30-10-604. Coroner shall act as sheriff, when. When there is no sheriff in any county, it is the duty of the coroner to exercise all the powers and duties of the sheriff of his county

until a sheriff is appointed or elected and qualified; and when the sheriff for any cause is committed to the jail of his county, the coroner shall be keeper of such jail during the time the sheriff remains a prisoner.

Source: G.L. § 508. G.S. § 612. R.S. 08: § 1297. C.L. § 8772. CSA: C. 45, § 119. CRS 53: § 35-6-4. C.R.S. 1963: § 35-6-4.

Cross references: For powers and duties of coroner when acting as sheriff, see § 30-10-518; for substitute officers having same powers and compensation, see § 30-10-106.

ANNOTATION

A coroner can exercise the powers of the sheriff only in the cases specified in this and the service of process by him, except in such

cases, is void. *Tate v. People ex rel. Dewees*, 6 Colo. App. 202, 40 P. 471 (1895).

30-10-605. When sheriff a party or disqualified. (1) Every coroner shall serve and execute process of every kind and perform all other duties of the sheriff when the sheriff is a party to the case, or where affidavit is made and filed as provided in this section, and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties.

(2) Whenever any party, his agent, or attorney makes and files with the clerk of the proper court an affidavit stating that he believes that the sheriff of such county by reason of either partiality, prejudice, consanguinity, or interest, will not faithfully perform his duties in any suit commenced or about to be commenced in such court, the clerk shall direct the original process in such suit to the coroner, who shall execute the process in like manner as the sheriff might or should have done.

Source: G.L. §§ 509, 510. G.S. §§ 613, 614. R.S. 08: §§ 1298, 1299. C.L. §§ 8773, 8774. CSA: C. 45, §§ 120, 121. CRS 53: § 35-6-5. C.R.S. 1963: § 35-6-5.

ANNOTATION

The provisions of this section are mandatory where there is a compliance with the statute by a litigating party, and a coroner may be disqualified in the same manner as a sheriff. *Litch v. People ex rel. Town of Sterling*, 19 Colo. App. 433, 75 P. 1083 (1904); *Kelliher v. People*, 71 Colo. 202, 205 P. 274 (1922); *Montez v. People*, 110 Colo. 208, 132 P.2d 970 (1942).

Where the sheriff is party to an action all process therein must be served by the coroner, and a special panel of jurors summoned by the sheriff in such case, must be discharged on motion. *Toenniges v. Drake*, 7 Colo. 471, 4 P. 790 (1884); *General Film Co. v. McAfee*, 58 Colo. 344, 145 P. 707 (1914); *Wise v. Toner*, 65 Colo. 420, 176 P. 838 (1918).

In no event may a sheriff be disqualified until a proper affidavit is filed with the court clerk, which should be done at the earliest practicable opportunity. *Hoffman v. People*, 72 Colo. 552, 212 P. 848 (1923).

The term "party" as used in this section means the person whose name is expressly mentioned in the record as plaintiff or defen-

dant, or one of the plaintiffs or defendants. *Wise v. Toner*, 65 Colo. 420, 176 P. 838 (1918).

Regularly, when the sheriff is a party to an action, his official character should appear by allegation in the declaration or by suggestion of record; courts, however, take judicial notice of who are their own officers, and, in the absence of any proof to the contrary, the court in this instance was justified in presuming the identity of the defendant and the sheriff. *Coon v. Rigden*, 4 Colo. 275 (1878).

It is immaterial whether a defendant sheriff has any pecuniary interest in the case, since, in any event, he is "a party to the case" within the meaning of this section. *Wise v. Toner*, 65 Colo. 420, 176 P. 838 (1918).

Sheriff as trustee of land held proper party. Where a sheriff as trustee held the legal title to the land involved, it was held that such a trustee holding the legal title to the premises in controversy, although he has no beneficial interest therein, is a proper party to a final determination of the controversy, and is disqualified to serve process in the suit. *Wise v. Toner*, 65 Colo. 420, 176 P. 838 (1918).

The term "suit" in this section includes criminal proceedings. *Kelliher v. People*, 71 Colo. 202, 205 P. 274 (1922).

Because this section is not one relating exclusively to either criminal or civil procedure, but is one simply relating to duties of the sheriff and coroner, and the legislative intent was to substitute the coroner for the sheriff in any case, not merely in a civil action, where the affidavit is filed. *Kelliher v. People*, 71 Colo. 202, 205 P. 274 (1922).

Objection waived. Where the court issued an order for an open venire for eight more men and ordered the sheriff to procure that number and

both the sheriff and the coroner were witnesses for the people, and objection was made to service by the sheriff, but since no affidavit of disqualification was filed as required by this section and no request was made for service by an elisor, objection was waived. *Randal v. People*, 113 Colo. 235, 156 P.2d 125 (1945).

Duty to court to declare disqualification. Whenever affidavits are filed showing disqualification of either sheriff or coroner to serve process in a case, it is the duty of the court to act, without counter-affidavits, and declare the officer disqualified. *Montez v. People*, 110 Colo. 208, 132 P.2d 970 (1942).

30-10-606. Coroner - inquiry - grounds - postmortem - jury - certificate of death.

(1) The coroner shall immediately notify the district attorney, proceed to view the body, and make all proper inquiry respecting the cause and manner of death of any person in his jurisdiction who has died under any of the following circumstances:

- (a) From external violence, unexplained cause, or under suspicious circumstances;
- (b) Where no physician is in attendance or where, though in attendance, the physician is unable to certify the cause of death;
- (c) From thermal, chemical, or radiation injury;
- (d) From criminal abortion, including any situation where such abortion may have been self-induced;
- (e) From a disease which may be hazardous or contagious or which may constitute a threat to the health of the general public;
- (f) While in the custody of law enforcement officials or while incarcerated in a public institution;
- (g) When the death was sudden and happened to a person who was in good health; or
- (h) From an industrial accident.

(1.1) After consultation with the district attorney, the coroner may request that jurisdiction of any such death be transferred to the coroner of the county in which the event which resulted in the death of the person occurred, with the jurisdiction effective upon the acceptance by the receiving coroner. Such transfer shall be in writing, and a copy thereof shall be maintained in the offices of the transferring and receiving coroners.

(1.2) When a person dies as a result of circumstances specified in subsection (1) of this section or is found dead and the cause of death is unknown, the person who discovers the death shall report it immediately to law enforcement officials or the coroner, and the coroner shall take legal custody of the body. The body of any such person shall not be removed from the place of death except upon the authority of the coroner in consultation with the district attorney or local law enforcement agency, nor shall any article on or immediately surrounding such body be disturbed until authorized by the coroner in consultation with the district attorney or local law enforcement agency.

(2) The coroner shall perform a forensic autopsy or have a forensic autopsy performed as required by section 30-10-606.5 or upon the request of the district attorney.

(3) When the coroner has knowledge that any person has died under any of the circumstances specified in subsection (1) of this section, he may summon forthwith six citizens of the county to appear at a place named to hold an inquest to hear testimony and to make such inquiries as he deems appropriate.

(4) (a) In all cases where the coroner has held an investigation or inquest, the certificate of death shall be issued by the coroner or the coroner's deputy.

(b) Any certificate of death issued by a coroner or a coroner's deputy shall be filed with the registrar and shall state their findings concerning the nature of the disease or the manner of death, and, if from external causes, the certificate shall state whether in their opinion death was accidental, suicidal, or felonious. In addition, the certificate shall include the information described in section 25-2-103 (3) (b), C.R.S., whenever the subject of the investigation or inquest is under one year of age.

(c) A copy of the certificate of death or affidavit of presumed death, including any related documents and statements of fact, shall be retained in the applicable county in a secure location in an appropriate county facility accessible only to the county coroner or the coroner's designee and in a manner that is consistent with the county's record retention policy and federal law.

(5) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case where death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.

(6) (a) Notwithstanding sections 12-43-218 and 13-90-107 (1) (d) or (1) (g), C.R.S., the coroner holding an inquest or investigation pursuant to this section has the authority to request and receive a copy of:

(I) Any autopsy report or medical information from any pathologist, physician, dentist, hospital, or health care provider or institution if such report or information is relevant to the inquest or investigation; and

(II) Any information, record, or report related to treatment, consultation, counseling, or therapy services from any licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, certified addiction counselor, or registered psychotherapist if the report, record, or information is relevant to the inquest or investigation.

(b) The coroner shall, at the request of the district attorney or attorney general, release to the district attorney or attorney general any autopsy report or medical information described in subparagraph (I) of paragraph (a) of this subsection (6) that the coroner obtains pursuant to paragraph (a) of this subsection (6).

(c) The coroner shall not release to any party any information, record, or report described in subparagraph (II) of paragraph (a) of this subsection (6) that the coroner obtains pursuant to paragraph (a) of this subsection (6).

(d) Any person who complies with a request from a coroner pursuant to paragraph (a) of this subsection (6) shall be immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the disclosure of confidential patient or client information.

Source: G.L. § 511. G.S. § 615. L. 1887: p. 233, § 1. R.S. 08: § 1300. C.L. § 8775. CSA: C. 45, § 122. CRS 53: § 35-6-6. L. 57: p. 311, § 1. L. 73: R&RE, p. 462, § 1. C.R.S. 1963: § 35-6-6. L. 81: (1)(c) to (1)(h) amended and (1.1), (1.2), and (6) added, pp. 1439, 1440, §§ 2, 3, effective June 4. L. 89: (6) amended, p. 1276, § 3, effective April 18. L. 96: (4) amended, p. 402, § 15, effective April 17. L. 2000: (6) amended, p. 157, § 1, effective August 2. L. 2001: (6) amended, p. 735, § 5, effective July 1. L. 2002: (6)(a)(II) amended, p. 1029, § 56, effective June 1. L. 2004: (4)(c) added, p. 626, § 3, effective August 4. L. 2011: (2) amended, (HB 11-1258), ch. 137, p. 477, § 2, effective May 4; IP(6)(a) and (6)(a)(II) amended, (SB 11-187), ch. 285, p. 1329, § 76, effective July 1.

Cross references: (1) For issuance of death certificate, see § 25-2-110; for postmortem examination by licensed physician, see § 12-36-133.

(2) For the legislative declaration in the 2011 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 2011.

ANNOTATION

Law reviews. For article, "Scientific Findings on Death and Coroner's Inquest", see 20 Rocky Mt. L. Rev. 197 (1948). For article, "Disposition of Bodily Remains: Post-Death Aspects", see 12 Colo. Law. 439 (1983).

Coroners' function is to investigate and determine whether a decedent has died from violent, unexplained causes, or under suspicious

circumstances. People ex rel. Kinsey v. Sumner, 34 Colo. App. 61, 525 P.2d 512 (1974).

There is no private right of action under this section. Macurdy v. Faure, 176 P.3d 880 (Colo. App. 2007).

There is also no implied private right of action under this section. Macurdy v. Faure, 176 P.3d 880 (Colo. App. 2007).

Failure to perform the discretionary duty under subsection (2) does not give rise to a private right of action. *Macurdy v. Faure*, 176 P.3d 880 (Colo. App. 2007).

An implied private right of action is inconsistent with the purposes of the legislative scheme because threat of litigation may lead to conducting of autopsies that the coroner or district attorney would not otherwise deem advisable under subsection (2). *Macurdy v. Faure*, 176 P.3d 880 (Colo. App. 2007).

Coroner's desire to solicit private burial contract for his funeral home would have no material bearing on outcome of an investigation under this section. *People ex rel. Kinsey v. Sumner*, 34 Colo. App. 61, 525 P.2d 512 (1974).

The verdict of the jury at a coroner's inquest finding that the deceased committed suicide was not admissible in evidence to establish that fact as a defense to an action on a policy of insurance on the life of the deceased. *Germania Life Ins. Co. v. Ross-Lewin*, 24 Colo. 43, 51 P. 488, 65 Am. St. R. 215 (1897).

Subsection (6)(a)(I) grants coroners access to medical information that would otherwise be protected from disclosure under § 24-72-204 (3)(a)(I), a provision of the Colorado Open Records Act. *Bodelson v. City of Littleton*, 36 P.3d 214 (Colo. App. 2001).

30-10-606.5. When autopsy performed - jurisdiction - qualifications to perform - definition. (1) (a) The coroner shall perform a forensic autopsy or have a forensic autopsy performed in accordance with the circumstances in the most recent version of the "forensic autopsy performance standards" adopted by the national association of medical examiners, when the death is apparently nonnatural and occurs in a facility or during services regulated by the department of human services, and when the death is the result of an automobile accident and a hospital physician has not documented the extent of the injuries.

(b) If a person is involved in an incident that requires the person to be transported to a medical facility outside the county where the incident occurred and the person dies en route to or at the medical facility outside the county where the incident occurred, the coroner for the county where the incident occurred shall take possession of the body and shall comply with the provisions of this section.

(2) (a) Except as provided in paragraphs (b) and (c) of this subsection (2), all forensic autopsies required to be performed pursuant to subsection (1) of this section shall be performed by a board-certified forensic pathologist.

(b) A physician who has completed a forensic pathology fellowship and is practicing forensic pathology in Colorado and who is not a board-certified forensic pathologist as of May 4, 2011, may perform a forensic autopsy required pursuant to subsection (1) of this section.

(c) A forensic pathologist who has completed a forensic pathology fellowship may perform forensic autopsies for four years from the date of completion of the fellowship before becoming a board-certified forensic pathologist.

(d) A pathology resident or forensic pathology fellow may perform a forensic autopsy required pursuant to subsection (1) of this section under the direct supervision of a board-certified forensic pathologist.

(e) For purposes of this subsection (2), "direct supervision" means supervision that is within the facility where a pathology resident or forensic pathology fellow is performing an autopsy and that requires a board-certified forensic pathologist's presence and availability for prompt consultation.

Source: L. 2011: Entire section added, (HB 11-1258), ch. 137, p. 477, § 3, effective May 4.

Cross references: For the legislative declaration in the 2011 act adding this section, see section 1 of chapter 137, Session Laws of Colorado 2011.

30-10-607. Talesmen - oath. If any juror fails to appear, the coroner shall immediately summon the proper number from the bystanders, and proceed to impanel them, and administer the following oath in substance: "You do solemnly swear, or affirm, that you will

diligently inquire, and true presentment make, when, how, and by what means the person about whom this inquest is being held came to his death, according to your knowledge and the evidence given you, so help you God.”

Source: G.L. § 512. G.S. § 616. R.S. 08: § 1301. C.L. § 8776. CSA: C. 45, § 123. CRS 53: § 35-6-7. C.R.S. 1963: § 35-6-7. L. 81: Entire section amended, p. 1440, § 4, effective June 4.

30-10-608. Coroner may issue subpoenas. The coroner may issue subpoenas within his county for witnesses, returnable forthwith, or at such time and place as he therein directs; and witnesses shall be allowed the fees set forth in section 13-33-102, C.R.S.; and the coroner has the same authority to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process as a county court has when process issues in behalf of the state.

Source: G.L. § 513. G.S. § 617. R.S. 08: § 1302. C.L. § 8777. CSA: C. 45, § 124. CRS 53: § 35-6-8. C.R.S. 1963: § 35-6-8. L. 64: p. 222, § 49. L. 73: p. 1401, § 26.

ANNOTATION

Jurors attending inquests shall be compensated in the same manner as other jurors, that

is, by a per diem while serving as such. Ireland v. Commissioners, 6 Colo. 280 (1882).

30-10-609. Physicians summoned - compensation. In any case wherein the coroner orders a post-mortem examination, he may summon one or more licensed physicians to make a scientific examination of the body of the deceased, and each such physician shall be allowed reasonable compensation for his services. The amount of such compensation shall be determined by the coroner within the limits prescribed by the board of county commissioners. Any person so summoned may rely on the coroner's act in ordering an examination, and it shall be legally presumed that he has acted with due legal authority.

Source: G.L. § 525. G.S. § 629. R.S. 08: § 1303. C.L. § 8778. CSA: C. 45, § 125. CRS 53: § 35-6-9. L. 57: p. 312, § 1. C.R.S. 1963: § 35-6-9.

ANNOTATION

Duty to obey summons. The coroner is a public officer, charged with the duty of holding inquests, and is clothed with general powers for that purpose, among which is the power to summon physicians to make scientific examination of the body, when the jury shall deem such examination requisite, and it is the duty of the

person so summoned to obey the summons, and it is not required of the person so summoned to make an investigation to see if the jury deems it requisite to make such an examination. County Comm'rs v. Marshall, 11 Colo. 84, 16 P. 837 (1887).

30-10-610. Oath of witnesses. An oath shall be administered to the witness in attendance as follows: “You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person about whom this inquest is being held, shall be the truth, the whole truth, and nothing but the truth, so help you God.”

Source: G.L. § 514. G.S. § 618. R.S. 08: § 1304. C.L. § 8779. CSA: C. 45, § 126. CRS 53: § 35-6-10. C.R.S. 1963: § 35-6-10. L. 81: Entire section amended, p. 1440, § 5, effective June 4.

30-10-611. Testimony written and subscribed - fees. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witnesses, and the person writing such testimony shall be paid from the county treasury the same fees prescribed for

jurors attending inquests concerning deaths. Such testimony, in the discretion of the coroner, may be taken down in shorthand by a competent stenographer, who shall first be sworn by the coroner to correctly take down such testimony and correctly transcribe the same. The stenographer shall receive the usual per diem and fees paid official court reporters for like services to be paid by the board of county commissioners. Upon the request of the coroner, the stenographer shall transcribe the testimony and transmit it to the coroner, and it shall not be necessary in such case for the witnesses to subscribe the same. If the testimony is not transcribed and transmitted, the stenographer shall file his name and address and the notes of the testimony with the district court, and the district court shall keep such materials for a period of seven years from the time of the transmittal of the coroner's inquisition. The coroner shall return his inquisition and list of witnesses to the district court, and such notes if transcribed and transmitted by such stenographer shall have the same force and effect as testimony written out under the coroner's order and subscribed by the witnesses.

Source: G.L. § 515. G.S. § 619. L. 1887: p. 245, § 1. L. 07: p. 308, § 1. R.S. 08: § 1305. C.L. § 8780. CSA: C. 45, § 127. CRS 53: § 35-6-11. C.R.S. 1963: § 35-6-11. L. 81: Entire section amended, p. 1441, § 6, effective June 4.

Cross references: For fees prescribed for jurors attending inquests over dead bodies, see § 13-33-101; for compensation of court reporters, see § 13-5-128.

ANNOTATION

Nonconforming notes inadmissible. Stenographer's notes taken at coroner's inquest were not admissible to contradict the testimony of a witness given upon the trial, where it was not made to appear that the questions propounded at

the preliminary hearing referred to the particular time to which the witness testified on the trial, or that the stenographer had been sworn, as required by this section. *Bryam v. People*, 49 Colo. 533, 113 P. 528 (1911).

30-10-612. Verdict of jury - form. The jurors, having heard the testimony and having made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands in substance as follows, stating the matters in the following form, suggested as far as found:

STATE OF COLORADO,

County of

An inquisition held at, in county, on the day of A.D. 20....., before, coroner of said county, concerning the death of or person unknown, by the jurors whose names are subscribed; the said jurors upon their oaths, do say (here state when, how, by what person, means, weapon, or accident he came to his death, and whether feloniously).

In Testimony Whereof, the said jurors have hereunto set their hands the day and year aforesaid.

Source: G.L. § 516. G.S. § 620. R.S. 08: § 1306. C.L. § 8781. CSA: C. 45, § 128. CRS 53: § 35-6-12. C.R.S. 1963: § 35-6-12. L. 81: Entire section amended, p. 1441, § 7, effective June 4.

30-10-613. When verdict kept secret. If the inquisition finds that a crime has been committed on the deceased and names the person who the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in section 30-10-614.

Source: G.L. § 517. G.S. § 621. R.S. 08: § 1307. C.L. § 8782. CSA: C. 45, § 129. CRS 53: § 35-6-13. C.R.S. 1963: § 35-6-13.

30-10-614. Coroner may order arrest - warrant. (1) If the person charged is present, the coroner may order his arrest by an officer or any person and shall then make a warrant requiring the officer or other person to take him before the county court.

(2) If the person charged is not present and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff of the county, requiring him to arrest the person and take him before the county court.

Source: G.L. §§ 518, 519. G.S. §§ 622, 623. R.S. 08: §§ 1308, 1309. C.L. §§ 8783, 8784. CSA: C. 45, §§ 130, 131. CRS 53: § 35-6-14. C.R.S. 1963: § 35-6-14. L. 64: p. 222, § 50.

30-10-615. Warrant - effect. The warrant of a coroner in the above cases shall be of equal authority with that of the county courts; and when the person charged is brought before the county court, he shall be dealt with as a person held under a complaint in the usual form.

Source: G.L. § 520. G.S. § 624. R.S. 08: § 1310. C.L. § 8785. CSA: C. 45, § 132. CRS 53: § 35-6-15. C.R.S. 1963: § 35-6-15. L. 64: p. 222, § 51.

30-10-616. Contents of warrant. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest; and such warrant shall be a sufficient foundation for the proceeding of the county court instead of a complaint.

Source: G.L. § 521. G.S. § 625. R.S. 08: § 1311. C.L. § 8786. CSA: C. 45, § 133. CRS 53: § 35-6-16. C.R.S. 1963: § 35-6-16. L. 64: p. 223, § 52.

30-10-617. Coroner to make return to district court. The coroner shall then return to the district court the inquisition, the written evidence, the name and address of the stenographer if required under section 30-10-611, and a list of the witnesses who testified as to material matter.

Source: G.L. § 522. G.S. § 626. R.S. 08: § 1312. C.L. § 8787. CSA: C. 45, § 134. CRS 53: § 35-6-17. C.R.S. 1963: § 35-6-17. L. 81: Entire section amended, p. 1441, § 8, effective June 4.

30-10-618. Burial expenses - when paid by county. The coroner shall cause the body of a deceased person which he is called to view to be delivered to his friends, if there are any, but if not he shall cause him to be decently buried, the expenses to be paid from any property found with the body, or, if there is none, from the county treasury, by certifying an account of the expenses which, being presented to the board of county commissioners, shall be allowed by them if deemed reasonable and paid as other claims on the county.

Source: G.L. § 523. G.S. § 627. R.S. 08: § 1313. C.L. § 8788. CSA: C. 45, § 135. CRS 53: § 35-6-18. C.R.S. 1963: § 35-6-18.

ANNOTATION

Law reviews. For article, "Disposition of Bodily Remains: Post-Death Aspects", see 12 Colo. Law. 439 (1983).

30-10-619. Conflicts of interest of county coroners. (1) A coroner who owns, operates, is employed by, or otherwise has an interest in a funeral establishment is deemed to have a conflict of interest and shall not direct business to such establishment when

performing his or her duties under this part 6.

(2) Nothing in this section shall prevent a person from taking the body of the deceased to a funeral establishment in which the coroner has an interest if such person decides to do so without the suggestion of the coroner.

(3) The provisions of this section shall not apply if an emergency situation exists and the coroner acts in good faith to prevent a health hazard.

(4) Any person who knowingly violates subsection (1) of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(5) This section shall apply to county coroners who take office after the general election in 1982.

Source: L. 81: Entire section added, p. 833, § 13, effective June 8. L. 2002: (4) amended, p. 1542, § 287, effective October 1. L. 2003: (1) amended, p. 1924, § 5, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

30-10-620. Corneal tissue - taking authorized. (Repealed)

Source: L. 81: Entire section amended, p. 1443, § 1, effective June 12. L. 82: (3)(a) R&RE, p. 482, § 1, effective February 19. L. 2002: Entire section repealed, p. 12, § 1, effective March 13.

30-10-621. Removal of pituitary gland - authorization. (1) Whenever a post-mortem examination is performed pursuant to section 30-10-606 (2), the examining physician may remove the pituitary gland from the body of the deceased for the purpose of medical research, education, or therapy if:

(a) The removal is performed in conjunction with a post-mortem examination performed under the jurisdiction of the county coroner;

(b) The removal will not impede or interfere with the investigation which gave rise to the post-mortem examination and will not significantly alter post-mortem appearance;

(c) No prior objection by the decedent is made known or no objection by the decedent's next of kin is expressed at the time of the post-mortem examination and the decedent was not a known member of a religious group with a public position in opposition to tissue removal.

(2) No county coroner or licensed physician acting pursuant to section 30-10-606 (2) and acting in good faith and in accordance with subsection (1) of this section with respect to the removal of a pituitary gland nor any facility in which such removal takes place shall be liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

Source: L. 85: Entire section added, p. 1057, § 1, effective May 3.

30-10-622. Unidentified human remains - DNA samples. (1) If a coroner or medical examiner takes legal custody of unidentified human remains pursuant to section 24-80-1302 (2), C.R.S., or section 30-10-606 (1.2), the coroner or medical examiner shall:

(a) Make reasonable attempts to identify the remains pursuant to section 16-2.7-104 (2), C.R.S.; and

(b) Ensure that information concerning the physical appearance and structure of the unidentified human remains, including DNA typing information, is entered into the national crime information center database pursuant to section 16-2.7-104 (3), C.R.S.

Source: L. 2006: Entire section added, p. 396, § 2, effective April 6.

PART 7

TREASURER

Cross references: For county treasurer's fees, see § 30-1-102.

30-10-701. Election - term - bond - insurance. (1) A county treasurer shall be elected in each county for the term of four years and, except as provided in subsection (2) of this section, before entering upon the discharge of duties, shall execute to the people of the state of Colorado a surety bond to be approved by the board of county commissioners and filed in the office of the county clerk and recorder. Prior to the treasurer being sworn into office, the board of county commissioners shall set the amount of the surety bond by written resolution duly adopted by a majority vote of the board, which shall be entered in its minutes.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the treasurer to protect the people of the county from any malfeasance on the part of the treasurer while in office.

Source: G.L. § 526. G.S. § 630. R.S. 08: § 1315. C.L. § 8789. CSA: C. 45, § 136. CRS 53: § 35-7-1. L. 56: p. 129, § 4. C.R.S. 1963: § 35-7-1. L. 95: Entire section amended, p. 499, § 1, effective May 16. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 562, § 23, effective August 11.

Cross references: For the oath of civil officers, see § 8 of art. XII, Colo. Const.; for the election and terms of county officers, see § 8 of art. XIV, Colo. Const.; for the election of the county treasurer, see § 1-4-206; for bonds executed by surety companies, see § 10-4-301; for the approval of bonds, see § 24-13-116; for bonds of county officers, see § 30-10-110.

ANNOTATION

The general assembly has expanded and built up a body of statutory directives for the guidance of county treasurers, outlining in great detail steps to be taken by them calculated to obtain the amount of taxes levied. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

County treasurers are only administrative agents of the state and their authority is limited to that expressly delegated by the general assembly. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

County treasurers are constitutional officers, but have no constitutional duties to perform or constitutional authority to do any particular act such as commencing a suit. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

No power to sue. Enactments of the general assembly relating to taxation negate any sugges-

tion that county treasurers have inherent, implied, or general powers to sue taxpayers for delinquent real estate taxes. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

The county treasurer and his bondsmen are primarily responsible. *Moulton v. McLean*, 5 Colo. App. 454, 39 P. 78 (1895).

He is not the agent of his county. *Moulton v. McLean*, 5 Colo. App. 454, 39 P. 78 (1895).

Bonds. The county treasurer may take security for his own indemnity from a bank in which he deposits county money, but a bond so taken inures to his benefit, and such a bond is his property, and no cause of action to the county can arise thereon, unless by the default of the treasurer and his sureties. *Moulton v. McLean*, 5 Colo. App. 454, 39 P. 78 (1895).

30-10-702. Term of office. The regular term of office of all county treasurers shall commence on the first day of January next after their election.

Source: L. 1891: p. 117, § 1. R.S. 08: § 1316. C.L. § 8790. CSA: C. 45, § 137. CRS 53: § 35-7-2. C.R.S. 1963: § 35-7-2.

30-10-703. Form of bond. If a treasurer executes a bond pursuant to section 30-10-701 (1), the condition of the bond shall be in substance as follows: Whereas,, was

elected to the office of County Treasurer of the County of on the day of; Now, therefore, the condition of this obligation is such, that if the said and the treasurer's deputy and all persons employed in the treasurer's office shall faithfully and promptly perform the duties of said office, and if the said and the treasurer's deputies shall pay or invest according to law, all moneys that shall come to the hands of the treasurer, and shall render a just and true account thereof whenever required by said board of county commissioners, or by any provision of law, and shall deliver over to a successor in office, or to any other person authorized by law to receive the same, all moneys, securities, books, papers, and other things appertaining thereto or belonging to the treasurer's office, the above obligation to be void, otherwise to be in full force and effect; except that the surety shall in no event be liable for any loss caused by the failure or insolvency of the depository in which the county treasurer or the treasurer's deputies deposit any such public funds, or for any loss arising out of the investment of any such funds.

Source: G.L. § 527. G.S. § 631. R.S. 08: § 1317. C.L. § 8791. L. 33-34, Ex. Sess.: p. 51, § 1. CSA: C. 45, § 138. CRS 53: § 35-7-3. C.R.S. 1963: § 35-7-3. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 563, § 24, effective August 11.

ANNOTATION

The bond of the county treasurer is the measure of his duties as treasurer, and is the contract covering his duties and all those in his employ performing the duties of the office. Goss v. Bd. of Comm'rs, 4 Colo. 468 (1878).

Under this section neither a deputy treasurer nor clerk gives a bond to the public for the faithful performance of the duties he undertakes, and the relation of debtor and creditor between the county and the treasurer is unaffected by the circumstance that the duties of the latter are discharged by deputy or clerical agency, and there is no such privity between the county or the public, and the deputy or clerk, as to create an implied contract between them in the face of an express contract between the treasurer and the public, embracing the duties of the office by whomsoever performed. Goss v. Bd. of Comm'rs, 4 Colo. 468 (1878).

30-10-704. Deputy treasurer - duties. The county treasurer may appoint a deputy, who in the absence of the treasurer from his office, or in case of vacancy in said office, for any disability of the treasurer to perform the duties of his office, may perform all the duties of the office of treasurer, until such vacancy is filled or such disability removed.

Source: G.L. § 528. G.S. § 632. R.S. 08: § 1318. C.L. § 8792. CSA: C. 45, § 139. CRS 53: § 35-7-4. C.R.S. 1963: § 35-7-4.

ANNOTATION

No term of office. While this section provides that a county treasurer may appoint a deputy, there is no law fixing the term of office of such a deputy, and with his compensation and term of office the public has nothing to do. Tureck v. Bd. of County Comm'rs, 108 Colo. 347, 117 P.2d 315 (1941).

There being no contractual privity between one acting as deputy county treasurer and the

The money received by the treasurer by virtue of his office belongs to the county. McClure v. Bd. of Comm'rs, 19 Colo. 122, 34 P. 763 (1893).

It constitutes a trust fund, which, if diverted or misappropriated, may be recovered in an action upon his bond, or the county may, if it elects, treat it as a trust fund and follow it wherever it can be traced. McClure v. Bd. of Comm'rs, 19 Colo. 122, 34 P. 763 (1893).

Interest due and sureties liable. Money in the hands of a county treasurer belonging to a county, and not turned over to his successor at the time the latter assumed the duties of the office, would draw interest at the legal rate from that date, and the sureties on his official bond are liable to the county for such money with interest. Gartley v. People ex rel. Pueblo County, 28 Colo. 227, 64 P. 208 (1901).

public, in a suit by such a deputy against the county commissioners for salary alleged to be due him, it was held, in the circumstances of the case, that the trial court properly directed a verdict in favor of defendants. Tureck v. Bd. of County Comm'rs, 108 Colo. 347, 117 P.2d 315 (1941).

The authority to remove or suspend county agents, in the absence of statutes otherwise

providing, rests in the appointing power, and as relating to a deputy county treasurer, there is in Colorado no “statutes otherwise providing”.

Tureck v. Bd. of County Comm’rs, 108 Colo. 347, 117 P.2d 315 (1941).

30-10-705. Vacancy in office - how filled. (1) In case the office of county treasurer becomes vacant, the board of county commissioners shall appoint a suitable person to perform the duties of the treasurer. Except as provided in subsection (2) of this section, the person so appointed shall give bond with like sureties and conditions as that required in county treasurers’ bonds and in such sum as the board shall direct and shall be invested with all the duties of the treasurer, until such vacancy is filled or such disability removed.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the appointee to the office of treasurer to protect the people of the county from any malfeasance on the part of the treasurer while in office.

Source: G.L. § 529. G.S. § 633. R.S. 08: § 1319. C.L. § 8793. CSA: C. 45, § 140. CRS 53: § 35-7-5. C.R.S. 1963: § 35-7-5. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 563, § 25, effective August 11.

30-10-706. Officers who cannot be treasurer. No person holding the office of sheriff, county judge, or county clerk and recorder, nor any member of the board of county commissioners, shall hold the office of county treasurer.

Source: G.L. § 530. G.S. § 634. R.S. 08: § 1320. C.L. § 8794. CSA: C. 45, § 141. CRS 53: § 35-7-6. C.R.S. 1963: § 35-7-6.

30-10-707. Treasurer to receive and pay moneys. It is the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him. All money received by him for the use of the county shall be paid out by him only on the orders of the board of county commissioners, according to law, except where special provision for the payment thereof is otherwise made by law.

Source: G.L. § 531. G.S. § 635. R.S. 08: § 1321. C.L. § 8795. CSA: C. 45, § 142. CRS 53: § 35-7-7. C.R.S. 1963: § 35-7-7.

30-10-708. Deposit of funds in banks and savings and loan associations. (1) In all counties of this state, the county treasurer shall deposit all the funds and moneys of whatever kind that come into the treasurer’s possession by virtue of the office, in the treasurer’s name as treasurer, in one or more state banks, national banks, or, in compliance with the provisions of article 47 of title 11, C.R.S., savings and loan associations that have previously been approved and designated by written resolution duly adopted by a majority vote of the board of county commissioners, which shall be entered in its minutes. The board, by written resolution similarly adopted, may authorize the county treasurer to invest all or any part of the funds and moneys in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. For the purposes of investment of funds of the county as set forth in said part 6, the board, by written resolution, may appoint one or more custodians of the funds, and such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(2) All securities so purchased shall be duly registered in the name of the county treasurer and shall be deposited and safely kept in the custody of some state bank or any national bank. No such security shall be sold or otherwise disposed of except pursuant to a resolution of said board of county commissioners similarly adopted, which resolution shall also approve and designate the bank or banks in which such proceeds shall then be deposited, or such resolution may in lieu thereof authorize the reinvestment of such proceeds in any of the securities specified in subsection (1) of this section.

(3) and (4) Repealed.

(5) No county treasurer, or member of the board of county commissioners, who acted in good faith in approving and designating such depository, is liable for loss of public funds deposited by such county treasurer or his deputies by reason of the default or insolvency of such depository; nor shall any county treasurer who invests any such funds or any member of the board of county commissioners who in good faith authorizes such investment be liable for any loss on account of such investment.

(6) Subject to the requirements of part 7 of article 75, of title 24, C.R.S., funds of the county may be pooled for investment with the funds of other local government entities.

Source: L. 19: p. 366, § 1. C.L. § 8796. L. 33-34, Ex. Sess.: p. 46, § 1. CSA: C. 45, § 143. L. 37: p. 489, § 1. L. 41: p. 363, § 1. CRS 53: § 35-7-8. C.R.S. 1963: § 35-7-8. L. 75: (1) amended, p. 407, § 4, effective January 1, 1976; (2) amended and (3) and (4) repealed, pp. 391, 392, §§ 4, 6, effective January 1, 1976. L. 76: (1) amended, p. 310, § 53, effective May 20. L. 77: (1) amended, p. 576, § 8, effective June 10. L. 83: (6) added, p. 1010, § 2, effective March 29. L. 89: (1) amended, p. 1113, § 22, effective July 1. L. 95: (1) and (2) amended, p. 500, § 2, effective May 16.

Editor's note: Subsection (6) was originally enacted as subsection (4) by House Bill 83-1097 but was renumbered on revision for ease of location.

30-10-709. Treasurer to keep accounts - settlement of accounts - resolution of findings - report to board of county commissioners - contempt. (1) The county treasurer shall keep a just and true account of the receipt and expenditure of all moneys that come into his or her hands by virtue of the office, in books to be kept by the treasurer for that purpose, which books shall be open at all times for the inspection of the board of county commissioners, or any member thereof, and to all county and state officers; and, at the meetings in July and January of the board of county commissioners, or at such other time as the board may direct, the treasurer shall settle with said board his or her account as treasurer, and, for that purpose, the treasurer shall exhibit to said board all his or her books, accounts, and all vouchers relating to the same, to be audited and allowed.

(2) In addition to the audit described in subsection (1) of this section, the treasurer may periodically cause to be performed an audit of the operations and accounts of the county treasurer's office.

(3) If a recommendation or finding is contained in the final report of any audit conducted pursuant to subsection (1) or (2) of this section or section 29-1-603, C.R.S., the treasurer shall promptly address the recommendation or finding and shall report to the board of county commissioners regarding the disposition of the recommendation or finding no later than ninety days after the issuance of the final audit report. If a treasurer fails to address a recommendation or finding or fails to report to the board as required by this subsection (3), the board may apply to a court of competent jurisdiction for an order compelling the treasurer to comply with the provisions of this subsection (3). If the court issues an order compelling the treasurer to comply with the provisions of this subsection (3) and the treasurer fails to comply, the treasurer shall be subject to penalties for contempt of the court issuing the order. Nothing in this subsection (3) shall be construed to limit the ability of the board or any other person to pursue any other legal remedy available to the board or person with regard to the actions of the treasurer.

Source: G.L. § 532. G.S. § 636. R.S. 08: § 1323. C.L. § 8798. CSA: C. 45, § 145. CRS 53: § 35-7-9. C.R.S. 1963: § 35-7-9. L. 98: Entire section amended, p. 239, § 2, effective April 10. L. 2002: (3) added, p. 73, § 1, effective August 7.

30-10-710. Apportionment and separation of funds. It is the duty of the county treasurer to apportion and keep all taxes collected by him or her in the several funds for which the taxes were levied, and it shall not be lawful to use the moneys belonging to any fund for the purpose of paying warrants drawn upon some other fund or for the purpose of paying warrants issued before April 2, 1998, which properly should have been drawn upon

some other fund; but the amount of interest gained through the investment of county funds, regardless of the origin of such funds, may be credited to the general fund of the county by the county treasurer, unless such investment is made from specific funds allocated for a definite purpose and so maintained. The treasurer and the sureties on his or her official bond or the insurer on the crime insurance policy, as applicable, shall be liable at the action of any taxpayer of the county for any violation of this section.

Source: L. 1891: p. 112, § 5. R.S. 08: § 1324. C.L. § 8799. CSA: C. 45, § 146. CRS 53: § 35-7-10. L. 55: p. 249, § 1. C.R.S. 1963: § 35-7-10. L. 98: Entire section amended, p. 149, § 1, effective April 2. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 563, § 26, effective August 11.

ANNOTATION

Where a school district became liable for interest on its bonds because of failure of its officers to publish notice as required, it was held that the treasurer was not liable because he paid interest coupons in violation of this section, since the failure of the district to give proper notice was the proximate cause of the injury. *People ex rel. Sch. Dist. No. 6 v. Schaeffer*, 100 Colo. 70, 65 P.2d 699 (1937).

Interest earned on school district tax moneys prior to distribution to school districts which elect to have such moneys paid over to the district treasurer may be credited to the county general fund. *Calhan Sch. Dist. No. 1 v. El Paso County*, 686 P.2d 1321 (Colo. 1984).

30-10-711. Payment of warrants - call published. (1) County orders and warrants, properly made and issued, shall be entitled to a preference as to payment, according to the order of time in which they may be presented to the county treasurer; but where two or more orders are presented at the same time, precedence shall be given to the order or warrant of the oldest date, and when two or more orders are presented at the same time, and there are no funds to the credit of the proper fund in the treasury to pay the same, the same shall be registered in the order of their date, precedence being given to the warrant of the oldest date. When there is in the treasury, to the credit of any fund, five hundred dollars or more, against which fund there are any outstanding and unpaid lawful warrants or orders, the county treasurer shall immediately give public notice of the fact by a written notice posted for thirty days at the outer door of the office of the treasurer. The treasurer, at the same time, shall call in for payment all outstanding and unpaid lawful warrants and orders drawn on said fund which the moneys in the treasury will pay and which are entitled to payment from said funds.

(2) Such notice shall also contain the number, date, and amount of such warrants and orders as are entitled to payment and call upon the holders thereof to present the same for payment to the treasurer within thirty days from the day of the posting of said notice, and that interest on the sums due by said warrants and orders will cease to accrue thereon after the last day of said posting of said notice, and interest shall cease to accrue on said sums accordingly. Such notice shall be dated at the county seat, be signed by the treasurer, and a record of the same be kept in the office of the treasurer in a book provided for that purpose; and such books shall be open to inspection and examination at all reasonable hours. Such funds shall be held by the county treasurer for the payment of the warrants and orders called by him, until the expiration of six years from the date of registry of such warrants and orders, when the same shall be paid out upon such other warrants or orders as are entitled to payment on the day of the expiration of the six years.

(3) The treasurer shall pay by electronic transfer any written authorization issued by the board of county commissioners directing the treasurer to make payment of claims against the county electronically.

(4) Payment of county warrants and orders by electronic transfer shall be made only after the treasurer approves the release of funds for such electronic transfer.

(5) For purposes of this part 7, "order" means all orders and authorizations issued by the board of county commissioners for the payment of claims against the county. "Order"

includes any warrant issued by the board of county commissioners and any written authorization issued by the board of county commissioners directing the treasurer to make payment of claims against the county by electronic transfer.

Source: G.L. § 533. G.S. § 637. L. 1887: p. 243, § 4. R.S. 08: § 1325. C.L. § 8800. CSA: C. 45, § 147. CRS 53: § 35-7-11. C.R.S. 1963: § 35-7-11. L. 96: Entire section amended, p. 563, § 25, effective April 24. L. 98: (3) to (5) added, p. 149, § 2, effective April 2.

Cross references: For the publication of legal notices, see part 1 of article 70 of title 24.

ANNOTATION

County warrants are payable in the order of their presentation to the county treasurer, and not otherwise, and the law enters into and becomes part of the contract between the county and the holders of its warrants, and each registered warrant matures as soon as sufficient money has accumulated in the treasury to the credit of the proper fund for its payment, after paying all other warrants of the same class whose registry was prior in time. Bd. of Comm'rs v. People ex rel. New Hampshire Sav. Bank, 16 Colo. App. 215, 64 P. 675 (1901).

Contractual obligation. It is settled by authority that where the law, at the time of the issuance of a warrant, provides for its payment in the order of its presentation this becomes a part of the contract and cannot be altered or changed, at least without an equally safe, certain, and speedy provision for payment. E. H. Rollins & Sons v. Bd. of Comm'rs, 199 F. 71 (8th Cir. 1912).

No legislative impairment allowed. The county is bound by contract to give orders precedence in payment over all orders subsequently

issued, and the county commissioners can take no step, either with or without legislative sanction, that shall impair the obligation of these contracts. People v. Austin, 11 Colo. 134, 17 P. 485 (1887).

The holder of a warrant has the right to its payment at its maturity, and without his consent he cannot be deprived of that right by the holders of other warrants, or by the county. Bd. of Comm'rs v. People ex rel. New Hampshire Sav. Bank, 16 Colo. App. 215, 64 P. 675 (1901).

Right to sue. It was held that a county warrant payable out of any money in the treasury appropriated for county expenditures was a written acknowledgment of indebtedness by the county and if not paid, when presented, could be sued on by the legal holder, although there was no money in the treasury to pay. Schloss v. Bd. of County Comm'rs, 1 Colo. App. 145, 28 P. 18 (1891).

The statute of limitations does not commence to run against warrants until there is sufficient money in the treasury to pay them and prior orders. E. H. Rollins & Sons v. Bd. of Comm'rs, 199 F. 71 (8th Cir. 1912).

30-10-712. Funds payable in order of presentment. Every fund in the hands of the county treasurer for disbursements shall be paid out in the order in which the orders drawn thereon and payable out of said fund are presented for payment.

Source: G.L. § 540. G.S. § 644. R.S. 08: § 1327. C.L. § 8802. CSA: C. 45, § 149. CRS 53: § 35-7-13. C.R.S. 1963: § 35-7-13.

30-10-713. Delivery of books to successor - penalty. Upon the resignation or removal from office of any county treasurer, all the books and papers belonging to the treasurer's office, and all moneys in the treasurer's hands by virtue of the treasurer's office, shall be delivered to the treasurer's successor in office, upon the oath of such preceding treasurer, or in case of the treasurer's death, upon oath of the treasurer's executors or administrators. If any such preceding county treasurer, or in case of the treasurer's death, the treasurer's executors or administrators neglect or refuse to deliver up such books, papers, and moneys on oath, when lawfully demanded, every such person shall forfeit a sum of not less than one hundred dollars nor more than five hundred dollars.

Source: G.L. § 534. G.S. § 638. R.S. 08: § 1328. C.L. § 8803. CSA: C. 45, § 150. CRS 53: § 35-7-14. C.R.S. 1963: § 35-7-14. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 564, § 27, effective August 11.

ANNOTATION

The requirement is not that the treasurer shall turn over to the various governmental units the sum due each, but that he shall make delivery to his successor, such is the mandate of this section in relation to his duty, and his bond, also statutorily couched is of like import, and the

moneys involved therefore belonged to the county in the sense that it has authority to maintain an action for their recovery. *Patterson v. People ex rel. Bd. of Comm'rs*, 98 Colo. 86, 53 P.2d 1187 (1935).

30-10-714. Treasurer collector of taxes. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law.

Source: G.L. § 535. G.S. § 639. R.S. 08: § 1329. C.L. § 8804. CSA: C. 45, § 151. CRS 53: § 35-7-15. C.R.S. 1963: § 35-7-15.

ANNOTATION

Statutes outlining the steps to be taken by county treasurers to obtain the amount of taxes levied are very comprehensive and detailed. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

Since the general assembly has exclusive jurisdiction over tax matters, county treasurers may exercise only such powers as have been delegated to them. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

The county treasurer and the assessor in whom the power of assessment and collection of taxes is confided must be qualified electors of their respective counties and take the statutory oath of office, because they are given the power to discover, and furnished with facilities to bring to light, omitted assessable property. *Chase v. Bd. of Comm'rs*, 37 Colo. 268, 86 P. 1011, 11 Ann. Cas. 483 (1906).

30-10-715. Treasurer to issue receipt for money collected. Upon payment of any money to him, the county treasurer shall issue his receipt therefor to the person paying it, setting forth the account upon which it is paid, and, in the case of the payment of taxes, such receipt shall state the valuation of property taxed, the rate of taxation, and the total amount of such taxes to agree with his cash book.

Source: G.L. § 538. G.S. § 642. L. 1887: p. 234, § 2. R.S. 08: § 1330. C.L. § 8805. CSA: C. 45, § 152. CRS 53: § 35-7-16. C.R.S. 1963: § 35-7-16.

30-10-716. Treasurer to assess property, when. It is the duty of the county treasurer to assess, at a fair value, the property of any person liable to pay taxes which the county assessor has failed to assess, to place the same on the tax roll, and to collect taxes on the same in the manner provided by law. Such treasurer shall not be compelled to assess such property in person; and he is authorized to administer oaths to such persons, or any others, touching the value of said property.

Source: G.L. § 536. G.S. § 640. R.S. 08: § 1331. C.L. § 8806. CSA: C. 45, § 153. CRS 53: § 35-7-17. C.R.S. 1963: § 35-7-17.

ANNOTATION

Power and facilities. The county treasurer and the assessor in whom the power of assessment and collection of taxes is confided are given the power to discover, and furnished with

facilities to bring to light, omitted assessable property. *Chase v. Bd. of Comm'rs*, 37 Colo. 268, 86 P. 1011 (1906).

30-10-717. Cash book - open to inspection. Every county treasurer shall keep in his office a cash book, wherein shall be entered every sum of money paid to him by virtue of

his office, the date of such payment, the name of the person paying the same, the account upon which the same was paid, the nature of the funds so paid to him, whether money, state or county scrip, or evidences of state or county indebtedness, and the amount of each separate kind. Such cash book, at all reasonable hours of the day, shall be open to the inspection and examination of all persons desiring to inspect or examine the same.

Source: G.L. § 537. G.S. § 641. R.S. 08: § 1332. C.L. § 8807. CSA: C. 45, § 154. CRS 53: § 35-7-18. C.R.S. 1963: § 35-7-18.

30-10-718. Registry of orders - open to inspection. Every county treasurer shall keep in his or her office a record to be called the registry of county orders wherein shall be entered at the date of the presentation thereof and without any interval or blank line between any such entry and the one preceding it every county order or other certificate or evidence of county indebtedness presented to such county treasurer for payment. At any time that the county has insufficient funds to pay the indebtedness evidenced on such order or other certificate or evidence of county indebtedness, the date and number of such order, the amount for which the same is payable, the date of the presentation thereof, the name of the person to whom such order is by the terms thereof payable, and the name of the person presenting the same. Every such registry of county orders, at all reasonable hours, shall be open to inspection and examination of any person desiring to inspect or examine the same.

Source: G.L. § 539. G.S. § 643. R.S. 08: § 1333. C.L. § 8808. CSA: C. 45, § 155. CRS 53: § 35-7-19. C.R.S. 1963: § 35-7-19. L. 98: Entire section amended, p. 150, § 3, effective April 2.

30-10-719. Charge to grand jury. (Repealed)

Source: L. 1889: p. 457, § 1. R.S. 08: § 1334. C.L. § 8809. L. 33: p. 402, § 1. CSA: C. 45, § 156. CRS 53: § 35-7-20. C.R.S. 1963: § 35-7-20. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-720. Committee to investigate accounts of treasurer. (Repealed)

Source: L. 1889: p. 457, § 2. R.S. 08: § 1335. C.L. § 8810. CSA: C. 45, § 157. CRS 53: § 35-7-21. C.R.S. 1963: § 35-7-21. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-721. Investigation of accounts - report. (Repealed)

Source: L. 1889: p. 458, § 3. R.S. 08: § 1336. C.L. § 8811. CSA: C. 45, § 158. CRS 53: § 35-7-22. C.R.S. 1963: § 35-7-22. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-722. Committee appointed once in three months only. (Repealed)

Source: L. 1889: p. 458, § 4. R.S. 08: § 1337. C.L. § 8812. CSA: C. 45, § 159. CRS 53: § 35-7-23. C.R.S. 1963: § 35-7-23. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-723. Committee power to examine witnesses. (Repealed)

Source: L. 1889: p. 458, § 5. R.S. 08: § 1338. C.L. § 8813. CSA: C. 45, § 160. CRS 53: § 35-7-24. C.R.S. 1963: § 35-7-24. L. 72: p. 557, § 12. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-724. Committee to examine books and accounts. (Repealed)

Source: L. 1889: p. 459, § 6. R.S. 08: § 1339. C.L. § 8814. CSA: C. 45, § 161. CRS 53: § 35-7-25. C.R.S. 1963: § 35-7-25. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-725. Refusal of treasurer to answer - contempt. (Repealed)

Source: L. 1889: p. 459, § 7. R.S. 08: § 1340. C.L. § 8815. CSA: C. 45, § 162. CRS 53: § 35-7-26. C.R.S. 1963: § 35-7-26. L. 94: Entire section repealed, p. 1052, § 8, effective July 1.

30-10-726. Failure of treasurer to perform duties - penalty. Every county treasurer who fails, neglects, or refuses to perform the duties of the office of the treasurer set forth in this part 7 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and the court may adjudge that such treasurer be removed from office. This section shall extend to the deputies of every such county treasurer.

Source: G.L. § 542. G.S. § 646. R.S. 08: § 1341. C.L. § 8816. CSA: C. 45, § 163. CRS 53: § 35-7-27. C.R.S. 1963: § 35-7-27. L. 98: Entire section amended, p. 150, § 4, effective April 2. L. 2002: Entire section amended, p. 74, § 2, effective August 7.

PART 8**ASSESSOR**

30-10-801. Assessor - election - bond - insurance - term - oath. (1) A county assessor shall be elected in each county at a general election and, except as provided in subsection (2) of this section, shall give bond to the people of the state of Colorado with two or more sufficient sureties, in a sum of not less than six thousand dollars for the performance of the assessor's duties according to law and to the satisfaction of the board of county commissioners, and subscribe an oath or affirmation for the faithful performance of the assessor's duties as such assessor, and who shall be a qualified elector of said county and shall hold office for four years and until a successor is elected and qualified.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the assessor to protect the people of the county from any malfeasance on the part of the assessor while in office.

Source: G.L. § 548. L. 1881: p. 99, § 1. G.S. § 647. R.S. 08: § 1342. C.L. § 8817. CSA: C. 45, § 164. CRS 53: § 35-8-1. L. 56: p. 130, § 5. C.R.S. 1963: § 35-8-1. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 564, § 28, effective August 11.

Cross references: For the oath of civil officers, see § 8 of art. XII, Colo. Const.; for county officers' election and term in office, see § 8 of art. XIV, Colo. Const.; for the election of county assessors, see § 1-4-206.

ANNOTATION

The liability of sureties on official bonds is limited by their terms strictly construed. People ex rel. Layden v. Jackson, 16 Colo. App. 308, 64 P. 1051 (1901); People ex rel. Howard v. Cobb, 10 Colo. App. 478, 51 P. 523 (1897).

And the sureties on an assessor's official bond are not liable to his successor for fees

collected after the expiration of his term and during the time he wrongfully withheld the office from his successor. People ex rel. Layden v. Jackson, 16 Colo. App. 308, 64 P. 1051 (1901).

30-10-802. Assessment district - deputy in each - oath - bond. (1) When the board of county commissioners of any county is of the opinion that the assessor is unable to perform the duties of office within the time prescribed by law, the board shall divide such county into assessment districts and shall require the assessor to appoint a deputy in each district, who shall be a qualified elector of the district and who shall be sworn and, except as provided in subsection (2) of this section, give bond to the principal.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of a deputy assessor to protect the people of the county from any malfeasance on the part of the deputy assessor while in office.

Source: G.L. § 549. L. 1879: p. 40, § 1. G.S. § 648. R.S. 08: § 1343. C.L. § 8818. CSA: C. 45, § 165. CRS 53: § 35-8-2. C.R.S. 1963: § 35-8-2. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 564, § 29, effective August 11.

ANNOTATION

There is a well-recognized distinction between a deputy and an assistant; the former must be a qualified elector, take the oath of office and give bond to the assessor, whereas the latter need not be a qualified elector and is not required to take the oath of office or to give bond, because a deputy assessor performs duties requiring the exercise of discretion; not so an assistant. Bd. of County Comm'rs v. Davis, 94 Colo. 330, 30 P.2d 266 (1934).

No power is conferred on the assessor to create assessment districts, nor can he appoint deputy assessors until such districts are created, and some discretion is lodged in the board of county commissioners as to when the necessity arises for such division of the county. Roberts v. People, 9 Colo. 458, 13 P. 630 (1886).

Reimbursement for clerk. Since it was not through any neglect or default of the assessor that a county was not divided into districts which would have authorized him to appoint deputies instead of clerks, it would be inequitable to require the assessor to bear the expenses

thus necessarily incurred; having paid the clerks, the assessor's right to reimbursement, although not covered by the express terms of this section, may be fairly implied therefrom, also the power of the commissioners to allow the claim. Roberts v. People, 9 Colo. 458, 13 P. 630 (1886).

Commissioners' contract for assessment ultra vires. Where board of county commissioners, under its authority to manage the business of the county, entered into a contract with plaintiffs to fix valuations of land, which assessor admittedly was unable to determine, such contract is ultra vires and void, because the right to employ capable assistants comes within the purview of the duties primarily conferred on the assessor and cannot be claimed as an implied power of the board of county commissioners, because the board, as such, has no authority to impose itself upon the express powers of another county officer. Pritchard v. Bd. of County Comm'rs, 119 Colo. 318, 204 P.2d 156 (1949).

30-10-803. Office and supplies - expenses. (1) The county assessor shall keep his or her office at the county courthouse or at a location in the county seat provided by the board of county commissioners, and shall be provided with a suitable room, vault, necessary office furnishings, books, maps, plats, and all forms and blanks required to be used, and other office supplies.

(2) Notwithstanding the provisions of subsection (1) of this section, the assessor may keep one or more offices outside of the county seat. Any such office shall be in addition to his or her respective office kept pursuant to subsection (1) of this section and shall be within the same county. Any such additional office may be kept only if the board of county commissioners of such county makes office space or funding available to provide for the office. As used in this section, "office" shall mean a place where some or all of the duties of the assessor are conducted. All necessary expenses shall be audited and paid as other county expenses are audited and paid.

Source: L. 13: p. 527, § 1. C.L. § 8819. CSA: C. 45, § 166. CRS 53: § 35-8-3. C.R.S. 1963: § 35-8-3. L. 2001: Entire section amended, p. 652, § 2, effective May 30.

30-10-804. Assistants - refusal to furnish - appeal. (Repealed)

Source: L. 13: p. 528, § 4. C.L. § 8820. CSA: C. 45, § 167. CRS 53: § 35-8-4. C.R.S. 1963: § 35-8-4. L. 72: p. 589, § 51. L. 77: Entire section repealed, p. 1739, § 24, effective June 20.

30-10-805. Expenses of assessor. (Repealed)

Source: L. 13: p. 529, § 6. C.L. § 8821. CSA: C. 45, § 168. CRS 53: § 35-8-5. C.R.S. 1963: § 35-8-5. L. 77: Entire section amended, p. 1739, § 23, effective June 20. L. 88: Entire section repealed, p. 917, § 4, effective April 14.

Cross references: For present provisions concerning the payment of actual and necessary expenses of county officers while engaged in business on behalf of the county, see § 30-2-102 (3)(e).

PART 9**SURVEYOR**

30-10-901. Surveyor - election - bond - insurance. (1) A county surveyor shall be elected for a term of four years, shall be a professional land surveyor as provided in part 2 of article 25 of title 12, C.R.S., and, except as provided in subsection (2) of this section, shall file an official bond in the office of the county clerk and recorder, to be approved by the board of county commissioners, in the sum of one thousand dollars, conditioned for the faithful discharge of duties.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the surveyor to protect the people of the county from any malfeasance on the part of the surveyor while in office.

Source: G.L. § 543. G.S. § 650. R.S. 08: § 1345. C.L. § 8822. CSA: C. 45, § 169. CRS 53: § 35-9-1. L. 56: p. 130, § 6. L. 63: p. 265, § 1. C.R.S. 1963: § 35-9-1. L. 69: p. 224, § 1. L. 84: Entire section amended, p. 1121, § 29, effective June 7. L. 2010: Entire section amended, (HB 10-1062), ch. 161, p. 565, § 30, effective August 11.

30-10-902. Deputies - certificates admitted as evidence. The county surveyor may appoint as many deputies as he thinks proper, for whose official acts he shall be responsible. The certificate of the county surveyor or any of his deputies shall be admitted as legal evidence in any court of the state, but the certificate may be explained or rebutted by other evidence.

Source: G.L. § 544. G.S. § 651. R.S. 08: § 1346. C.L. § 8823. CSA: C. 45, § 170. CRS 53: § 35-9-2. C.R.S. 1963: § 35-9-2.

30-10-903. Duties and powers of the county surveyor. (1) The duties of the county surveyor are:

(a) To represent the county in boundary disputes pursuant to sections 30-6-110 and 30-10-906;

(b) To notify the county attorney of any unsettled boundary disputes or boundary discrepancies within the county which may come to his attention;

(c) To file in the office of the county surveyor, or in the office of the county clerk and recorder if there is no office for the county surveyor in the county, all surveys, field notes, calculations, maps, and any other records pertaining to work authorized and financed by the board of county commissioners. All surveys made by the county surveyor or his deputies shall be numbered consecutively by the county surveyor, and all field notes and calculations

pertaining to such surveys shall be endorsed by the county surveyor with the number of the survey to which they pertain.

(2) The county surveyor may, when authorized by the board of county commissioners:

(a) Conduct surveys to establish the boundaries of county property, including road rights-of-way, or any other surveys necessary to the county;

(b) Accept for filing maps of surveys that establish monuments and keep a current record of all survey monuments within the county;

(c) Examine all survey maps and plats before they are recorded by the county clerk and recorder to insure proper content and form;

(d) Conduct geodetic control surveys, vertical control surveys, or any surveys for the purpose of geographic information systems;

(e) Conduct or supervise construction surveys necessary to the county; and

(f) Provide reference monuments for or the remonumentation or monument upgrades of public land survey system monuments that are destroyed by county construction or other functions.

Source: G.L. § 545. G.S. § 652. R.S. 08: § 1347. C.L. § 8824. CSA: C. 45, § 171. CRS 53: § 35-9-3. L. 63: p. 265, § 2. C.R.S. 1963: § 35-9-3. L. 94: (1)(a) amended, p. 1507, § 40, effective July 1. L. 2007: (2)(d), (2)(e), and (2)(f) added, p. 293, § 4, effective August 3.

30-10-904. Vacancy - how filled. If the office of county surveyor is at any time vacant, the board of county commissioners shall, no later than ninety days after the vacancy occurs, appoint some suitable and qualified person, who need not be a resident of the county, to fill the position of surveyor until the next general election.

Source: G.L. § 547. G.S. § 654. R.S. 08: § 1349. C.L. § 8826. CSA: C. 45, § 173. CRS 53: § 35-9-5. C.R.S. 1963: § 35-9-4. L. 2002: Entire section amended, p. 77, § 1, effective August 7.

30-10-905. Remuneration - expenses. (1) In counties of every class, the board of county commissioners may provide for additional compensation to be paid to the county surveyor who performs services for the county in addition to the duties specified in section 30-10-903, which compensation shall be paid out of the county treasury.

(2) The board of county commissioners may authorize any material and equipment necessary for the performance of any of the duties of the county surveyor; but, the material and equipment so provided shall not be used for any purpose other than to perform the duties of the county surveyor.

(3) A county surveyor and any of his deputies may engage in private survey practice, if such private practice does not interfere with the performance of their official duties.

(4) Except as provided in section 30-10-906, no county surveyor nor any of his deputies shall accept any remuneration other than that provided by the board of county commissioners for the performance of any act required as part of his official duties.

(5) While engaged in an act necessary to the performance of his official duties, no county surveyor nor any of his deputies shall perform any act not directly related to his official duties.

Source: L. 63: p. 266, § 3. C.R.S. 1963: § 35-9-5. L. 78: (4) amended, p. 272, § 92, effective May 23. L. 94: (4) amended, p. 1508, § 41, effective July 1. L. 2006: (1) amended, p. 449, § 4, effective August 7. L. 2010: (1) amended, (SB 10-182), ch. 291, p. 1352, § 2, effective May 26.

30-10-906. Disputed boundaries - notice - establishment of legal corner monument. (1) Whenever the proper location of any section corner or quarter section corner is in dispute, a corner monument shall be established by the county surveyor for the county in which such corner is located pursuant to this section.

(2) (a) Upon receipt of an application from any party in interest and the fee required pursuant to subsection (4) of this section and subsequent to giving notice as required pursuant to paragraph (b) of this subsection (2), the county surveyor shall gather evidence and conduct any necessary surveys to establish the location of a monument.

(b) Within two weeks of receipt of an application and fee pursuant to paragraph (a) of this subsection (2), the county surveyor shall give notice including the date when such surveyor will be in the vicinity of the disputed corner in the following manner:

(I) For parties whose property rights might be affected by the establishment of the location of a monument, by written notice;

(II) For parties to whom written notice cannot be given because of an incorrect address or because there are more than fifty known affected landowners, by publishing for four consecutive weeks in a newspaper of general circulation in the applicable county or, if there is no newspaper published in such county, in some newspaper of general circulation published in the nearest county;

(III) For all professional land surveyors who have filed a monument record on the disputed corner or on any aliquot corner within one mile thereof and all professional land surveyors known to have performed land surveys in the vicinity of the disputed corner, by written notice to the extent practicable.

(3) (a) On the date given in the notices pursuant to subsection (2) of this section, the county surveyor shall proceed to establish the corner monument in accordance with section 38-51-103, C.R.S., and with the field notes of original surveys made by the United States by firmly planting a monument at the points found. The county surveyor shall accurately take and note courses and distances from such established monument to one or more prominent objects of a permanent nature if there are any in the vicinity and make a plat or map of the survey.

(b) The county surveyor shall record the survey and a statement of the proceedings, including the application, notice, and names of the parties in interest, in the records of the office of the county surveyor.

(c) Any corner monument established pursuant to this section shall be the true and legal monument defining the boundary corner as stated in the record of the survey; except that any affected party may, pursuant to article 44 of title 38, C.R.S., appeal the result within six months after the date the corner monument is established.

(4) (a) The reasonable fees and expenses incurred by the county surveyor in establishing a corner shall be paid by the party applying therefor.

(b) At the time the application is filed, the county surveyor shall estimate the probable fees and expenses to be incurred in establishing the corner and shall collect that amount from the applicant.

(c) After the corner has been established, if the estimated amount exceeds the actual fees and expenses, the excess shall be refunded. If the fees and expenses exceed the estimated amount, the applicant shall pay the difference to the county surveyor.

Source: L. 94: Entire section added, p. 1508, § 42, effective July 1. L. 97: (3)(c) amended, p. 1629, § 4, effective July 1. L. 2010: (3)(c) amended, (HB 10-1085), ch. 95, p. 324, § 3, effective August 11.

ANNOTATION

The procedures set forth under this section may be used to resolve disputes over the proper location of a section or quarter section

corner, even if those disputes are related to the location of a private boundary. *Cumpston v. Neirinckx*, 1 P.3d 752 (Colo. App. 2000).

30-10-907. County surveyor to administer oaths. County surveyors shall have the authority to administer an oath or affirmation to deputies and assistants acting under them faithfully and impartially to discharge their duties as deputies and assistants.

Source: L. 94: Entire section added, p. 1508, § 42, effective July 1.

PART 10

SUPERINTENDENT OF SCHOOLS

30-10-1001 to 30-10-1011. (Repealed)

Source: L. 84: Entire part repealed, p. 582, § 1, effective March 19.

Editor's note: This part 10 was numbered as article 10 of chapter 35, C.R.S. 1963. For amendments to this part 10 prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

COUNTY POWERS AND FUNCTIONS**General****ARTICLE 11****County Powers and Functions**

Cross references: For the power of boards of county commissioners in the control and eradication of rodents and predatory animals, see part 2 of article 7 of title 35; for licenses for operating dance halls, see article 18 of title 12; for family planning and birth control services rendered by counties, see part 2 of article 6 of title 25; for provisions regarding county airport revenue bonds, see article 5 of title 41; for the "County and Municipality Development Revenue Bond Act", see article 3 of title 29; for the power of boards of county commissioners to create cemetery districts, see part 8 of article 20 of this title; for definitions applicable to this article, see § 30-26-301 (2)(d).

PART 1

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30-11-107.5.	Lodging tax for the advertising and marketing of local tourism.	30-11-118.	County attorney - county collector.
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- ties - new business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitations.
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PART 1

GENERAL PROVISIONS

30-11-101. Powers of counties. (1) Each organized county within the state shall be a body corporate and politic and as such shall be empowered for the following purposes:

(a) To sue and be sued;

(b) To purchase and hold real and personal property for the use of the county, and acquire lands sold for taxes, as provided by law;

(c) To sell, convey, or exchange any real or personal property owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; and to lease any real or personal property, either as lessor or lessee, together with any facilities thereon, when deemed by the board of county commissioners to be in the best interests of the county and its inhabitants;

(d) To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers. Any such contract may by its terms exceed one year and shall be binding upon the parties thereto as to all of its rights, duties, and obligations.

(e) To exercise such other and further powers as may be especially conferred by law;

(f) To develop, maintain, and operate mass transportation systems, which power shall be vested either individually in the board of county commissioners or jointly with other political subdivisions or governmental entities formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. Except as provided in paragraph (j) of this subsection (1), this provision shall not apply to any county or portion thereof encompassed by the regional transportation district as formed pursuant to the provisions of article 9 of title 32, C.R.S. Counties, by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title, shall have the authority: To fix, maintain, and revise passenger fees, rates, and charges, and terms and conditions for such systems; to prescribe the method of development, maintenance, and operation of such mass transportation systems; and to receive contributions, gifts, or other support from public and private entities to defray the operating costs of such systems.

(g) To provide for the payment of construction, installation, operation, and maintenance of street lighting by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title and to assess, either in whole or in part, the cost of constructing, installing, operating, and maintaining such street lighting against the property in the vicinity of such street lighting in proportion to the frontage of the property abutting the road, street, or alley where such street lighting is so constructed, installed, operated, and maintained;

(h) To enter into contracts with the executive director of the department of corrections pursuant to section 16-11-308.5, C.R.S., for the placement of persons under the custody of the executive director in county jails or adult detention centers;

(i) To dispose of abandoned personal property acquired by an elected county official or county employee in performing official duties. Said personal property may be disposed of only after the exercise of due diligence to determine the owner of such personal property. Such personal property may be sold, discarded, or used for county purposes as the board of county commissioners deems to be in the best interests of the county.

(j) For any county located in whole or in part within the boundaries of the regional transportation district, to provide transit services in cooperation with and pursuant to consultation with the board of directors of the district. For purposes of this paragraph (j), "county" means any county or city and county.

(k) To coordinate, pursuant to 43 U.S.C. sec. 1712, the "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop land management plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, the protection of air quality, public utilities protection, and private property protection on federal lands within such county's jurisdiction.

(2) Counties have the authority to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues as otherwise prescribed by law. In addition to any other enforcement or collection method authorized by law, if a county passes an ordinance or resolution of which a violation would be a class 2 petty offense, the county may elect to apply the penalty assessment procedure set forth in section 16-2-201, C.R.S., and may adopt a graduated fine schedule for multiple offenses. If a specified offense would

be an unclassified misdemeanor, a county may elect to downgrade the offense to a class 2 petty offense and apply the penalty assessment procedure under circumstances deemed appropriate and prescribed by the county in an ordinance or resolution.

Source: G.L. § 428. G.S. § 521. R.S. 08: § 1177. C.L. § 8658. CSA: C. 45, § 1. CRS 53: § 36-1-1. C.R.S. 1963: § 36-1-1. L. 73: pp. 465, 466, §§ 1, 1. L. 79: (1)(g) added, p. 1150, § 2, effective April 25. L. 88: (1)(h) added, pp. 677, 711, §§ 5, 12, effective July 1. L. 90: (1)(f) and (1)(g) R&RE, p. 1446, § 1, effective July 1. L. 92: (1)(i) added, p. 967, § 9, effective June 1. L. 93: (1)(h) amended, p. 407, § 6, effective April 19. L. 2002: (1)(f) amended and (1)(j) added, p. 733, § 3, effective August 7; (1)(f) amended and (1)(j) added, p. 713, § 3, effective August 7. L. 2003: (1)(k) added, p. 1036, § 10, effective April 17. L. 2008: (2) added, p. 57, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 2003 act enacting subsection (1)(k), see section 1 of chapter 145, Session Laws of Colorado 2003.

ANNOTATION

- I. General Consideration.
- II. Power to Sue and be Sued.
- III. Power to Deal in Real Property.
- IV. Power to Place Inmates Out of State.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

A county is not an independent governmental entity existing by reason of any inherent sovereign authority of its residents, rather, it is a political subdivision of the state, existing only for the convenient administration of the state government, created to carry out the will of the state. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895); *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900); *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

A county in Colorado is nothing more than an agency of the state in the general administration of the state policy, and its powers are solely governmental. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895); *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

And it does not, like a municipal corporation, possess a complete local government of its own, executive, legislative, and judicial. *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

Express and implied powers. As a political subdivision, a county, and its commissioners, possess only such powers as are expressly conferred upon them by the constitution and statutes, and such incidental implied powers as are reasonably necessary to carry out such express powers. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895); *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900);

Farnik v. Bd. of County Comm'rs, 139 Colo. 481, 341 P.2d 467 (1959); *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970); *Bainbridge, Inc. v. Bd. of County Comm'rs*, 964 P.2d 575 (Colo. App. 1998).

Statutory taxing duties on behalf of others. Counties and county officers are charged with specific statutory duties in assessing property for tax purposes, levying taxes, collecting taxes, foreclosing tax liens when the taxes are not paid, acquiring title to tax delinquent property, and disposing of property so acquired, and in these matters the counties and their officers act in behalf of the state, towns and cities, school districts, conservancy districts, and other taxing authorities. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

General assembly may delegate authority to county based upon reasonableness standard in appropriate circumstances where, as in the case of setting fees for county building permits, flexibility is required for counties to operate effectively in addressing local concerns. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 964 P.2d 575 (Colo. App. 1998).

II. POWER TO SUE AND BE SUED.

A county is not sovereign in the sense in which the state is sovereign, exempt from suit except by its own consent. *Bd. of Comm'rs v. City of Colo. Springs*, 66 Colo. 111, 180 P. 301 (1919).

This section expressly authorizes counties to sue or be sued. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

This undoubtedly carries with it the right when sued to interpose every defense, legal and equitable, which it may have, including the statute of limitations. *Schloss v. Bd. of County Comm'rs*, 1 Colo. App. 145, 28 P. 18 (1891).

The right "to sue" relates to the county's function as a body corporate and can only be

exercised within the framework of the specific powers granted counties and boards of county commissioners, such does not grant a general power to sue in any and all situations. *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

But no express limitation is put upon the class of subject matter in respect to which that power can be exercised. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

And it cannot be that a county must submit to have such portion of its territory unlawfully taken from it and transferred to another county, without being able to contest the legality of the proceeding. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

The state is not liable in damages for the negligence of its servants, nor are other governmental corporate entities liable for the tortious acts of their servants performing duties in furtherance of a governmental function, as distinguished from a proprietary function. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960); *M. & M. Oil Transp., Inc. v. Bd. of County Comm'rs*, 143 Colo. 309, 353 P.2d 613 (1960).

Therefore, counties are not liable for the tortious acts of their servants performing duties in furtherance of a governmental function as distinguished from a proprietary function. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960).

Also the doctrine of respondeat superior applicable to the relation of master and servant does not apply to a public county officer so as to render him responsible for the acts or omissions of subordinates whether appointed by him or not, unless he, having the power of selection, has failed to use ordinary care therein, or unless he has been negligent in supervising the acts of such subordinates, or has directed or authorized the wrong. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960).

But where servants or employees of a county are the actual tort-feasors, and the evidence establishes this fact, they should be held liable in all respects as other tort-feasors. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960).

Since counties are quasi and not municipal corporations, they are not liable to garnishment. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895).

Because counties, not their various subsidiary departments, exist as bodies corporate empowered to sue and be sued, naming a county department as a defendant is not an appropriate means of pleading a § 1983 action against a county. *Stump v. Gates*, 777 F. Supp. 808 (D. Colo. 1991).

III. POWER TO DEAL IN REAL PROPERTY.

A county does not have blanket authority to deal in real estate. Its authority is to purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

And a county has no power to acquire real or personal property as a speculation or an investment, nor does it have the power to retain property lawfully acquired for the use of the county when the use therefor no longer exists, and it may acquire and retain such property as it now reasonable needs, or in the foreseeable future may reasonably need, but no more, and such needed property is exempt from taxation, however, other not needed property should be on the tax rolls as provided by law. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

A statutory right to reserve the minerals therein means only that it may reserve and sell the minerals separately. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

Where a husband and wife executed and delivered their warranty deed to property to the county subject to encumbrances, and the consideration for the conveyance was financial assistance theretofore and in the future to be advanced by the county for their needs, it was held the county carried out its agreement and acquired a good and sufficient title under the deed. *Bainbrich v. Boies*, 113 Colo. 458, 158 P.2d 736 (1945).

IV. POWER TO PLACE INMATES OUT OF STATE.

Subsection (1)(h) should not be interpreted to limit placement of Colorado inmates only to county jails and this section does not affect authority of director of department of corrections to transfer inmates out of state. *People v. Wood*, 999 P.2d 227 (Colo. App. 2000).

30-11-102. Property of county. Any real or personal property conveyed to any county shall be deemed the property of such county.

Source: G.L. § 429. G.S. § 522. R.S. 08: § 1178. C.L. § 8659. CSA: C. 45, § 2. CRS 53: § 36-1-2. C.R.S. 1963: § 36-1-2.

30-11-103. Commissioners to exercise powers of county. The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners therefor.

Source: G.L. § 430. G.S. § 523. R.S. 08: § 1179. C.L. § 8660. CSA: C. 45, § 3. CRS 53: § 36-1-3. C.R.S. 1963: § 36-1-3.

ANNOTATION

Within the scope of their powers the county commissioners are supreme and they cannot be superseded, nor can their acts be judicially controlled or reviewed, except for an excess of jurisdiction or abuse of discretion. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

It cannot shift its powers to another, nor evade responsibility for its declared duties. *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

The county commissioners are invested with full and sole power to manage the business affairs of the county. *Bd. of Comm'rs v. Leonard*, 3 Colo. App. 576, 34 P. 583 (1893).

And they are necessarily vested with reasonable discretion in the administration of county affairs. *Bd. of Comm'rs v. Leonard*, 3 Colo. App. 576, 34 P. 583 (1893).

The commissioners are the governing body and by statute they are clothed with full authority to make all contracts which are essential to the management of the county affairs. *Liggett v. Bd. of Comm'rs*, 6 Colo. App. 269, 40 P. 475 (1895).

A county exercises its power by and through its board of commissioners, not through individual members. *Nicholl v. E-470 Pub. Highway Auth.*, 896 P.2d 859 (Colo. 1995).

The status of counties as corporations has been the subject of considerable discussion, and while they are defined as quasi corporations, it is always conceded that as such they have, to the extent of the powers which are conferred upon them, full authority to act and to contract as may corporations generally. *Liggett v. Bd. of Comm'rs*, 6 Colo. App. 269, 40 P. 475 (1895).

The board possesses such powers as are expressly conferred upon it by the constitution and statutes, and in addition thereto such implied powers as are reasonably necessary to the efficient execution of its express powers and duties. *Roberts v. People*, 9 Colo. 458, 13 P. 630 (1887); *Chase v. Bd. of Comm'rs*, 37 Colo. 268, 86 P. 1011 (1906); *Robbins v. Hoover*, 50 Colo. 610, 115 P. 526 (1911); *Bd. of Comm'rs v. Davis*, 27 Colo. App. 501, 150 P. 324 (1915).

These powers, it is evident and unquestioned, are to be used in such manner as would best subserve the interests of the citizens of the county of which the county commissioners are simply the representatives. *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

But they are not clothed with the authority to barter away in perpetuity the rights and interests of the public, whatever may be their power as to discretionary acts. *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

Power to buy and build not power to maintain. Where the commissioners had the discretionary power to select and purchase a site for a courthouse, and to erect the building thereon, here the power ended, because they had no authority from the general assembly, either express or implied, to bind the public to maintain the courthouse upon the site so selected for all time to come, and the public was not bound by any alleged acts of ratification of the void contract. *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

Power to contract beyond terms of office. Where the officers or trustees of a quasi corporation are empowered to act with reference to any particular matter, it is generally conceded their contract will be valid and binding, even though some part of its performance may be impossible until after the expiration of the term of the officers who may enter into the engagement. *Liggett v. Bd. of Comm'rs*, 6 Colo. App. 269, 40 P. 475 (1895).

A subsequent board of commissioners has no power to review the discretionary acts of a former board. *Bd. of Comm'rs v. Leonard*, 3 Colo. App. 576, 34 P. 583 (1893).

Void contract. Any contract which will disabate a public or quasi-public corporation from performing the duty which it has undertaken, or has been imposed upon it, for public weal, is void. *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

The right to sue a county is purely statutory, and where the mode of instituting the suit is prescribed by statute, it must be strictly followed. *Bd. of Comm'rs v. Churning*, 4 Colo. App. 321, 35 P. 918 (1894).

30-11-103.5. County petitions and referred measures. The procedures for placing an issue or question on the ballot by a petition of the electors of a county that is pursuant to statute or the state constitution or that a board of county commissioners may refer to a vote of the electors pursuant to statute or the state constitution shall, to the extent no such procedures are prescribed by statute, charter, or the state constitution, follow as nearly as

practicable the procedures for municipal initiatives and referred measures under part 1 of article 11 of title 31, C.R.S. The county clerk and recorder shall resolve any questions about the applicability of the procedures in part 1 of article 11 of title 31, C.R.S.

Source: L. 96: Entire section added, p. 1766, § 58, effective July 1.

30-11-104. County buildings - acquisition of land or buildings by eminent domain authorized. (1) (a) Each county, at its own expense, shall provide a suitable courthouse, a sufficient jail, and other necessary county buildings and keep them in repair.

(b) For any penal institution that begins operations on or after August 30, 1999, that is operated by or under contract with a county, the county may establish standards relating to space requirements, furnishing requirements, required special use areas or special management housing, and environmental condition requirements, including but not limited to standards pertaining to light, ventilation, temperature, and noise level. If a county does not adopt standards pursuant to this paragraph (b), the penal institution operated by or under contract with the county shall be subject to the standards adopted by the department of public health and environment pursuant to section 25-1.5-101 (1) (i), C.R.S. In establishing such standards, the county is strongly encouraged to consult with national associations that specialize in policies relating to correctional institutions.

(2) Each county has the power to acquire, by eminent domain, land or buildings, or both, for the provision of court and district attorney facilities, jails, and other necessary facilities specifically related thereto. Any acquisitions by eminent domain shall be made in the manner authorized for cities and towns as set forth in article 6 of title 38, C.R.S.

Source: G.L. § 431. G.S. § 524. R.S. 08: § 1180. C.L. § 8661. CSA: C. 45, § 4. CRS 53: § 36-1-4. C.R.S. 1963: § 36-1-4. L. 87: Entire section amended, p. 1203, § 1, effective July 1. **L. 2000:** (1) amended, p. 803, § 2, effective May 24. **L. 2003:** (1)(b) amended, p. 714, § 56, effective July 1.

ANNOTATION

A county's duties under this section may not be reduced or ended pursuant to art. X, § 20(9), of the state constitution. *State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).*

Historically, Colorado law has placed the duty of providing a suitable courthouse upon the county commissioners of each county. *Lawson v. Pueblo County, 36 Colo. App. 370, 540 P.2d 1136 (1975).*

Even though the general assembly indicated its intention to take over from the counties the financial burden of providing judicial facilities, the general assembly has not provided funds for the construction of court facilities in the various counties of the state, and the burden of providing courtroom space and facilities remains with the counties. *Lawson v. Pueblo County, 36 Colo. App. 370, 540 P.2d 1136 (1975).*

Counties are charged with the duty to provide public buildings for county offices, and to maintain those buildings. *Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n, 655 P.2d 831 (Colo. 1982).*

But lack power to acquire office space through eminent domain. The general assembly has not impliedly delegated the power of

eminent domain to counties for the purpose of acquiring office space for authorized county purposes. *Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n, 655 P.2d 831 (Colo. 1982).*

An express grant of eminent domain power to provide facilities to house public offices does not appear in this section. *Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n, 655 P.2d 831 (Colo. 1982).*

The board of county commissioners was a proper party and entitled to recover damages against the building contractor and his surety under third party beneficiary principles, because in Colorado one may enforce a contractual obligation made for his benefit although he was not a party to the agreement, when such an obligation is apparent from the agreement and the surrounding circumstances. The obligation for the benefit of the county is inherent in the contract documents and circumstances. Under the leasehold agreement, the public building authority's obligation to the county to construct the courthouse building was recognized, and the building plans and specifications were subject to the approval of the county. Under the construction agreement, the county has the right to approve the form of the performance bond. The contractor was not entitled to final payment until

completion of the building and final acceptance of work by the authority, the county and the architects. The land belonged to the county and was leased to the authority to have the courthouse built and to lease the land and building back to the county. Thus, the agreements and the

circumstances show that the benefit of faithful performance of the construction agreement and the bond were intended to flow to the county. Such contractual benefit to the property owner is enforceable by him. *Cox v. Fremont County Pub. Bldg. Auth.*, 415 F.2d 882 (10th Cir. 1969).

30-11-104.1. Lease purchase agreements. (1) In order to provide for financing of a public park, a public trail, a public golf course, or public open space, or a courthouse, jail, or other county building or equipment used, or to be used, for governmental purposes, any county is authorized to enter into lease purchase agreements.

(2) Such agreements may include an option to purchase, transfer, and acquire title to such property and the improvements thereon, if any, within a period not exceeding the useful life of such property and any improvements, but in no case exceeding thirty years.

(3) The obligation under any such leases may only be from year to year and may not constitute a mandatory charge or requirement in any ensuing budget year.

(4) The obligation to make payments under such an agreement and the obligation to pay other charges incident to any such agreement shall not constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or home rule charter debt limitation.

Source: L. 81: Entire section added, p. 1446, § 1, effective May 29. L. 83: (1) amended, p. 1233, § 1, effective May 25. L. 99: (1) and (2) amended, p. 166, § 1, effective March 25.

30-11-104.2. Tax exemption. (1) Property financed pursuant to the provisions of section 30-11-104.1 shall be exempt from taxation so long as it is used for governmental purposes.

(2) (a) A courthouse, jail, or other county building subject to lease purchase agreements in force on May 29, 1981, shall be accorded the same tax-exempt status as a courthouse, jail, or other county building financed by such agreements entered into after such date.

(b) Equipment subject to lease purchase agreements in force on May 25, 1983, shall be accorded the same tax-exempt status as equipment financed by such agreements entered into after such date.

Source: L. 81: Entire section added, p. 1446, § 1, effective May 29. L. 83: (2) amended, p. 1233, § 2, effective May 25.

30-11-105. Title of suits by or against county. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be, "The board of county commissioners of the county of"; but this provision shall not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

Source: G.L. § 432. G.S. § 525. R.S. 08: § 1181. C.L. § 8662. CSA: C. 45, § 5. CRS 53: § 36-1-5. C.R.S. 1963: § 36-1-5.

ANNOTATION

This provision is the exclusive method by which jurisdiction over a county can be obtained, and an action attempted to be brought under any other designation is a nullity, and no valid judgment can enter in such a case. *Bd. of Comm'rs v. Churning*, 4 Colo. App. 321, 35 P. 918 (1894); *John Deere Plow Co. v. County of*

Phillips, 97 Colo. 196, 48 P.2d 793 (1935); *Calahan v. County of Jefferson*, 163 Colo. 212, 429 P.2d 301 (1967).

The defect if not raised will be considered waived. *Great W. Mining Co. v. Woodmas*, 12 Colo. 46, 20 P. 771, 13 Am. St. R. 204 (1888); *Fitzgerald v. Burke*, 14 Colo. 559, 23 P. 993

(1890); *Poundstone v. Holt*, 5 Colo. App. 66, 37 P. 35 (1894); *Miller v. Kinsel*, 20 Colo. App. 346, 78 P. 1075 (1904); *Del Monte Live Stock Co. v. Ryan*, 24 Colo. App. 340, 133 P. 1048 (1913).

And where three persons were named as defendants, with the addition "the board of county commissioners" of a county named, and throughout the proceedings in the court below all parties treated the board of county commissioners as the defendant, it was held that the county commissioners were bound by the proceeding, and by any order or decree that might be properly made in the court of review. *Del Monte Live Stock Co. v. Ryan*, 24 Colo. App. 340, 133 P. 1048 (1913).

Where suit was directed at the county board of adjustment, not at the county, county board of adjustment was properly designated as the party defendant. *Benes v. Jefferson County Bd. of Adjustment*, 36 Colo. App. 131, 537 P.2d 753 (1975).

In a suit on the official bond of a county treasurer, the action should be brought by

"the people of the state of Colorado", since there is no valid objection to the title of an action brought by the people of the state of Colorado for the use of the county. *Bell v. People ex rel. Garfield County*, 92 Colo. 585, 22 P.2d 857 (1933).

Where an appeal is taken by the board of county commissioners in an action against them, the appeal bond must be executed in the name of the board, and not by the members individually. *Bd. of County Comm'rs v. King*, 9 Colo. 542, 13 P. 539 (1887).

A writ of error sued out by a county in its proper name to reverse a judgment against it by another name was dismissed. *Bd. of County Comm'rs v. Churning*, 4 Colo. App. 321, 35 P. 918 (1894).

County is a "person" for the purposes of a civil rights action for damages under 42 U.S.C. § 1983. *Wigger v. McKee*, 809 P.2d 999 (Colo. App. 1990).

30-11-105.1. Standing - contesting constitutionality of a statute. In addition to any other powers prescribed in this part 1, any county or county officer shall have standing in district court to defend any action brought against such county or officer by contesting the constitutionality of a statute underlying such action and affecting the rights, status, or other legal relations of such county or county officer or directing the performance of, defining, or prescribing the duties or responsibilities of such county officer.

Source: L. 93: Entire section added, p. 73, § 1, effective March 26.

ANNOTATION

Applied in *Mesa Verde Co. v. Montezuma County Bd. of Equaliz.*, 898 P.2d 1 (Colo. 1995).

30-11-106. Process served on clerk - clerk to notify board. In all legal proceedings against the county, process shall be served on the clerk of the board of county commissioners, and when such suit or proceeding is commenced, it is the duty of the clerk to notify the county attorney thereof, and to lay before the board of county commissioners, at their next meeting, all the information he may have in regard to such suit or proceeding.

Source: G.L. § 433. G.S. § 526. R.S. 08: § 1182. C.L. § 8663. CSA: C. 45, § 6. CRS 53: § 36-1-6. C.R.S. 1963: § 36-1-6.

30-11-107. Powers of the board. (1) The board of county commissioners of each county has power at any meeting:

(a) To make such orders concerning the property belonging to the county as it deems expedient;

(b) To examine and settle all accounts of the receipts and expenses of the county, to examine and settle and allow all accounts chargeable against the county, and, when so settled, to issue county orders therefor as provided by law;

(c) To build and keep in repair county buildings and cause the same to be insured in the name of the county treasurer for the benefit of the county and, in case there are no county buildings, to provide suitable rooms for county purposes;

(d) (I) To apportion and order the levying of taxes as provided by law; except that, for

purposes of the application of any occupational privilege tax, oil and gas wells and their associated production facilities shall not be considered a business or occupation subject to such tax; and

(II) To contract loans in the name and for the benefit of the county for the purpose of erecting necessary public buildings and making or repairing public roads or bridges, when such loans have been authorized by a vote of the legal voters of the county;

(e) To represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provisions are made by law;

(f) To set off, organize, and change the boundaries of precincts in their respective counties and to designate and number such precincts in accordance with sections 1-5-101 and 1-5-101.5, C.R.S.;

(g) To establish one or more voting places in each election precinct, as the convenience of the inhabitants may require;

(h) To lay out, alter, or discontinue any road running into or through such county and also to perform such other duties respecting roads as may be required by law;

(i) To grant such licenses and perform such other duties as are or may be prescribed by law;

(j) To acquire land for, lay out, construct, maintain, and repair airports and landing strips for aircraft, to enter into leases, and to fix and collect charges or fees for the use of such airports and landing strips;

(k) To provide in the county budget for dumping grounds within the county to be used for such purposes as may be prescribed by the board;

(l) To enter into agreements with any municipality for the joint use and occupation of public buildings. The consideration to be paid for such use and occupation shall be paid each year out of current revenues which shall be appropriated annually, and any agreement to make such annual payment shall not be considered or held to be creation of an indebtedness of the county within any constitutional or statutory limitation.

(m) To negotiate with the board or boards of county commissioners of another county or counties, and with the board of governors of the Colorado state university system of Colorado state university, for agricultural extension service to be furnished such counties, and to be financed on a pro rata share by the counties receiving such service;

(n) To create, by resolution duly adopted, the office of county manager, or administrative assistant to the board of county commissioners, or county budget officer, or any other such office as may, in its judgment, be required for the efficient management of the business and concerns of the county. When so created, the board has power to make appointments to such offices, to prescribe the duties to be performed by such appointees, to fix the compensation to be paid to such appointees, and to pay the same from the county general fund. Any persons appointed to such offices shall serve at the pleasure of the board of county commissioners.

(o) To cooperate with other counties and with the state forester in the organization and training of rural fire fighting groups, payment for the operation and maintenance of fire fighting equipment and in sharing the cost of suppressing fires;

(o.5) Repealed.

(p) To purchase all necessary uniforms of the county sheriff, undersheriff, and deputies of the county; but no such uniforms shall be supplied to those persons deputized to perform particular acts, and all such uniforms shall be and remain the property of the county;

(q) To organize, own, operate, control, direct, manage, contract for, or furnish ambulance service;

(r) To provide in the county budget for services for the aged, including but not limited to social and recreational services, medical services, transportation, and homemaker services;

(s) To appropriate moneys from sources other than ad valorem taxes to multijurisdictional housing authorities or housing authorities established under part 5 of article 4 of title 29, C.R.S., from the county general fund;

(t) To set, by resolution duly adopted or by the method provided in the charter of a home rule county, mileage for all county officers, employees, and agents in an amount not

less than twenty cents per mile nor more than a rate per mile equal to the standard mileage rate allowed pursuant to 26 U.S.C. sec. 162, as amended, and regulations promulgated thereunder, for each mile actually and necessarily traveled while on official county business;

(u) To expend moneys or make assessments pursuant to paragraph (z) of this subsection (1) for the maintenance of drainage structures and facilities and to accept dedicated or deeded drainage easements or drainageway tracts as county property once drainage structures and facilities on such easements or tracts have been completed and found to meet county specifications and standards;

(v) To provide a job diversion program directing persons making application for or receiving assistance under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S., into bona fide public or private sector employment;

(w) To expend moneys or make assessments pursuant to paragraph (z) of this subsection (1) for the construction, reconstruction, improvement, or extension of drainage facilities within the unincorporated or incorporated areas of the county and to acquire, by gift, purchase, lease, or the exercise of the right of eminent domain, all lands, easements, or rights in land which are necessary in connection with such construction, reconstruction, improvement, or extension. Drainage facilities shall not be provided in any area which is within an existing drainage district organized or created pursuant to law without the approval of such district.

(x) To enter into a contract with the state telecommunications director pursuant to the provisions of section 24-37.5-502 (3), C.R.S., for the providing of teleconferencing facilities and services between the county and any other county, city and county, or state agency to be used for teleconferencing of hearings relating to any person in the custody of the county;

(y) To expend moneys or make assessments pursuant to paragraph (z) of this subsection (1) for the construction, maintenance, repair, or installation of curbs, gutters, sidewalks, and related structures along residential and commercial streets or alleys and in residential or commercial subdivisions within the unincorporated areas of the county; except that, prior to making an assessment for any purpose authorized by this paragraph (y), the county shall consider cost-sharing alternatives so that a portion of the cost of any project authorized in this paragraph (y) is incurred and paid by the county;

(z) To prescribe, by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title, the mode in which the charges on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes authorized in paragraphs (u), (w), and (y) of this subsection (1);

(aa) To establish policies and procedures regarding entering into contracts binding on the county, and to delegate its power to enter into such contracts pursuant to such policies and procedures, where amounts specified in such policies and procedures and where such contracts otherwise comply with limits and requirements set forth in such policies and procedures;

(bb) To provide for the preservation of the cultural, historic, and architectural history within the county by ordinance or resolution; to delegate the power to designate historic landmarks and historic districts to an historic preservation advisory board; to accept dedicated or deeded easements or other historic property and to expend moneys for the maintenance of such deeded historic land, facilities, and structures; and to receive contributions, gifts, or other support from public and private entities to defray the maintenance costs of such historic land, facilities, and structures;

(cc) By resolution, memorial, plaque, or limited gift, to honor, commemorate, memorialize, or acknowledge outstanding service or other events, including death or retirement of individuals, or actions, accomplishments, or achievements deserving of recognition;

(dd) To enter into installment purchase contracts or shared-savings contracts or otherwise incur indebtedness under section 29-12.5-103, C.R.S., to finance energy conservation and energy saving measures and enter into contracts for an analysis and recommendations pertaining to such measures under section 29-12.5-102, C.R.S.;

(ee) Repealed.

(ff) To set, by written resolution duly adopted by a majority vote of the board and entered in its minutes prior to the county treasurer being sworn into office, the amount of

a surety bond to be executed by the treasurer and to authorize the purchase of such a bond by the board;

(gg) To authorize the use of electronic records or signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures pursuant to article 71.3 of title 24, C.R.S.;

(hh) To establish an affordable housing dwelling unit advisory board for the county in accordance with the requirements of article 26 of title 29, C.R.S.;

(ii) To provide in the county budget for programs that support education and outreach on environmental sustainability and for financing capital improvements for energy efficiency retrofits and the installation of renewable energy fixtures, as defined in section 30-11-107.3, for private residences and commercial property within the county but that do not exempt the county from the requirements of any other statute;

(jj) To encourage homeowners to participate in utility demand-side management programs where applicable.

(2) (a) Subject to the provisions of part 1 of article 1 of title 29, C.R.S., the board of county commissioners of each county has exclusive power to adopt the annual budget for the operation of the county government, including all offices, departments, boards, commissions, other spending agencies of the county government, and other agencies which are funded in whole or in part by county appropriations. All such entities shall make appropriate budget recommendations each year to the board of county commissioners for the operation of their respective offices; but the final budget determination of each board of county commissioners shall be binding upon each of the respective offices, departments, boards, commissions, other spending agencies of the county government, and other agencies which are funded in whole or in part by county appropriations.

(b) Every decision made by the board of county commissioners in exercising its budget-making power shall be presumed to be a valid exercise of the power granted by paragraph (a) of this subsection (2).

(3) The board of county commissioners of any county eligible to receive impact assistance grants pursuant to part 3 of article 25 of this title may certify a dollar amount to the parks and wildlife commission pursuant to part 3 of article 25 of this title.

Source: G.L. § 446. G.S. § 538. R.S. 08: § 1204. C.L. § 8682. CSA: C. 45, § 25. L. 45: p. 296, § 2. CRS 53: § 36-1-7. L. 55: p. 250, § 1. L. 57: p. 313, § 1. L. 61: pp. 301, 714, §§ 1, 2. C.R.S. 1963: § 36-1-7. L. 65: pp. 458, 925, §§ 1, 5. L. 69: p. 225, § 1. L. 77: (1)(q) amended, p. 1439, § 1, effective May 26; (2) added, p. 1441, § 1, effective June 9; (1)(r) added, p. 1440, § 1, effective June 19; (1)(s) added, p. 1396, § 2, effective July 7; (1)(q) R&RE, p. 1285, § 3, effective January 1, 1978. L. 79: (3) added, p. 1154, § 2, effective June 22. L. 80: (1)(t) added, p. 655, § 1, effective July 1. L. 81: (1)(u) added, p. 1448, § 1, effective June 12. L. 82: (1)(v) added, p. 427, § 3, effective July 1. L. 83: (1)(w) added, p. 1235, § 1, effective July 1. L. 85: (1)(x) added, p. 806, § 2, effective May 23. L. 86: (1)(v) amended, p. 1040, § 4, effective April 30. L. 90: (1)(u) and (1)(w) amended and (1)(y) to (1)(cc) added, p. 1447, § 2, effective July 1. L. 91: (1)(t) amended, p. 712, § 1, effective March 11; (1)(dd) added, p. 733, § 3, effective May 1. L. 93: (1)(ee) added, p. 346, § 4, effective April 12; (1)(o.5) added, p. 1255, § 4, effective July 1. L. 95: (1)(ff) added, p. 500, § 3, effective May 16; (1)(o.5) repealed, p. 546, § 2, effective May 22. L. 96: (1)(d) amended, p. 347, § 3, effective April 17. L. 97: (1)(v) amended, p. 1245, § 51, effective July 1. L. 98: (1)(ee) repealed, p. 825, § 40, effective August 5. L. 99: (1)(gg) added, p. 1348, § 6, effective July 1. L. 2000: (1)(f) amended, p. 265, § 4, effective August 2. L. 2001: (1)(hh) added, p. 977, § 2, effective August 8. L. 2002: (1)(gg) amended, p. 858, § 7, effective May 30; (1)(m) amended, p. 1246, § 20, effective August 7. L. 2007: (1)(ii) added, p. 1470, § 1, effective August 3. L. 2008: (1)(x) amended, p. 1130, § 16, effective May 22; (1)(ii) amended and (1)(jj) added, p. 1293, § 5, effective May 27. L. 2012: (3) amended, (HB 12-1317), ch. 248, p. 1204, § 10, effective June 4.

Cross references: For additional powers of county commissioners relating to county airports, see part 1 of article 4 of title 41; for power of county commissioners to transfer county property for

hospital purposes, see § 32-1-1003 (2); for power of a board to adopt ordinances for control or licensing of matters of purely local concern, see § 30-15-401; for the authority of the city and county of Denver to enter into a contract for teleconferencing facilities and services, see § 30-11-208.

ANNOTATION

- I. General Consideration.
- II. Making Order Concerning County Property.
- III. Examining and Settling County Accounts.
- IV. Building and Keeping in Repair County Buildings.
- V. Apportioning and Ordering the Levy of Taxes and Contracting Loans.
- VI. Laying Out, Altering, or Discontinuing County Roads.

I. GENERAL CONSIDERATION.

In discharging their duties, county commissioners are in all relevant aspects the alter egos of the county. *Koch v. Bd. of County Comm'rs of Costilla Cty.*, 774 F. Supp. 1275 (D. Colo. 1991).

Section does not violate separation of powers. *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

The general assembly can and does, at times in Colorado, delegate limited police and legislative powers to local governmental units. *Asphalt Paving Co. v. Bd. of County Comm'rs*, 162 Colo. 254, 425 P.2d 289 (1967).

Because in Colorado the general assembly, as government has grown more complex, has extended its reliance on boards of county commissioners to carry out, on a local level local governmental functions where it has deemed such necessary. *Asphalt Paving Co. v. Bd. of County Comm'rs*, 162 Colo. 254, 425 P.2d 289 (1967).

Therefore, in the absence of any constitutional prohibition, there is nothing illegal about a state legislature delegating powers local in nature to local governmental units, provided that the proper constitutional tests are met as to maintaining a separation of powers and nonabrogation of proper responsibility. *Asphalt Paving Co. v. Bd. of County Comm'rs*, 162 Colo. 254, 425 P.2d 289 (1967).

Counties have been delegated the following powers, among others, each of which requires the board of county commissioners to exercise certain police powers, viz.: to license and control dogs; to adopt building regulations and restrictions; to license and regulate public dance halls; to issue liquor licenses; to adopt zoning regulations; to regulate roadside signs on county roads; and to adopt, subject to state approval, lower prima facie speed limits on highways and roads located in unincorporated areas within their boundaries. *Asphalt Paving Co. v. Bd. of*

County Comm'rs, 162 Colo. 254, 425 P.2d 289 (1967).

County commissioners, in order to bind the county, must act collectively as a board. *Robbins v. Hoover*, 50 Colo. 610, 115 P. 526 (1911).

Care for the poor. Unless there is some statute which takes from the board the duty of providing for the poor, with the power to make valid contracts for their support, which binds the county, such power is vested in the county board. *Saguache v. Tough*, 45 Colo. 395, 101 P. 411 (1909).

Contract for assessments ultra vires. Where board of county commissioners, under its authority to manage the business of the county, entered into a contract with plaintiffs to fix valuations of land, which assessor admittedly was unable to determine, such contract is ultra vires and void, because the right to employ capable assistants comes within the purview of the duties primarily conferred on the assessor and cannot be claimed as an implied power of the board of county commissioners, because the board, as such, has not authority to impose itself upon the express powers of another county officer. *Pritchard v. Bd. of County Comm'rs*, 119 Colo. 318, 204 P.2d 156 (1949).

An action on the official bond of a district court clerk for moneys belonging to a county is properly brought in the name of the people of the state of Colorado for the use of the board of county commissioners of the county, and the fact that the county treasurer is the person legally authorized to receive the money does not make it necessary that he should be named as the obligee of the bond, nor that a suit thereon should be brought for his use. *Cooper v. People ex rel. Bd. of Comm'rs*, 28 Colo. 87, 63 P. 314 (1900).

Effect of 1977 amendment. The 1977 amendment, adding subsection (2), gives the county commissioners the authority to make the final budget determination for agencies such as the office of the district attorney which are funded in whole or in part by county appropriations, and establishes a statutory presumption that the board validly exercised its budget-making power. *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

District attorney funded by county appropriations. The office of the district attorney is an agency which is "funded in whole or in part by county appropriations", pursuant to subsection (2)(a). *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

County commissioners are accorded broad discretion on budgetary matters and have the exclusive power to adopt the annual budget, which is presumptively valid. *City of Aurora v. Bd. of County Comm'rs*, 902 P.2d 375 (Colo. App. 1994), *aff'd*, 919 P.2d 198 (Colo. 1996).

Judicial review of discretionary budgetary decisions limited. A court's role in reviewing discretionary budgetary decisions by a board of county commissioners is limited to the determination of whether the board abused its discretion by acting arbitrarily or unreasonably. *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

Local boards of county commissioners cannot, in an employee manual, override the general assembly's determination in subsection (1)(n) that board-appointed county employees serve at the board's pleasure and are therefore terminable at will. *Erickson v. Bd. of County Comm'rs*, 801 F. Supp. 414 (D. Colo. 1992); *Parker v. Park County Bd. of County Comm'rs*, 78 F. Supp.2d 1169 (D. Colo. 1999).

The provisions of subsection (1)(n) will not bar a cause of action where a genuine issue of material fact remains as to the controversy. *Kennedy v. Bd. of County Comm'rs*, 776 P.2d 1159 (Colo. App. 1989).

Placement of moneys derived from the specific ownership tax in the county road and bridge fund held not an abuse of discretion. *City of Aurora v. Bd. of County Comm'rs*, 902 P.2d 375 (Colo. App. 1994), *aff'd*, 919 P.2d 198 (Colo. 1996).

Permissive grants of power that allow the county to construct, operate, improve, and extend storm water facilities and levy taxes to finance the acquisition, construction, operation, improvement, and extension thereof, do not impose a mandatory duty to remedy a particular harm and, therefore, do not establish a clear legislative intent to create a private cause of action. *Larry H. Miller Corp.-Denver v. Bd. of County Comm'rs*, 77 P.3d 870 (Colo. App. 2003).

Trial court properly dismissed petition by county to condemn a portion of owner's property for use as a public road because county presented no valid public purpose for its condemnation of owner's property. Here, public purpose is to benefit private parties; a few, select members of the public will gain access to a private cemetery. Such a private benefit does not constitute a valid public purpose. *Bd. of County Comm'rs v. Kobobel*, 176 P.3d 860 (Colo. App. 2007).

With respect to board's powers under subsection (1)(bb), no right by general public to visit a private cemetery or historical or cultural sites on private land. There is no law in Colorado establishing a right of the public to access private cemeteries. *Bd. of County Comm'rs v. Kobobel*, 176 P.3d 860 (Colo. App. 2007).

II. MAKING ORDER CONCERNING COUNTY PROPERTY.

General powers yield to specific power. The general powers conferred upon the board of commissioners with reference to subsection (1)(a), when in conflict with the special, particular powers conferred upon the sheriff with reference to jails, must yield to the latter, the latter must be treated as exceptions to the former. *Richart v. Bd. of Comm'rs*, 95 Colo. 153, 33 P.2d 971 (1934).

III. EXAMINING AND SETTLING COUNTY ACCOUNTS.

The board is constituted by law the financial representative of the county, to whom all unliquidated claims against the county are to be presented for allowance, and no other officer or agent of the county is invested with similar powers, and the presentation of a claim to this board, the allowance of which comes within the scope of its powers, is practically a presentation thereof to the county. *Roberts v. People*, 9 Colo. 458, 13 P. 630 (1886).

The rule governing the allowance of claims by the board of county commissioners is that the authority must be found in the statute, either in express words or by implication, and the compensation for every legitimate charge against a county is not fixed by statute, nor even expressly provided for, it is therefore within the power of the board in such cases to allow reasonable compensation. *Bd. of Comm'rs v. Leonard*, 3 Colo. App. 576, 34 P. 853 (1893).

IV. BUILDING AND KEEPING IN REPAIR COUNTY BUILDINGS.

Counties are charged with the duty to provide public buildings for county offices, and to maintain those buildings. *Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n*, 655 P.2d 831 (Colo. 1982).

Lease not unconstitutional indebtedness. The leasing of a building for county purposes for a monthly rental of \$670 for a term of 25 years is not a creation of indebtedness for the aggregate amount of the rentals within the meaning of § 6 of art. XI, Colo. Const. *Heberer v. Bd. of Comm'rs*, 88 Colo. 159, 293 P. 349 (1930).

The fact that contract of county commissioners to lease a building for courthouse purposes extends beyond the terms of office of the commissioners making the contract does not make the contract void. *Heberer v. Bd. of Comm'rs*, 88 Colo. 159, 293 P. 349 (1930).

Perpetual maintenance of hospital. Nothing in this section authorizes the board of commissioners to enter into an engagement binding the county to forever maintain a hospital, for the

benefit of a particular class, because each board must in each year determine for itself what appropriation shall be made for public purposes, and levy the taxes necessary to meet them; and no board is competent to determine these matters for its successors, or limit their action in the exercise of governmental functions. *Robbins v. Hoover*, 50 Colo. 610, 155 P. 526 (1911).

The board may not appropriate public moneys, raised by general taxation, to the maintenance of a hospital over which the county has not complete control, or from which particular classes of the public are to be excluded. *Robbins v. Hoover*, 50 Colo. 610, 155 P. 526 (1911).

V. APPORTIONING AND ORDERING THE LEVY OF TAXES AND CONTRACTING LOANS.

The board has the power at any time to apportion and order the levying of taxes as provided by law, for the payment of the debts of the county contracted in accordance with law prior to July, 1876, and a bonded debt was strictly within this section and commissioners not only had the power to levy the tax at the time the demand was made, but it was their duty to do so and they had no discretion in the matter. *Berkey v. Bd. of Comm'rs*, 48 Colo. 104, 110 P. 197 (1910).

Mandamus to enforce statutory duty. Where a statute imposes upon a city, county, levee district, or other municipality, or upon a particular officer, board, or tribunal, a clear legal duty to levy a special tax to pay judgments, bonds, warrants, or other allowed or fixed indebtedness, or interest thereon, or to provide a sinking fund for payment at a future day, mandamus will lie on the relation of a person interested to compel performance of such duty. *Berkey v. Bd. of Comm'rs*, 48 Colo. 104, 110 P. 197 (1910).

Contract to discover omitted property ultra vires. With respect to assessing or collecting taxes, no implied power is given the board of county commissioners, as a corporate body, to discover omitted property or to make a valid contract with other to do so, and such a contract is ultra vires. *Chase v. Bd. of Comm'rs*, 37 Colo. 268, 86 P. 1011 (1906).

No power to challenge state taxing authority. The supreme court found no constitutional or statutory provision which grants any express

or implied powers to boards of county commissioners or to county boards of equalization to challenge in court the findings and orders of the state tax commission or state board of equalization. *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

VI. LAYING OUT, ALTERING, OR DISCONTINUING COUNTY ROADS.

Reasonable discretion. This section vests the board with reasonable discretion as to the modes and methods by which it may exercise the power conferred upon it by this section, with reference to laying out, altering, or discontinuing roads. *Switzer v. Bd. of County Comm'rs*, 70 Colo. 563, 203 P. 680 (1922).

Interference with the use of a public highway may be enjoined by the board. *Leach v. Manhart*, 96 Colo. 397, 43 P.2d 959 (1935).

Based on the authority in subsection (1)(h) to engage in road improvement projects, counties have the authority to require a utility to relocate its utility line. Further, the utility must pay the cost of relocating the utility line when required by the county. *Meadowbrook-Fairview v. Bd. of County Comm'rs*, 910 P.2d 681 (Colo. 1996).

It is not bound to acquire a permanent right-of-way for a road by condemnation, conveyance or prescription, but has authority to contract for the use of a strip of land for road purposes until such time as the permission or license for such use may be revoked. *Switzer v. Bd. of County Comm'rs*, 70 Colo. 563, 203 P. 680 (1922).

Ceding of authority over roads in a national park. The resolution of the state highway commission, sanctioned by the county board of commissioners, was sufficient to cede or transfer through legislative agency, to the federal government, such jurisdiction and control as the state possessed over the highways in a national park. *Robbins v. United States*, 284 F. 39 (8th Cir. 1922).

Right to intervene. In an action by a landowner to enjoin the use of a road across his property, a board of county commissioners claiming the road to be a public highway has a right to intervene to the end that the character of the road may be determined, and the dismissal of such a petition in intervention is error. *Leach v. Manhart*, 96 Colo. 397, 43 P.2d 959 (1935).

30-11-107.3. Incentives for installation of renewable energy fixtures - definitions.

(1) Notwithstanding any law to the contrary, any county may offer an incentive, in the form of a county property tax or sales tax credit or rebate, to a residential or commercial property owner who installs a renewable energy fixture on his or her residential or commercial property.

(2) For purposes of this section, unless the context otherwise requires:

(a) "County" means any county or city and county.

(b) "Renewable energy fixture" means any fixture, product, system, device, or inter-

acting group of devices installed behind the meter of any residential or commercial building that produces energy from renewable resources, including, but not limited to, photovoltaic systems, solar thermal systems, small wind systems, biomass systems, or geothermal systems.

Source: L. 2007: Entire section added, p. 488, § 2, effective August 3. **L. 2008:** (2)(b) amended, p. 1294, § 6, effective May 27.

Cross references: In 2007, this section was added by the "Renewable Energy Incentives Act". For the short title, see section 1 of chapter 130, Session Laws of Colorado 2007.

30-11-107.5. Lodging tax for the advertising and marketing of local tourism.

(1) In accordance with the procedures set forth in this section, the board of county commissioners of each county, for the purpose of advertising and marketing local tourism, may levy a county lodging tax of not more than two percent on the purchase price paid or charged to persons for rooms or accommodations as included in the definition of "sale" in section 39-26-102 (11), C.R.S. No tax shall apply within any municipality levying a lodging tax.

(2) (a) The county lodging tax shall be collected, administered, and enforced, to the extent feasible, pursuant to section 29-2-106, C.R.S.

(b) The department of revenue shall perform, on an annual basis, an analysis to determine the net incremental cost of such collection, administration, and enforcement. The department of revenue shall retain only the amount determined to be necessary by the cost analysis, and in no event shall that amount exceed three and one-third percent of the amount collected. Such amount retained shall be transmitted to the state treasurer, who shall credit the same to the general fund, and such amount shall be subject to appropriation by the general assembly for the net incremental cost of such collection, administration, and enforcement.

(c) Any person or entity providing rooms or accommodations as included in the definition of "sale" referred to in subsection (1) of this section shall be liable and responsible for the payment of an amount equivalent of up to two percent of all such sales made and shall quarterly, unless otherwise provided by law, make a return to the executive director of the department of revenue for the preceding tax-reporting period and remit an amount equivalent up to the said two percent on such sales to said executive director.

(3) (a) The board of county commissioners may, by resolution, approve a proposal for a county lodging tax; thereupon, such proposal for the county lodging tax shall be referred to the registered electors of the unincorporated areas and the municipalities subject to the lodging tax at a special election held for such purpose. Any such election may be combined with any other special election. On and after January 1, 1989, such tax may only be approved at a general election.

(b) (I) Such proposal shall contain a description of the proposed county lodging tax, including its purposes, and shall state the amount to be imposed and shall describe any municipality within the county which has such a tax and which shall therefore be excluded from the election proposed in paragraph (a) of this subsection (3) and any resulting lodging tax.

(II) If any additional lodging tax or statewide tax on lodging facilities is enacted or levied after January 1, 1987, which in combination with the lodging tax authorized by this section exceeds two percent, the tax under this section shall be reduced by that amount that the total tax exceeds the two percent maximum specified in subsection (1) of this section.

(c) Repealed.

(d) No public moneys from any source shall be expended directly or indirectly to urge electors to vote in favor or against the imposition of the lodging tax. Nothing in this paragraph (d) shall be construed as prohibiting an elected official from expressing his personal opinion concerning the imposition of the lodging tax.

(e) Upon the adoption of the resolution by the board of county commissioners approving such county lodging tax proposal, the county clerk and recorder shall publish the text of such county lodging tax proposal four separate times, a week apart, in a newspaper of

general circulation within the county. The cost of the election shall be initially paid out of the general fund of the county. If the county lodging tax is approved, the general fund of the county shall be reimbursed out of the county lodging tax tourism fund described in paragraph (a) of subsection (4) of this section. The conduct of the election shall conform, so far as practicable, to the general election laws of the state.

(f) (I) If approved by a majority of the registered electors from the municipality or unincorporated area subject to the lodging tax voting thereon, the county lodging tax shall become effective as provided in section 29-2-106 (2), C.R.S.

(II) If a majority of the registered electors voting thereon fail to approve the county lodging tax, the question shall not be submitted again to such electors for a period of one year following the date of said election.

(4) (a) All revenue collected from such county lodging tax, except the amounts retained under subsection (2) of this section, shall be credited to a special fund designated as the county lodging tax tourism fund, hereby created. The fund shall be used only to advertise and market tourism in accordance with paragraphs (b) and (c) of this subsection (4) and to reimburse the general fund of the county for the cost of the election in accordance with paragraph (d) of subsection (3) of this section. No revenue collected from such county lodging tax shall be used for any capital expenditures, with the exception of tourist information centers.

(b) Upon approval of a lodging tax by the electors pursuant to this section, the county commissioners shall select a panel of no less than three citizens to administer the tourism fund. Members of the panel shall be appointed from the tourism industry within the municipalities or unincorporated areas from which the lodging tax is collected. Where there is an established and proven marketing entity within the county formed for the purpose of advertising and marketing tourism, the panel is encouraged to use that entity, and that entity shall provide an accounting to the panel and to the county commissioners.

(c) The panel, to the extent feasible, shall advertise and market tourism for the benefit of those unincorporated areas and municipalities from which the lodging tax originated.

(5) Nothing provided in this section shall in any way prohibit municipalities and counties from cooperating to create countywide uniform lodging taxes with voluntary abandonment of municipal lodging tax ordinances.

(6) Repealed.

Source: **L. 87:** Entire section added, p. 1203, § 1, effective May 6; (3)(a) amended and (3)(c) repealed, p. 1207, §§ 1, 2, effective June 20. **L. 90:** (6) repealed, p. 1453, § 1, effective April 3. **L. 91:** (3)(b)(II) amended, p. 713, § 1, effective March 12. **L. 94:** (2)(b) amended, p. 317, § 1, effective March 29.

ANNOTATION

Law reviews. For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

30-11-107.7. County rental tax on the rental of personal property - procedures - apportionment. (1) As used in this section, unless the context otherwise requires:

(a) "Personal property" means personal property which:

(I) Is not subject to ad valorem tax pursuant to section 39-3-119, C.R.S., or specific ownership tax pursuant to section 42-3-107, C.R.S.; and

(II) The owner thereof is regularly engaged in the sale, rental, or both sale and rental of such personal property and rents such personal property to another individual or corporation, in which the owner does not have any interest whatsoever, for one or more periods of thirty days or less in any calendar year.

(b) "Personal property" does not include any residential real property as defined for property tax purposes in section 39-1-102 (14.5), C.R.S.

(2) (a) In accordance with the procedures set forth in this section, the board of county commissioners of each county may levy a rental tax on personal property which is rented

in such county. The rate of any rental tax levied pursuant to this section shall be not more than one percent of the amount of the rental payment paid or charged to persons who rent such personal property.

(b) The board of county commissioners may, by resolution, approve a rental tax on personal property which is rented in the county. Such resolution shall contain a description of the rental tax on personal property which is rented, state the rate of rental tax to be levied, and specify the effective date of the resolution.

(c) (I) Any rental tax levied pursuant to the provisions of this section shall be collected, administered, and enforced, to the extent feasible, pursuant to section 29-2-106, C.R.S.

(II) The department of revenue shall perform, on an annual basis, an analysis to determine the net incremental cost of such collection, administration, and enforcement. The department of revenue shall retain only the amount determined to be necessary by the cost analysis, and in no event shall that amount exceed three and one-third percent of the amount collected. Such amount retained shall be transmitted to the state treasurer, who shall credit the same to the general fund, and such amount shall be subject to appropriations by the general assembly for the net incremental cost of such collection, administration, and enforcement.

(3) (a) During the month of January of each year, the county treasurer of any county which levies a rental tax pursuant to this section shall calculate, for such county and each political subdivision located within the boundaries of such county, the percentage which the dollar amount of ad valorem taxes levied by each such political entity is of the aggregate dollar amount of ad valorem taxes levied in such county during the preceding calendar year. The percentages so calculated shall be used for the apportionment between the county itself and each political subdivision located within such county of the aggregate amount of rental tax revenue to be distributed by the department of revenue to the county treasurer during the current calendar year.

(b) All rental taxes collected by the county treasurer shall be apportioned, credited, and distributed to the county and to each political subdivision located within such county on the tenth day of each month for all rental taxes collected during the immediately preceding month.

Source: L. 91: Entire section added, p. 1981, § 2, effective April 20. L. 94: (2)(c)(II) amended, p. 317, § 2, effective March 29; (1)(a)(I) amended, p. 2564, § 76, effective January 1, 1995.

30-11-107.9. County tax for public safety improvements - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Public safety improvements" means capital expenditures or operational costs associated with a public safety organization.

(b) "Public safety organization" means a law enforcement agency or office, district attorney's office, judicial district, coroner's office, a fire protection district, fire department, or any other public entity dedicated to providing services related to public safety, public health, or emergency management at the county or local level in the state.

(2) In accordance with the procedures set forth in this section, the board of county commissioners of each county may levy a sales tax for public safety improvements of not more than two percent on the sale of tangible personal property of retail and services taxable in such county pursuant to the provisions of section 39-26-104, C.R.S. All net revenues collected by a county after the payment of the costs of collection, administration, and enforcement to the department of revenue in accordance with subsection (4) of this section shall be used exclusively for public safety improvements.

(3) The board of county commissioners of a county may by resolution approve a proposal for a county public safety improvements tax; thereupon the public safety improvements tax proposal shall be submitted to the registered electors of the county at the next general election. The proposal shall contain a description of the tax including its purposes

and shall state the amount to be imposed. The proposal may include a provision to also seek voter approval to retain and expend all or a portion of the revenues of the tax from district fiscal year spending for purposes of section 20 of article X of the state constitution. The conduct of the election shall conform so far as practicable to the general election laws of the state and with the provisions of said section 20.

(4) (a) The county public safety improvements tax shall be collected, administered, and enforced, to the extent feasible, pursuant to section 29-2-106, C.R.S.

(b) The department of revenue shall perform, on an annual basis, an analysis to determine the net incremental cost of such collection, administration, and enforcement. The department shall retain only the amount determined to be necessary by the cost analysis, and in no event shall that amount exceed three and one-third percent of the amount collected. Such amount retained shall be transmitted to the state treasurer, who shall credit the same to the general fund, and such amount shall be subject to appropriation by the general assembly for the net incremental cost of such collection, administration, and enforcement.

(5) No public moneys from any source shall be expended directly or indirectly to urge electors to vote in favor or against the imposition of a county public safety improvements tax. Nothing in this subsection (5) shall be construed as prohibiting an elected official from expressing his or her personal opinion concerning the imposition of the tax.

Source: L. 2007: Entire section added, p. 1459, § 1, effective August 3.

30-11-108. Assent of electors required - when. The board of county commissioners shall not borrow money for the purposes stated in section 30-11-107, except as provided in section 30-11-107 (1) (dd), without having first submitted the question of such loan to a vote of the electors of the county and without a majority of the voters legally qualified to vote and voting on that question having voted therefor.

Source: G.L. § 447. G.S. § 540. R.S. 08: § 1214. C.L. § 8683. CSA: C. 45, § 30. CRS 53: § 36-1-8. C.R.S. 1963: § 36-1-8. L. 91: Entire section amended, p. 733, § 4, effective May 1.

Cross references: For authority of county to contract debts, see § 6 of art. XI, Colo. Const.

30-11-109. Advertisement for bids on supplies. (1) It is the duty of the board of county commissioners in each county in this state to cause at least one advertisement to be inserted in the official newspaper of its respective county, under the heading of “stationery proposals”, asking for bids for the supplying, for one year, of all books, stationery, records, printing, lithographing, and such other supplies, specifically mentioning and describing them, as are furnished to the several officers of the county, such advertisement to be published not less than twenty nor more than forty days prior to the opening of such bids. Such advertisement may be published any time during the year as the board deems most advisable. The publication of the advertisement may be made in conjunction with any other county or the state, when bids are asked on the supplies specified in this section.

(2) Notwithstanding the provisions of subsection (1) of this section, a board of county commissioners may purchase recycled paper under an existing price agreement between the state purchasing division and a recycled paper supplier when such board has determined that the recycled paper available through such agreement is comparable in cost and quality to the paper which the county proposes to purchase.

Source: L. 1893: p. 103, § 1. R.S. 08: § 1205. C.L. § 8684. CSA: C. 45, § 31. CRS 53: § 36-1-9. C.R.S. 1963: § 36-1-9. L. 71: p. 332, § 1. L. 93: Entire section amended, p. 2137, § 12, effective June 12.

ANNOTATION

A county is not required to ask for bids for the publication of notice of tax sale and delinquent tax list, and this section has no application thereto. *Bd. of Comm'rs v. Wood*, 80 Colo. 279, 250 P. 860 (1926).

The purchase of postage stamps for the use of a county does not come within this section. *People ex rel. Mine Owners' Ass'n v. White*, 81 Colo. 315, 255 P. 453 (1927).

30-11-109.5. Purchases of recycled paper and recycled products. (1) When purchasing any product with public funds, the purchasing agent for the county shall be authorized to purchase products or materials with recycled content that have been source-reduced, that are reusable, or that have been composted, unless one or more of the following conditions exist:

- (a) The product is not available within a reasonable period of time;
- (b) The product fails to meet applicable purchasing rules, including specifications; or
- (c) The product fails to meet federal or state health or safety standards, as set forth in federal or state regulations.

Source: L. 93: Entire section added, p. 2138, § 13, effective June 12.

Cross references: For further provisions concerning the purchase of recycled paper and recycled products, see §§ 13-1-133, 24-103-207, and 25-16.5-102.

30-11-110. State suppliers preferred. It is unlawful for any board of county commissioners of any county to accept any bid or make a purchase of any books, stationery, records, printing, lithographing, or other supplies for any officer of its county, from any person, company, or corporation having its manufactory or principal place of business outside the state of Colorado, when the same can be procured from some person, company, or corporation having its manufactory or principal place of business within this state and at a net cost which shall not exceed the amount for which such books, stationery, records, printing, lithographing, or other supplies can be procured and delivered to them by any person, company, or corporation having its manufactory or principal place of business without the state.

Source: L. 1893: p. 103, § 2. **R.S. 08:** § 1206. **C.L.** § 8685. **CSA:** C. 45, § 32. **CRS 53:** § 36-1-10. **C.R.S. 1963:** § 36-1-10.

30-11-111. Term of contract. No contract for the furnishing of such books, stationery, records, printing, lithographing, or other supplies shall be made for more than one year.

Source: L. 1893: p. 104, § 3. **R.S. 08:** § 1207. **C.L.** § 8686. **CSA:** C. 45, § 33. **CRS 53:** § 36-1-11. **C.R.S. 1963:** § 36-1-11.

ANNOTATION

This section has no application to the leasing of a building for courthouse purposes, the words "or other supplies", meaning other sup-

plies similar to those specified. *Heberer v. Bd. of Comm'rs*, 88 Colo. 159, 293 P. 349 (1930).

30-11-112. Officer cannot contract or purchase. No county officer shall be allowed to contract for or purchase any books, stationery, records, printing, lithographing, or other supplies of any kind for use in his office, and no such supplies shall be procured in any other manner than as provided in sections 30-11-109 to 30-11-112.

Source: L. 1893: p. 104, § 4. **R.S. 08:** § 1208. **C.L.** § 8687. **CSA:** C. 45, § 34. **CRS 53:** § 36-1-12. **C.R.S. 1963:** § 36-1-12.

ANNOTATION

Number of postage stamps question for board. The board of commissioners could not delegate to the county clerk the duty and power to determine how many postage stamps should be purchased for use in the various county offices, the determination of that question is for the board alone. *People ex rel. Mine Owners' Ass'n v. White*, 81 Colo. 315, 255 P. 453 (1927).

But a board of county commissioners having power to purchase postage stamps, has power to ratify their purchase by the county clerk, but the ratification must be with the same formality as is required in case the board itself made the purchase. *Town of Durango v. Pennington*, 8 Colo. 257, 7 P. 14 (1885); *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914); *People ex rel. Mine Owners' Ass'n v. White*, 81 Colo. 315, 255 P. 453 (1927).

And when a county clerk, without authorization, bought postage stamps for the county,

he did so at his peril; if, upon considering his claim for reimbursement, the board of commissioners had refused to ratify his act in making the purchase, and had disallowed his claim, he would have been without redress. *People ex rel. Mine Owners' Ass'n v. White*, 81 Colo. 315, 255 P. 453 (1927).

The right of the county clerk does not depend upon estoppel, the use of the stamps for the benefit of the county gave him no right to enforce his claim on the ground of estoppel. *People ex rel. Mine Owners' Ass'n v. White*, 81 Colo. 315, 255 P. 453 (1927).

The fact that the state got the benefit of the unauthorized purchase did not make the state liable on quantum meruit. *People ex rel. Mine Owners' Ass'n v. White*, 81 Colo. 315, 255 P. 453 (1927).

30-11-113. Commissioners to furnish blank assessment rolls. The boards of county commissioners of their respective counties, at the expense of the county, shall furnish annually and in due season, to the assessor of the county, suitable blank assessment rolls, prepared in accordance with the provisions of law; shall also provide suitable books and stationery for the use of each of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said officers; and also shall provide official seals for each of said officers when the same are required by law.

Source: G.L. § 466. G.S. § 549. R.S. 08: § 1209. C.L. § 8688. CSA: C. 45, § 35. CRS 53: § 36-1-13. C.R.S. 1963: § 36-1-13.

ANNOTATION

Blanks used by a clerk of a district court are not stationery within the meaning of this section and the county is not liable for them. *Bd.*

of County Comm'rs v. Koons, 1 Colo. 160 (1869).

30-11-114. New precincts - change boundaries - reduce number. The board of county commissioners may set off or organize new precincts, change the boundaries, or reduce the number of those already organized as the public good from time to time requires.

Source: G.L. § 458. L. 1883: p. 121, § 1. G.S. § 541. R.S. 08: § 1218. C.L. § 8695. CSA: C. 45, § 42. CRS 53: § 36-1-14. C.R.S. 1963: § 36-1-14.

ANNOTATION

This section does not conflict with any provision of the constitution. *Bd. of County*

Comm'rs v. Smith, 22 Colo. 534, 45 P. 357 (1896).

30-11-115. Board may appropriate for expositions. The board of county commissioners of any county in this state may make such appropriation as it may seem proper for the purpose of enabling such county to secure a proper representation of its interests in exhibits and expositions held in Colorado.

Source: L. 1883: p. 244, § 2. G.S. § 539. R.S. 08: § 1211. C.L. § 8689. CSA: C. 45, § 36. CRS 53: § 36-1-15. C.R.S. 1963: § 36-1-15.

30-11-116. Appropriations for advertising or marketing. The boards of county commissioners of the several counties within the state of Colorado are authorized to appropriate money from the county general fund for the purpose of advertising or marketing the county.

Source: L. 07: p. 320, § 1. R.S. 08: § 1212. C.L. § 8690. CSA: C. 45, § 37. L. 51: p. 297, § 10. CRS 53: § 36-1-16. C.R.S. 1963: § 36-1-16. L. 2008: Entire section amended, p. 5, § 1, effective July 1.

30-11-117. Commissioners to fill vacancies in county offices. In case a vacancy occurs in any county office, or in any precinct office in any county in this state, by reason of death, resignation, removal, or otherwise, the board of county commissioners of such county has power to fill such vacancy by appointment, subject to section 9 of article XIV of the state constitution, until an election can be held as provided by law.

Source: G.L. § 474. G.S. § 553. R.S. 08: § 1240. C.L. § 8716. CSA: C. 45, § 63. CRS 53: § 36-1-17. C.R.S. 1963: § 36-1-17.

ANNOTATION

One appointed to fill the vacant and unexpired term of a public office holds precisely as his predecessor would have done had the vacancy not occurred. *People ex rel. Callaway v. De Guelle*, 47 Colo. 13, 105 P. 1110 (1909).

And where a sheriff incumbent was reelected, but failed to qualify for the second term and died before his first term expired, one appointed by the board of county commissioners to the vacancy, held only to the second Tuesday of the succeeding January, the day ap-

pointed by law for the commencement of the second term of his predecessor, even though by express terms, his appointment was "until the next general election"; that upon the second Tuesday of the succeeding January there was a vacancy, and one then appointed by the county commissioners to fill it was entitled to the office until the next general election. *People ex rel. Callaway v. De Guelle*, 47 Colo. 13, 105 P. 1110 (1909).

30-11-118. County attorney - county collector. The board of county commissioners of each county of the state, when the interests of the county require it, may employ an attorney, but the person appointed shall be a member of the bar of the supreme court of this state and at least twenty-five years of age. The board may also, when the business of the county requires it, appoint a county collector, whose duty it is to collect license moneys and other special dues of said county; such collector shall receive such compensation as may be allowed by the board of county commissioners.

Source: G.L. § 565. G.S. § 558. L. 1887: p. 243, § 3. R.S. 08: § 1241. C.L. § 8717. CSA: C. 45, § 64. CRS 53: § 36-1-18. C.R.S. 1963: § 36-1-18.

ANNOTATION

The commissioners are the judges of when the interests of a county require the employment of an attorney, and until it is made to appear that their judgment in this respect has been exercised unlawfully and corruptly, it will not be interfered with by the courts. *Roberts v. People*, 9 Colo. 458, 13 P. 630 (1886); *Hurd v. Hamill*, 10 Colo. 174, 14 P. 126 (1887); *Morris v. Bd. of Comm'rs*, 25 Colo. App. 416, 139 P. 582 (1914).

A county attorney is employed primarily as the legal advisor of the county commissioners in whose discretion reposes the power of appointment. *Medberry v. People*, 107 Colo. 15, 108 P.2d 243 (1940).

In certain matters he advises other county administrative officers and appears for the county in cases involving dependent, neglected and delinquent children, in lunacy inquest and, when directed by the county commissioners, in

civil litigation to which the county is a party or in which it is interested. *Medberry v. People*, 107 Colo. 15, 108 P.2d 243 (1940).

No recovery for unauthorized services. It has been held that a county attorney should not be allowed to recover for services rendered to county officials other than the board of county commissioners, unless such other officials are first authorized by the commissioners to employ or consult an attorney. *Morris v. Bd. of Comm'rs*, 25 Colo. App. 416, 139 P. 582 (1914).

However, the services of an attorney for the county being necessary, his employment by a majority of the board, without meeting, may be afterwards ratified at a meeting duly held. *Morris v. Bd. of Comm'rs*, 25 Colo. App. 416, 139 P. 582 (1914).

He has no part whatsoever in the initiation or conduct of ordinary criminal proceedings which, in Colorado, are prosecuted by the district attorney in the name of the people of the state and not of the county. *Medberry v. People*, 107 Colo. 15, 108 P.2d 243 (1940).

And the interest of the county in the expense incident to a criminal proceeding is not such that will disqualify a county attorney from defending one charged with crime and he is not chargeable with unethical conduct, and in defending the accused at least where the county has no interest beyond that ordinarily attaining, a county attorney does not represent conflicting interests nor serve two masters. *Medberry v. People*, 107 Colo. 15, 108 P.2d 243 (1940).

30-11-119. New bond for officers, when. When the board of county commissioners of any county in this state deems the bond given by the sheriff or other officer of the county insufficient, or when in its opinion the sureties on said bond are insolvent or permanently removed from the county, or when it for any other reason considers said bond insufficient for the public security, it is lawful for the board to require of said sheriff or other officer a new bond, with such sureties and so conditioned as required by law in the first instance.

Source: G.L. § 566. G.S. § 559. R.S. 08: § 1242. C.L. § 8718. CSA: C. 45, § 65. CRS 53: § 36-1-19. C.R.S. 1963: § 36-1-19.

ANNOTATION

Jurisdiction to require new bond. Without having first made a finding affecting the sufficiency of the original official bond of a county officer, the board of county commissioners has

no jurisdiction to require him to file a new one. *People ex rel. Carr v. Brown*, 23 Colo. 425, 48 P. 661 (1897).

30-11-120. Failure to file bond - office vacant. In case any sheriff or other officer refuses or neglects, for a period longer than thirty days after receiving notice, to give a new bond as required, it is lawful for the board of county commissioners to declare the office vacant and appoint some other person to fill the vacancy, who shall hold the office until a successor is elected or appointed.

Source: G.L. § 567. G.S. § 560. R.S. 08: § 1243. C.L. § 8719. CSA: C. 45, § 66. CRS 53: § 36-1-20. C.R.S. 1963: § 36-1-20.

30-11-121. General accounting records. The board of county commissioners is responsible for the maintenance of the general accounting records of the county. It is the duty of the county treasurer, county clerk and recorder, county sheriff, and county assessor to furnish, as directed by the board of county commissioners, copies of any and all accounting, administrative, financial, recorded, or assessment records to a person appointed by the board of county commissioners for the purpose of utilizing computer or other record-keeping facilities. Such person shall serve at the pleasure of the board of county commissioners.

Source: L. 69: p. 226, § 1. C.R.S. 1963: § 36-1-21. L. 75: Entire section amended, p. 992, § 1, effective June 4.

30-11-122. Conservation trust fund authorized. Each county in this state may create a conservation trust fund as provided in section 29-21-101, C.R.S.

Source: L. 74: Entire section added, p. 433, § 3, effective July 1. **C.R.S. 1963:** § 36-1-22.

30-11-123. Legislative declaration - counties - new business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitations. (1) (a) The general assembly hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the attraction of new private enterprise as well as the retention and expansion of existing private enterprise; that incentives are often necessary in order to attract private enterprise; and that providing such incentives stimulates economic development in the state and results in the creation and maintenance of new jobs.

(b) Notwithstanding any law to the contrary, any county may negotiate for an incentive payment or credit with any taxpayer who establishes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., in the county. In no instance shall any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the county upon the taxable personal property located at or within the new business facility and used in connection with the operation of the new business facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; except that the term of any agreement made or renewed on or after June 3, 2002, may extend to as many as ten years, including the term of any original agreement being renewed.

(2) Notwithstanding any law to the contrary, any county may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section 39-30-105 (7) (c), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., and that is located in the county. In no instance shall any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the county upon the taxable personal property directly attributable to the expansion, located at or within the expanded facility, and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; except that the terms of any agreement made or renewed on or after June 3, 2002, may extend to as many as ten years, including the term of any original agreement being renewed.

(3) For purposes of this section, "county" means any county or city and county.

(4) (Deleted by amendment, L. 94, p. 2833, § 3, effective January 1, 1995.)

(5) Any county which negotiates any agreement pursuant to the provisions of this section shall inform any municipality and any school district in which a new business facility would be located or an expanded business facility is located, whichever is applicable, of such negotiations.

(6) Any county may adjust the amount of its tax levy authorized pursuant to the provisions of section 29-1-301, C.R.S., or pursuant to a county home rule charter, whichever is applicable, by an additional amount which does not exceed the total amount of annual incentive payments or credits made by such county in accordance with agreements negotiated pursuant to the provisions of this section or section 39-30-107.5, C.R.S.

Source: L. 90: Entire section added, p. 1454, § 1, effective April 24. **L. 91:** (1) amended and (6) added, p. 723, § 1, effective May 24. **L. 94:** (1)(b), (2), (4), and (6) amended, p. 2833, § 3, effective January 1, 1995. **L. 2002:** (1)(b) and (2) amended, p. 1120, § 3, effective June 3. **L. 2007:** (1)(b) and (2) amended, p. 350, § 4, effective August 3. **L. 2012:** (1)(b) and (2) amended, (HB 12-1029), ch. 61, p. 219, § 3, effective August 8.

Cross references: (1) For further provisions concerning the Colorado business incentive fund, see article 46.5 of title 24.

(2) In 2012, subsections (1)(b) and (2) were amended by the "Save Colorado Jobs Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 61, Session Laws of Colorado 2012.

30-11-124. Fire planning authority. (1) The board of county commissioners of each county in the state, subject to the requirements of section 25-7-123, C.R.S., may prepare,

adopt, and implement a county fire management plan that details individual county policies on fire management for prescribed burns, fuels management, or natural ignition burns on lands owned by the state or county. Such plans shall be developed in coordination with the county sheriff, the Colorado state forest service, and the appropriate state and local governmental entities. All interested parties shall have the opportunity to comment on the plan prior to its adoption and implementation.

(2) County fire management plans created pursuant to subsection (1) of this section shall:

(a) Clearly define appropriate responses in order to mitigate immediate threats to public safety; and

(b) Set forth the conditions under which prescribed or natural ignition fires shall be managed.

(3) Any county that adopts and adheres to a county fire management plan shall be accorded liability protection pursuant to article 10 of title 24, C.R.S.

(4) Federal government agencies, subject to the provisions of sections 25-7-106 (7) and (8) and 25-7-114.7 (2) (a) (III), C.R.S., and private landowners may enter into memoranda of understanding with the board of county commissioners to include public or private lands that are within the boundaries of the county under the county fire management plan. Counties may purchase an indemnification insurance policy and private landowners who enter into memoranda of understanding with the board shall have the opportunity to opt into such policy.

(5) Nothing in this section shall infringe upon or otherwise affect the ability of agricultural producers to conduct burning on their property.

Source: L. 2000: Entire section added, p. 1304, § 8, effective May 26.

30-11-125. Licensing program for building contractors - contents of program - requirements - exceptions - definitions. (1) As used in this section, unless the context otherwise requires:

(a) (I) “Building contractor” means a building contractor who for compensation directs, supervises, or undertakes any work for which a county building permit is required. A county licensing program established in accordance with the provisions of this section shall exclude from the definition of “building contractor” any person whose sole function in the work for which a county building permit is required is to perform labor under the supervision or direction of a building contractor.

(II) “Building contractor” shall not include an electrician required to be licensed by the state pursuant to article 23 of title 12, C.R.S., or a plumber required to be licensed by the state pursuant to article 58 of title 12, C.R.S.

(b) “County” means any county or city and county in the state.

(c) “Municipality” means any home rule or statutory city or town in the state.

(d) “Person” means any individual, corporation, limited liability company, partnership, association, or other legal entity.

(2) Subject to the requirements of this section, any county that has adopted a building code may establish a licensing program to require a person who engages in the business of being a building contractor within the unincorporated areas of the county to obtain a license from the county prior to engaging in the business. The county may develop the licensing program in accordance with the requirements of this section, and any such program may include one or more of the following:

(a) Procedures that a building contractor would follow in order to obtain or renew a license, including the submission of any documentation or information as may be required by the county;

(b) A requirement that the building contractor achieve a passing grade on a nationally recognized examination promulgated by the international code council that is commonly used and accepted in the industry;

(c) Specification of the duration of the license issued by the county;

(d) Subject to the requirements of subsection (3) of this section, the imposition of a reasonable fee to be charged by the county to a building contractor to cover the costs of any

testing required to be performed by the county, the processing of the application, or any other costs incurred by the county in connection with the issuance or renewal of a license; or

(e) Grounds for the revocation or suspension of a license issued by the county, grounds for the revocation or suspension of a building permit issued for a project for which the building contractor is found not to be in compliance with the county's licensing requirements, or grounds for the imposition of any lesser sanction, which shall be based on objective standards and criteria developed from the county building code, and procedures to be followed by the county in carrying out the revocation, suspension, or other sanction based upon such grounds, including a process for appealing any sanction so imposed.

(3) Any county that establishes a licensing program pursuant to this section shall issue a license to a building contractor holding a valid license issued by another county or municipality in the state without requiring the building contractor to take or achieve a passing grade on any examination conducted by the county if the license issued by such other county or municipality required the building contractor to achieve a passing grade on a nationally recognized examination promulgated by the international code council commonly used and accepted in the industry. In the case of a building contractor holding a valid license issued by another county or municipality in the state, the fee charged by a secondary county for issuance or renewal of a license in accordance with the requirements of this section shall be reasonable and limited to costs incurred by the secondary county in processing the application and otherwise administering the issuance or renewal of a license required by this section.

(4) If a building contractor applying for a license complies with the requirements for obtaining a license established by the county, the county shall issue a provisional license to the building contractor no later than seven business days after the building contractor has submitted a complete application. Notwithstanding the provisions of subsection (5) of this section, any failure on the part of the county to issue a nonprovisional license within forty-five days after submission of a complete application to a building contractor who has otherwise satisfied all other requirements for obtaining a license shall not preclude the building contractor from engaging in the business of being a building contractor and applying for a building permit for unincorporated areas of the county.

(5) Except as otherwise provided in subsection (4) of this section, no person shall engage in the business of being a building contractor within the unincorporated areas of any county that has adopted a licensing program created pursuant to this section unless the person holds a valid license issued or recognized by the county in accordance with the requirements of this section.

(6) Notwithstanding any other provision of this section:

(a) The provisions of this section shall apply to any licensing program operated or administered by a county that is in existence as of August 3, 2007. Any licensing program operated or administered by a county as of August 3, 2007, that satisfies or is amended to satisfy the requirements of this section is hereby ratified as compliant with the requirements of this section and need not be reestablished by the county.

(b) Nothing in this section shall be construed to require any individual to hold a license to perform repair or maintenance work on his or her own property, nor shall it prevent a person from employing an individual on either a full-time or a part-time basis to perform repair or maintenance work on his or her own property who is not licensed under the provisions of this section.

Source: L. 2007: Entire section added, p. 392, § 1, effective August 3.

PART 2

CITY AND COUNTY OF DENVER

30-11-201. Merger not to affect pending actions. No action or proceeding to which any municipality merged into the city and county of Denver is a party or in which it is in any way interested shall abate by reason of such merger, but the same shall survive and be

prosecuted to a conclusion under its title as borne by it at the time of such merger; and any judgment or decree entered therein shall be enforceable by or against the city and county of Denver to the full extent of the interest or liability of the said municipality so merged, the same as if said city and county of Denver were expressly made a party thereto. No right or cause of action by or against any such municipality so merged shall be lost or extinguished by reason of such merger, and the same shall be thereafter enforced and prosecuted by or against the city and county of Denver.

Source: L. 01: p. 167, § 1. R.S. 08: § 2080. C.L. § 8969. CSA: C. 53, § 1. CRS 53: § 36-18-1. C.R.S. 1963: § 36-18-1.

30-11-202. Laws applicable. (Repealed)

Source: L. 01: p. 168, § 2. R.S. 08: § 2081. C.L. § 8970. CSA: C. 53, § 2. CRS 53: § 36-18-2. C.R.S. 1963: § 36-18-2. L. 2003: Entire section repealed, p. 914, § 22, effective August 6.

30-11-203. Records concerning charter amendment. It is the duty of the secretary of state to carefully preserve all certified charters and charter amendments and measures, and the record of votes thereon, that come to his office under the operation of the constitutional amendment creating the city and county of Denver. He shall publish them in the next ensuing volume of the session laws of the state. The originals, during office hours, shall be open to the inspection of the public.

Source: L. 01: p. 168, § 4. R.S. 08: § 2082. C.L. § 8971. CSA: C. 53, § 3. CRS 53: § 36-18-3. C.R.S. 1963: § 36-18-3.

30-11-204. Channel of Platte river - improvement. The city council of the city and county of Denver is authorized to improve, change, straighten, widen, narrow, deepen, or extend the channel of the South Platte river within the city and county of Denver.

Source: L. 15: p. 198, § 1. C.L. § 8974. CSA: C. 53, § 6. CRS 53: § 36-18-6. C.R.S. 1963: § 36-18-6.

ANNOTATION

In determining its policy and character of construction work to be done under this section, the city acted in its governmental capacity; the power so to act is expressly conferred upon the city council, and this authority it could not delegate. *City & County of Denver v. Talarico*, 99 Colo. 178, 61 P.2d 1 (1936).

But in the performance of the ministerial work it is not acting in a governmental capacity and will be held liable for damages resulting from its negligence in the construction and maintenance of the works erected in carrying out the policy adopted. *City & County of Denver v. Talarico*, 99 Colo. 178, 61 P.2d 1 (1936).

And in an action against a municipality for damages occasioned by the flooding of plaintiff's lands and crops, resulting from the city's negligence in making and leaving an excavation in an embankment through which the flood waters reached his land, it was held that the evidence supported a finding that the excavation

was the proximate cause of the damage. *City & County of Denver v. Talarico*, 99 Colo. 178, 61 P.2d 1 (1936).

Ordinary care required. In an action for damages to land and crops resulting from the alleged negligence of a city, if the latter failed to use ordinary care in maintaining an embankment constructed in line with its policy for flood water control, it cannot escape liability by imputing the cause of damage to an act of God. *City & County of Denver v. Talarico*, 99 Colo. 178, 61 P.2d 1 (1936).

City must see that adjacent land not subject to greater hazard. Where city under legislative authority makes improvements in and along the channel of a natural stream, in the absence of contract, it owes no duty to adjacent landowners other than to see that in the plan of the improvement and its maintenance or failure to maintain, such land is not subjected to a greater burden or hazard from floods than that to which it would have been exposed had the

stream been left in its natural state. City & County of Denver v. Pilo, 102 Colo. 326, 79 P.2d 270 (1938).

30-11-205. City to control channel. The width, depth, course, and dimensions of said channel shall be as established by ordinance duly enacted by the council of the city and county of Denver, and said city and county has the power to acquire by purchase or condemnation all lands necessary to improve, straighten, widen, narrow, deepen, or extend said channel, and the public works department has exclusive control of the construction of said improvement.

Source: L. 15: p. 198, § 2. C.L. § 8975. CSA: C. 53, § 7. CRS 53: § 36-18-7. C.R.S. 1963: § 36-18-7.

30-11-206. Improvement of channel beyond city limits. The city and county of Denver is empowered to extend and improve said channel beyond and outside the limits of the city and county of Denver when in the opinion of the council of said city and county the extension and improvement of said channel beyond the boundary line of said city and county shall more effectually and advantageously accomplish the purpose and object of sections 30-11-204 to 30-11-207, and cause said improvement to be more beneficial to the inhabitants of the city and county of Denver and promote and protect the general health and general welfare.

Source: L. 15: p. 199, § 3. C.L. § 8976. CSA: C. 53, § 8. CRS 53: § 36-18-8. C.R.S. 1963: § 36-18-8.

30-11-207. Obstructions or pollutions. The city council of the city and county of Denver may enact and adopt ordinances for the purpose of preventing and removing obstructions in said channel or encroachments upon the same or polluting the waters thereof; and to in every manner control, regulate, and protect said property when improved in whole or in part, and provide for a penalty for the violation of any of said ordinances.

Source: L. 15: p. 199, § 4. C.L. § 8977. CSA: C. 53, § 9. CRS 53: § 36-18-9. C.R.S. 1963: § 36-18-9.

30-11-208. Contract - teleconferencing facilities and services. The city and county of Denver may enter into a contract with the state telecommunications director pursuant to the provisions of section 24-37.5-503, C.R.S., for the providing of teleconferencing facilities and services between the city and county of Denver and any other county or state agency to be used for teleconferencing of hearings relating to any person in the custody of the city and county of Denver.

Source: L. 85: Entire section added, p. 807, § 3, effective May 23. L. 2008: Entire section amended, p. 1131, § 17, effective May 22.

Cross references: For the authority of the board of county commissioners to enter into a contract for teleconferencing facilities and services, see § 30-11-107 (1)(x).

PART 3

OIL, GAS, AND MINERAL RIGHTS

30-11-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Landfill-generated methane gas" means those gases resulting from the biological decomposition of landfilled solid wastes, including methane, carbon dioxide, hydrogen, and traces of other gases, and shall be referred to in this part 3 as "landfill gas".

(1.5) "Oil and gas" means oil, gas, casinghead gas, condensate, and hydrocarbons or any one or more of them.

(2) "Real estate owned by a county" and "county lands" means any real estate acquired and owned by a county under the laws relating to taxation or otherwise.

Source: L. 49: p. 328, § 5. CSA: C. 45, § 25(5). CRS 53: § 36-11-5. C.R.S. 1963: § 36-11-5. L. 80: (1) amended and (1.5) added, p. 651, §§ 1, 2, effective July 1.

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

ANNOTATION

Placement of statute immaterial. That the revisor of statutes placed a statute relating to the authority of counties to reserve mineral rights in county lands sold under the title "County Powers and Functions" rather than under "taxation" is immaterial where the statute provides that the term county lands means any real estate acquired and owned by a county under the laws

relating to taxation or otherwise. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

Section 30-11-305 expressly governs lands acquired by a county on account of nonpayment of taxes as evidenced by this section. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

30-11-302. Oil, gas, and mineral rights - reservation of - sale. (1) In any sale of county lands made by any county acting through its board of county commissioners, a valid reservation of oil and gas and other minerals in such lands may be made when in the opinion of the board of county commissioners it is deemed to be for the best interest of the county. Oil and gas and other mineral rights or any of them thus reserved by a county upon the sale of such real estate may be sold by order of the board of county commissioners at public sale to the highest and best bidder after four weeks' prior notice by publication two times in a newspaper of general circulation in the county in which the land is situated, said notice to describe the oil and gas or other mineral rights to be sold, the location of the land involved, and the date, time, and place of such sale; but a copy of said notice shall be mailed, postage prepaid, by the board of county commissioners to the owner of the surface at the time of such notice as shown by the records in the office of the county assessor of the county in which such lands are situated at the last known address of such owner as shown by said books of the county assessor, and that a copy of said notice shall be mailed, postage prepaid, by the board of county commissioners to the person in possession of the surface.

(2) In the sale of reserved oil and gas rights under any tract of land, the number of acres contained in any one parcel or unit of sale of such rights shall not exceed the total number of acres of such surface land sold by the county to the purchaser thereof at the time of reservation therefrom of the oil and gas rights thus offered for sale. Nothing contained in this section shall prevent a county from selling any number of such units or parcels at any public sale. The board of county commissioners has the right to reject any and all bids.

(3) Mineral rights, other than oil and gas, reserved as provided in this section may be leased for exploration, development, and production purposes upon such terms and conditions as may be prescribed and contracted by the board of county commissioners in the exercise of its best judgment and as such board deems to be for the best interests of the county. Any such lease of mineral rights, other than oil and gas, shall be for a term not to exceed twenty-five years and as long thereafter as such minerals are produced. Leases of any such mineral rights made or entered into by the board in conformity with the provisions of this section prior to February 25, 1955, are hereby confirmed, validated, and declared to be legal and valid insofar as the authority of any such board is concerned.

Source: L. 49: p. 326, § 1. CSA: C. 45, § 25(1). CRS 53: § 36-11-1. L. 55: p. 255, § 1. C.R.S. 1963: § 36-11-1.

ANNOTATION

Law reviews. For article, "Highlights of the 1955 Colorado Legislative Session — Mining", see 28 Rocky Mt. L. Rev. 56 (1955).

Placement of statute immaterial. That the revisor of statutes placed a statute relating to the authority of counties to reserve mineral rights in county lands sold under the title "County Powers and Functions" rather than under "taxation" is immaterial where the statute provides that the term county lands means any real estate acquired and owned by a county under the laws relating to taxation or otherwise. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

The fact that present statutes permit a county to reserve minerals only means that it may reserve and sell the minerals separately. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

Property sold subject to lease. All county-owned property not needed for the use of a county should be sold promptly and as soon as lack of need is apparent, and the fact that it is subject to a valid lease or leases does not preclude a sale; the property surface, minerals, or both, can be sold subject to the terms of the lease, which lease may add to or detract from the

value of the property. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

To permit a county to become the owner of and hold at its pleasure unlimited nontaxable real estate, would be to deprive the state, school district, and others tax revenue and by such action cripple other governmental agencies dependent for their existence upon tax revenue. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

A deed of land by a county reserving to the county the minerals therein, through invalid when made, but validated by § 30-11-305, precludes the grantee from asserting ownership of the minerals which by the validated deed are expressly reserved to the county, and a decree quieting title to the minerals in the county is correct. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

Purchaser took subject to reserve rights. Where land acquired by a county through a tax sale is thereafter sold by the county, reserving the mineral estate, the purchaser of the surface, having prior knowledge that the minerals were to be reserved, received that which he intended to acquire and for which he paid. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

30-11-303. Oil and gas rights - leases - royalties. (1) Any county acting by its board of county commissioners may lease any real estate or any interest therein owned by the county for oil and gas exploration, development, and production purposes upon such terms and conditions as may be prescribed and contracted by the board of county commissioners in the exercise of its best judgment, and as such board deems to be for the best interests of the county.

(2) Any such lease of oil and gas rights shall be for a term not to exceed five years and as long thereafter as oil or gas is produced and shall provide for a royalty of not less than twelve and one-half percent of all oil and gas produced, saved, and marketed, or the equivalent market value thereof, which royalty may be reduced proportionately under appropriate provision in such lease if the interest of the county is less than a full interest in the land or oil and gas rights in the land described in such lease.

(3) When, in the opinion of the board of county commissioners and because of the size, shape, or current use of any tract of county real estate, the public interest so requires, any lease of such tract may provide that no drilling shall be conducted on the land covered thereby, in which case such lease shall be for a term not to exceed ten years and so long thereafter as the county may share in royalties payable on account of production of oil or gas from lands adjacent to such tract of county land so leased.

Source: L. 49: p. 327, § 2. CSA: C. 45, § 25(2). L. 53: p. 218, § 1. CRS 53: § 36-11-2. C.R.S. 1963: § 36-11-2.

30-11-304. Agreements to pool lands for production purposes. When deemed by the board of county commissioners to be in the best interest of the county, any county acting by its board of county commissioners may enter into any unit agreement providing for the pooling or consolidation of acreage covered by any oil and gas lease executed by such county with other acreage for oil and gas exploration, development, and production purposes and providing for the apportionment or allocation of royalties among the separate

tracts of land included in such unit agreement on an acreage or other equitable basis, and may by such agreement, with the consent of its lessee, change any and all of the provisions of any lease issued by such county including the term of years for which such lease was originally granted in order to conform such lease to the terms and provisions of such unit agreement and to facilitate the efficient and economic production of oil and gas from the unit lands.

Source: L. 49: p. 327, § 3. CSA: C. 45, § 25(3). CRS 53: § 36-11-3. C.R.S. 1963: § 36-11-3.

30-11-305. Prior agreements validated. All reservations of oil and gas and other mineral rights and sales of previously reserved oil and gas and other mineral rights in county lands made or entered into by any county prior to May 20, 1949, acting by its board of county commissioners, all leases of oil and gas or rights, and all unit agreements relating to or dealing with oil and gas and containing provisions similar to those set forth in section 30-11-304, affecting county lands, made or entered into by any county prior to May 20, 1949, acting by its board of county commissioners are hereby confirmed, validated, and declared to be legal and valid in all respects.

Source: L. 49: p. 327, § 4. CSA: C. 45, § 25(4). CRS 53: § 36-11-4. C.R.S. 1963: § 36-11-4.

ANNOTATION

Reservation subsequently validated. Where a county sold land acquired by tax sale and reserved the minerals therein without authority at the time of such sale, such reservation where thereafter validated by this section. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

This validating act was intended by the general assembly to apply to sales of surface rights, and it validates such sales unless subject to some constitutional objection. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

No impairment of vested rights. Generally speaking, the general assembly may, within the constitutional limits of its power, cure formal defects in deeds and other written instruments, and give them the same validity as though they had been properly executed, since such legislation, even though it may operate to cut off a right of action that would otherwise exist, is not considered as depriving anyone of vested rights, but rather as carrying into effect the intent of the parties. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

The general assembly may validate retrospectively any proceeding which it might have authorized in advance, or may cure by subsequent statute what it might have dispensed with altogether. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

A curative or validating statute is one whose purpose is to cure past errors, omissions, and neglects, and thus to make valid what, before the enactment of the statute, was invalid. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

But a validating statute grants no indulgence for the correction of future errors and neglects. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

And § 11 of art. II, Colo. Const., does not apply, and was not intended to apply, to acts validating contracts theretofore made on behalf of the state. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

Quieting title decree correct. Where a deed of land by a county reserving to the county the minerals therein, though invalid when made, had been validated by this section, precluded the grantee from asserting ownership of the minerals which by the validated deed were expressly reserved to the county, and a decree quieting title to the minerals in the county was correct. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

This section expressly governs lands acquired by a county on account of nonpayment of taxes as evidenced by § 30-11-301. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

30-11-306. Legislative declaration concerning landfill gas. The general assembly hereby declares that landfill gas constitutes a hazard to the health, welfare, and safety of the people of this state, whether such gas has accumulated as a result of a public or private

landfill operation, and that the extraction of landfill gas will ameliorate this dangerous condition, and further declares that the development of landfill gas will provide a valuable, alternate energy resource to the citizens of this state. In order to diminish this hazard and utilize this energy resource, the powers of counties are hereby expanded to authorize landfill gas exploration, development, and production; the financing thereof; the marketing and sale of landfill gas to any public or private person or entity; and the county use thereof for any purpose.

Source: L. 80: Entire section added, p. 651, § 3, effective July 1.

30-11-307. County authority relating to landfill gas. (1) To accomplish the purposes specified in section 30-11-306, counties are granted the following powers:

(a) To acquire, hold, use, transfer, and convey any real property or any interest therein for purposes of landfill gas exploration, production, and development;

(b) To engage in any and all activities respecting the exploration, development, production, distribution, marketing, and sale of landfill gas to any person or public or private entity, or for county uses;

(c) (I) To acquire by gift, purchase, or condemnation necessary easements and rights-of-way, for ingress and egress and for the installation of facilities related to collection and distribution of landfill gas; except that the power of condemnation granted in this paragraph (c) shall not extend to acquisition of landfill gas in place nor shall such power be available to a county until the county has entered into a contract with the owner of such landfill gas for the development, extraction, and purchase of such landfill gas, and except that such condemnation shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use or upon which landfill gas abatement or recovery facilities have been placed in operation and shall be limited to the maximum reasonable width or area necessary to install, operate, and maintain such rights-of-way, ingress and egress, and collection and distribution facilities.

(II) Any interest in real property acquired by condemnation pursuant to this paragraph (c) shall terminate upon the completion of use of such real property, or any interest therein, for landfill gas operations, and any such condemnation shall be in the manner provided in part 1 of article 6 of title 38, C.R.S.

(d) To enter into contracts, including intergovernmental contracts, and to perform all acts necessary to produce, distribute, and market landfill gas;

(e) To issue general obligation bonds, after approval of the qualified electors of the county, for purposes of financing the exploration, development, production, distribution, and marketing of landfill gas;

(f) To issue revenue bonds authorized by action of the board of county commissioners, without the approval of the qualified electors of the county, for purposes of financing the exploration, development, production, distribution, and marketing of landfill gas. Such revenue bonds shall be issued in the manner provided in part 4 of article 35 of title 31, C.R.S., for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the county, in its discretion, shall determine. Such revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the county within the meaning of any provision or limitation of the state constitution or statutes, and shall not constitute nor give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and such revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 80: Entire section added, p. 652, § 3, effective July 1.

Cross references: For municipal provisions concerning landfill gas, see §§ 31-15-715 and 31-15-716.

PART 4

LAW ENFORCEMENT AUTHORITIES

30-11-401. Short title. This part 4 shall be known and may be cited as the “Law Enforcement Authority Act of 1969”.

Source: L. 69: p. 239, § 2. C.R.S. 1963: § 36-27-2.

30-11-402. Legislative declaration. It is the intent of the general assembly in the enactment of this part 4 to provide an alternative and additional means to provide law enforcement for the citizens of this state, especially those residing in developed or developing unincorporated areas of counties, to combat the rising crime rate therein, and to better assist police and other law enforcement agencies in the prevention of crime and in the detection and apprehension of criminal offenders.

Source: L. 69: p. 239, § 1. C.R.S. 1963: § 36-27-1. L. 71: p. 346, § 1.

30-11-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) “Area” or “territory” means all areas of land in a county included or proposed to be included in a law enforcement authority, which may consist of all or a portion of the unincorporated area of the county but may not include any single tract or parcel of property containing twenty acres or more without the written consent of the owner thereof, unless such tract or parcel would be entirely within the boundaries of an area.

(2) (a) (I) An “elector” of an authority means a person who, at the designated time or event, is registered to vote in general elections in this state; and

(II) Who has been a resident of the authority or the area to be included in the authority for not less than thirty days; or

(III) Who or whose spouse owns taxable real or personal property within the authority or the area to be included within the authority, whether or not said person resides within the authority.

(b) A person who is obligated to pay general taxes under a contract to purchase real property within the authority shall be considered an owner within the meaning of this subsection (2). The ownership of property on which a specific ownership tax is paid pursuant to law shall not qualify a person as an elector. Taxable property shall mean real or personal property subject to general ad valorem taxes.

(c) Registration pursuant to the general election laws or any other laws shall not be required.

(3) “Law enforcement authority”, referred to in this part 4 as an “authority”, means a taxing unit which may be created by a county in this state for the purpose of providing additional law enforcement by the county sheriff to the residents of the developed or developing unincorporated area of the county.

(4) “Publication”, when no manner of publication is specified, means publication once a week for three consecutive weeks in a newspaper of general circulation in the area of the authority. It shall not be necessary that publication be made on the same day of the week in each of the three consecutive weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the day of the first publication and the day of the last publication, and publication shall be complete on the day of the last publication.

Source: L. 69: p. 239, § 3. C.R.S. 1963: § 36-27-3. L. 70: p. 144, § 17. L. 71: pp. 337, 346, 348, §§ 4, 2, 3, 9. L. 96: (2)(a) amended, p. 1767, § 59, effective July 1.

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

30-11-404. Organization of authority. (1) The board of county commissioners of any county in this state may by resolution create an authority pursuant to the provisions of this part 4, which authority shall be a political subdivision of this state.

(2) No resolution creating an authority under this part 4 shall be adopted by a board of county commissioners unless prior notice of such action, including the date, time, and place of meeting of said board, shall be made by publication, and an opportunity to be heard in person or by counsel shall be afforded to persons desiring to appear.

(3) The resolution creating such an authority shall contain the following:

(a) The name of the proposed district, which shall include the name of the county and the words "law enforcement authority";

(b) A general description of the territory included in the authority, with such certainty to enable a property owner to determine whether or not his property is within the authority; and

(c) Where applicable, the specific powers and duties of the authority, as provided in this part 4, but if the authority is authorized to exercise all such powers and duties under this part 4, only a general statement to this effect need be included.

(4) The resolution creating any such authority shall not take effect until thirty days following the canvass of votes cast at the election conducted pursuant to section 30-11-405.

(5) On the effective date of such resolution, the board of county commissioners shall, ex officio, constitute the governing board of the authority and shall exercise the powers and duties prescribed in this part 4 and in the resolution.

Source: L. 69: p. 240, § 4. C.R.S. 1963: § 36-27-4. L. 71: p. 347, § 4.

30-11-405. Election. (1) The board of county commissioners shall call a special election in the area proposed to be included in the authority, as described in the resolution, which election shall be held not less than thirty nor more than forty-five days after adoption of the resolution by the board of county commissioners.

(2) No authority shall be created unless the proposition to create such authority shall first be submitted to and approved by the electors of the authority.

(3) Notice of the election shall be by publication and shall contain the question to be submitted, the date of the election, the times that the polls shall be open, and the place of each polling place. Designation of election precincts and polling places and election contests shall be pursuant to the provisions of part 8 of article 1 of title 32, C.R.S.

(4) Said election shall otherwise be conducted, insofar as practicable, as are general elections. Election judges shall be appointed and compensated by the board of county commissioners, and their powers and duties shall be defined and exercised pursuant to the comparable provisions of law governing general elections, except that they shall be appointed without regard to political affiliation. All costs of such election shall be paid out of the county general fund.

(5) If a majority of those electors of the authority voting at said election have voted in favor of such proposition, said authority shall be approved and the resolution creating the same shall become effective as provided in section 30-11-404.

Source: L. 69: p. 240, § 5. C.R.S. 1963: § 36-27-5. L. 70: p. 145, § 18. L. 71: pp. 337, 347, 348, §§ 5, 7, 5, 9. L. 81: (3) amended, p. 1612, § 10, effective June 19.

30-11-406. Powers of law enforcement authority. (1) Each law enforcement authority formed pursuant to this part 4 has the following powers, except as otherwise limited by the resolution creating the same:

(a) To have perpetual existence;

(b) To sue and be sued and be a party to suits, actions, and proceedings;

(c) To enter into contracts and agreements with the sheriff of the county in which the authority is located to provide law enforcement services for the authority, except as otherwise provided in this part 4;

(d) To employ such administrative, clerical, and professional employees as may be necessary to carry out the purposes of the authority;

(e) To levy a tax not to exceed five mills for the 1982 property tax year or seven mills for the 1983 property tax year and each property tax year thereafter on the taxable property

within the area of the authority, for the payment of the operating expenses of the authority. In any case in which an authority proposes to impose a mill levy which is the maximum mill levy allowable under this paragraph (e) or which is in excess of the certified mill levy computed pursuant to section 30-11-406.5, such authority shall follow the procedure set forth in section 30-11-406.5.

Source: L. 69: p. 241, § 6. C.R.S. 1963: § 36-27-6. L. 81: (1)(e) amended, p. 1399, § 13, effective June 19.

30-11-406.5. Procedure for levying property tax - public disclosure - county assessor's duties. (1) No later than August 25 of each year, each county assessor shall certify to each authority within the assessor's county the total valuation for assessment of all taxable property located within the territorial limits of the authority and the mill levy that when applied to such valuation for assessment, exclusive of the increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the authority for the preceding year, or attributable to new construction and personal property connected therewith within the authority for the preceding year, or attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the authority and if such increase in volume of production causes an increase in the level of services provided by the authority, or attributable to previously legally exempt federal property that becomes taxable if such property causes an increase in the level of services provided by the authority, will raise the same property tax revenue as was raised the previous year.

(2) Any authority which proposes to impose a mill levy in excess of the mill levy for the previous year shall submit such proposal at an election in accordance with section 20 of article X of the state constitution and title 1, C.R.S.

(3) to (6) (Deleted by amendment, L. 94, p. 1188, § 84, effective July 1, 1994.)

Source: L. 81: Entire section added, p. 1399, § 14, effective June 19. L. 82: (1) amended, p. 458, § 3, effective March 17. L. 83: (1) amended, p. 2073, § 3, effective October 13. L. 87: (1) amended, p. 1188, § 3, effective March 12. L. 94: Entire section amended, p. 1188, § 84, effective July 1. L. 96: (1) amended, p. 17, § 2, effective February 22.

30-11-407. Short-term loans for new authorities. In order to provide funds for a new authority to operate prior to the receipt of revenues from property taxes, an authority may contract with any person, corporation, association, or company for a short-term loan, not to exceed the amount necessary for such operation, and such loan shall be fully paid within twelve months; but subsequent short-term loans may be made in each budget year in smaller amounts and shall be paid within six months. Such subsequent loans shall be scheduled to liquidate the accumulated debt fully in a period not to exceed ten years after the date of the first loan. Interest paid on such loans shall be exempt from taxation by the state or any political subdivision thereof.

Source: L. 69: p. 241, § 7. C.R.S. 1963: § 36-27-7.

30-11-408. Detachment - dissolution. (1) Upon the effective date of the annexation to any city, town, or city and county, or the incorporation of any territory included in an authority, upon the certification thereof by the clerk of such municipality, the territory so annexed or incorporated shall be detached from such authority as of the effective date thereof, if such be January 1 of any year; otherwise, such detachment shall take effect on the following January 1, for purposes of general property taxation. Property so detached shall not thereafter be liable for any portion of the outstanding indebtedness of the authority.

(2) Upon the annexation or incorporation of fifty percent or more of the area of the territory included in any authority, or upon petition by ten percent of the electors and the

approval of a majority of the electors of the authority voting at a special election called for that purpose, pursuant to the applicable provisions of section 30-11-405, any authority formed under this part 4 shall be dissolved effective the following January 1, except that if any indebtedness of the authority is unpaid and outstanding, the authority shall continue in existence for taxation purposes only until all obligations of the authority are paid.

Source: L. 69: p. 241, § 8. C.R.S. 1963: § 36-27-8. L. 70: p. 146, § 19. L. 71: pp. 337, 347, §§ 6, 6.

30-11-409. Payments to sheriff. Moneys paid to any sheriff for services pursuant to the provisions of this part 4 shall be expended by the sheriff only for law enforcement purposes, including administration and capital expenditures, pursuant to agreements entered into as authorized by this part 4.

Source: L. 69: p. 241, § 9. C.R.S. 1963: § 36-27-9.

30-11-410. Power to contract for provision of law enforcement services. (1) The governing body of a municipality and the board of county commissioners may contract for the purpose of providing law enforcement, including enforcement of municipal ordinances, by the sheriff within the boundaries of the municipality.

(2) The law enforcement authority and the sheriff may contract with other law enforcement agencies or with municipalities for the provision of law enforcement services within the unincorporated areas of the county.

Source: L. 71: p. 347, § 8. C.R.S. 1963: § 36-27-10. L. 89: Entire section amended, p. 1270, § 3, effective April 23.

30-11-411. Inclusion of land. An additional area may be included in a law enforcement authority, upon petition of all electors and landowners in such area, by resolution of the board of county commissioners or by such resolution and a vote of a majority of electors of such area in the same manner as provided for the organization of a law enforcement authority.

Source: L. 71: p. 348, § 8. C.R.S. 1963: § 36-27-11.

PART 5

COUNTY HOME RULE CHARTERS

Cross references: For provisions on home rule counties, see article 35 of this title.

30-11-501. County home rule charters. Any county in this state, pursuant to the provisions of this part 5, may establish the organization and structure of county government which shall be submitted to and adopted by a majority vote of the registered electors of the county which shall be known as a county home rule charter.

Source: L. 71: p. 349, § 1. C.R.S. 1963: § 36-28-1. L. 85: Entire section amended, p. 1344, § 8, effective April 30.

30-11-502. Charter commission. (1) Following the adoption of a resolution by the board of county commissioners, or upon the submission of a petition of not less than five percent of the registered electors of the county, requesting that a charter commission be established, the board of county commissioners shall call an election to be held on or before the next general election for the purpose of determining whether or not a charter commission shall be elected. The board of county commissioners shall publish notice of the election at least sixty days prior to the election.

(2) (a) At least sixty days before the election provided for in section 30-11-503, the board of county commissioners shall divide the county into three compact districts; such districts to be as nearly equal in population as possible, for the purpose of electing charter commission members by district according to subsection (4) of this section.

(b) If the provisions of paragraph (a) of this subsection (2) are not met before sixty days prior to the election provided for in section 30-11-503, no member of the board of county commissioners of the county shall thereafter be entitled to or earn any compensation for his services or receive any payment for salary or expenses, nor shall any member be eligible to succeed himself in office.

(3) (a) The charter commission shall consist of the following members and be elected from the district as follows:

(I) In counties having a population of less than fifty thousand, eleven members, three of whom shall reside in and be elected from each commissioner district within the county and two to be elected at large;

(II) In counties having a population of fifty thousand or more, twenty-one members, six of whom shall reside in and be elected from each commissioner district and three to be elected at large.

(b) Eligibility to serve on the commission shall extend to all qualified electors of the county. Any vacancy in the charter commission shall be filled by majority vote of the members of the charter commission.

(4) Candidates for the charter commission shall be nominated by filing with the county clerk and recorder, on forms supplied by the county clerk and recorder, a nomination petition signed by at least twenty-five registered electors of the county and a statement by the candidate consenting to serve if elected. Said petition and statement must be filed within thirty days after publication of the election notice. A second notice of the election shall be published by the said commissioners and include the names of candidates for the charter commission.

Source: L. 71: p. 349, § 1. C.R.S. 1963: § 36-28-2. L. 85: (1) and (4) amended, p. 1344, § 9, effective April 30.

Editor's note: In 2004, the provisions within subsection (3) were renumbered on revision to conform to statutory format.

30-11-503. Election on formation of charter convention and designation of members. (1) At the election, voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

Source: L. 71: p. 350, § 1. C.R.S. 1963: § 36-28-3. L. 85: (1) amended, p. 1345, § 10, effective April 30.

30-11-504. Development of proposed charter. (1) A charter commission elected pursuant to section 30-11-503 shall meet on a date designated by the board of county commissioners for the purposes of organization within thirty days after the election. The charter commission shall elect a chairman and a vice-chairman from among its membership. Further meetings of the commission shall be held upon call of the chairman or a majority of the members of the commission. All meetings shall be open to the public. A majority of the charter commission shall constitute a quorum. The commission may adopt such other rules for its operations and proceedings as it deems necessary or desirable. Members of the commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to law.

(2) The charter commission shall conduct a comprehensive study of the operation of county government and of the ways in which the conduct of county government might be improved or reorganized. Within two hundred forty days after its initial meeting, the charter commission shall present to the board of county commissioners a proposed charter, upon which it shall have held three public hearings at intervals of not less than fifteen nor more than thirty days, and notice of these public hearings shall be published not less than fifteen days prior to each public hearing in a newspaper of general circulation within the county. Within ten days of the last of such public hearings, the charter commission shall incorporate any amendments it deems desirable. A majority vote of the members of the charter commission in favor of a proposed charter for the county shall be required to forward said charter to the board of county commissioners for the setting of a referendum election as provided in section 30-11-505.

(3) In the event that the charter commission fails to present a charter to the board of county commissioners after the specified time, the charter commission shall recess for a period of not less than thirty days nor more than ninety days. The board of county commissioners shall then call the charter commission to begin a second attempt to present a charter which shall be presented within a period of ninety days. In the event a second attempt to present a charter to the board of county commissioners also fails, the charter commission shall be excused from its duties and dissolved by the board. All records, files, and proceedings of the charter commission shall be submitted to the board of county commissioners for storage and safekeeping as a public record. A new charter commission shall be elected on dissolution as provided in section 30-11-502.

(4) The board of county commissioners is authorized to establish a special county charter fund and establish a mill levy therefor when the charter commission has submitted a preliminary budget approved by the board of county commissioners. The expenses of the charter commission shall be verified by a majority vote of the commission and shall be submitted to the board of county commissioners for approval, which approval shall not be unreasonably withheld. If approved, payment shall be made from the special county charter fund. The charter commission may employ a staff, may consult and retain experts, and may purchase, lease, or otherwise provide for such supplies, materials, equipment, and facilities as it deems necessary or desirable. The board of county commissioners may accept funds, grants, gifts, and services for the charter commission from the state of Colorado, the government of the United States or any of its agencies, or other sources, public or private.

Source: L. 71: p. 350, § 1. C.R.S. 1963: § 36-28-4. L. 75: Entire section amended, p. 993, § 1, effective June 4.

30-11-505. Referendum election on charter - adoption or rejection. (1) Upon submission to the board of county commissioners of a charter by the charter commission, the board of county commissioners shall call a special election, to be paid for from the special county charter fund and held pursuant to the Colorado election laws. The special election shall be held not more than ninety days nor less than forty-five days after the board of county commissioners receives the proposed charter; however, if a coordinated election or general election is to be held within sixty days after the board of county commissioners receives the proposed charter, the special election shall be held as part of the coordinated election or general election. The board of county commissioners shall publish in a newspaper of general circulation within the county a complete text of the proposed charter not less than ten days prior to the special election. At the special election a referendum of the registered electors of the county shall be held to determine the question of whether the proposed charter as submitted shall be adopted. Notice of the election on the proposed charter shall be published at least thirty days prior to the election.

(2) If a majority of those voting on the question favor the adoption of the charter, the said charter shall become effective January 1 of the succeeding year or at such other time as the charter may provide. Such charter, once adopted by the electors, may be amended only by the registered electors of the county.

(3) If a majority of the voters disapprove the proposed charter, the charter commission may proceed to prepare a revised proposed charter in the same manner provided for

preparation, submission, and election on the proposed charter. The election on any revised proposed charter must be held not less than ninety nor more than one hundred eighty days after the election rejecting the proposed charter. The charter commission shall not submit more than one proposed charter and one revised proposed charter. If a majority of the voters disapprove the proposed charter, or the revised proposed charter, if one is submitted, no new referendum may be held during the next twelve months following the date of the last disapproval.

(4) Upon acceptance or rejection of the proposed charter or the revised proposed charter, if one is submitted by the registered electors of the county, the charter commission shall be dissolved, and all property of the charter commission shall thereupon become the property of the county, and the board of county commissioners shall adopt a resolution to that effect.

Source: L. 71: p. 351, § 1. C.R.S. 1963: § 36-28-5. L. 85: (1), (2), and (4) amended, p. 1345, § 11, effective June 4. L. 2006: (1) amended, p. 2036, § 25, effective June 6.

30-11-506. Procedure to amend or repeal charter. (1) Action to amend a charter shall be initiated by:

- (a) A petition signed by at least five percent of the registered electors of the county; or
- (b) A resolution adopted by the board of county commissioners submitting the proposed amendment to the registered electors.

(2) Action to repeal a charter or to form a new charter commission may be initiated by a petition signed by at least fifteen percent of the registered electors of the county.

(3) (a) Within thirty days of initiation of a proposed amendment, repeal, or charter convention measure, the board of county commissioners shall publish notice of and call an election to be held not less than thirty nor more than one hundred twenty days after said publication. The text of any proposed amendment shall be published with said notice.

(b) If the proposal is for a charter commission, the election shall be scheduled at least sixty days after publication of the notice. The procedure for the forming and functioning of a new charter commission shall comply as nearly as practicable with provisions relating to formation and functioning of an initial charter commission.

(4) If a majority of the registered electors voting thereon vote for a proposed amendment, the amendment shall be deemed approved. If a majority of the registered electors voting thereon vote for repeal of the charter, the charter shall be deemed repealed, and the county shall proceed to organize and operate pursuant to the statutes applicable to statutory counties.

Source: L. 71: p. 352, § 1. C.R.S. 1963: § 36-28-6. L. 85: (1)(a), (1)(b), (2), and (4) amended, p. 1345, § 12, effective June 4.

30-11-507. Filings - effect of. (1) Within twenty days after voter approval, a certified copy of the charter shall be filed with the division of local government and with the county clerk and recorder.

(2) This section shall also apply to an amendment or repeal of a charter.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-7.

30-11-508. Initiative, referendum, and recall. Every charter shall contain procedures for the initiative and referendum of measures and for the recall of elected officers.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-8.

ANNOTATION

The equal protection clause of the fourteenth amendment to the U.S. Constitution does not command Colorado to grant the power of initiative to the electors of statutory

counties simply because it has granted that power to the electors of home rule counties. *Save Palisade FruitLands v. Todd*, 279 F.3d 1204 (10th Cir. 2002).

30-11-509. Time limit on submission of similar proposals. No proposal for a charter commission, charter amendment, or repeal of a charter shall be initiated within twelve months after rejection of a substantially similar proposal.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-9.

30-11-510. Publication requirements. “Publish” or “publication” means one publication in one newspaper of general circulation in the county. If there is no such newspaper, publication shall be by posting in at least three public places within the county.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-10.

30-11-511. Board of county commissioners - home rule counties. A home rule county shall provide all mandatory county functions, services, and facilities and shall exercise all mandatory powers required by statute. A home rule county may provide such permissive functions, services, and facilities and may exercise such permissive powers as authorized by statute applicable to nonhome rule counties, except as may be otherwise prohibited or limited by the county charter or the constitution of Colorado. Any power, function, service, or facility vested by statute in a particular county officer, agency, or board, including a board of county commissioners, may be exercised or performed within a home rule county by such county officer, agency, or board or by any other county officer, agency, or board designated in the home rule charter. For home rule counties, the term “board of county commissioners” means the governing body of the county designated by the county.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-11. L. 76: Entire section R&RE, p. 693, § 1, effective March 16.

30-11-512. Finality. No proceeding contesting the adoption of a charter, charter amendment, or repeal thereof shall be brought unless commenced within one hundred eighty days after the election adopting the measure.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-12.

30-11-513. Officers. Officers of a home rule county shall be appointed or elected as provided for in the charter; the terms of office and qualifications of such officers shall also be provided for in the charter; however, the duties of such officers shall be as provided by statute. The charter shall designate the officers who shall respectively perform the acts and duties required of county officers by statute. No elected official shall receive any increase or decrease in compensation under any resolution passed during the term for which he was elected.

Source: L. 71: p. 353, § 1. C.R.S. 1963: § 36-28-13.

PART 6

TELECOMMUNICATIONS RESEARCH FACILITIES OF THE UNITED STATES

30-11-601. Short title. This part 6 shall be known and may be cited as the “Telecommunications Research Facilities of the United States Protection Act of 1969”.

Source: L. 69: p. 235, § 1. C.R.S. 1963: § 36-26-1.

30-11-602. Legislative declaration. (1) The general assembly hereby declares that it is the purpose of this part 6 to assist in promoting and protecting telecommunications research facilities of the United States which are located within the state of Colorado.

(2) Specifically, it is the purpose of this part 6 to:

(a) Avoid undue interferences caused by emanation of electrical impulses from electrical equipment functioning in the area surrounding telecommunications research facilities of the United States;

(b) Promote the public interest by encouraging economic improvement and development of this state, and further, to promote educational and scientific research within this state;

(c) Encourage the continued operational capability of telecommunications research facilities of the United States in areas of this state, which, in turn, will encourage and contribute to the economic improvement and development of the state and will promote educational and scientific research within this state.

Source: L. 69: p. 235, § 1. C.R.S. 1963: § 36-26-2.

30-11-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Expressways" or "major arterials" means those rights-of-way used primarily for fast or heavy traffic; and "collector streets" means those rights-of-way which have four lanes or more of moving traffic which carry traffic from local streets to the system of major arterials and highways and move traffic to parks, schools, and shopping centers serving residential neighborhoods.

(2) "Governing body" means a city council, a board of trustees of a town, or a board of county commissioners.

(3) "Planning commission" means the regional planning commission, county planning commission, district planning commission, or zoning commission, as the case may be, which has the responsibility of preparing plans for zoning or the making or adopting of plans for the physical development of the unincorporated and incorporated territory located within a distance of two miles from the perimeter of any telecommunications research facility of the United States.

(4) "Telecommunications research facility of the United States" means a site presently owned by the United States in this state consisting of not less than fifteen hundred contiguous acres in area and having located thereon technical electronic facilities of a value of more than five million dollars operated by an agency of the United States, and which technical electronic facilities are principally utilized in a program of scientific research in telecommunications and related atmospheric science, involving highly sensitive reception, observation, measurement, and recording of radio waves from distant emanation of experimental signals, radio astronomical sources, or electromagnetic phenomena of the atmosphere or ionosphere.

Source: L. 69: p. 236, § 1. C.R.S. 1963: § 36-26-3.

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

30-11-604. Scope of part 6. Nothing in this part 6 shall be construed to change any zoning or restrict or limit any land use in effect on and after April 23, 1969, within a city, town, or a county in which a telecommunications research facility of the United States is wholly or partially located.

Source: L. 69: p. 236, § 1. C.R.S. 1963: § 36-26-4.

30-11-605. Powers and duties of governing bodies, planning commissions, and boards of adjustment. (1) Upon being requested to do so by an agency of the United

States, the governing body shall determine if any telecommunications research facility of the United States is located wholly or partially within its jurisdiction. If such determination results in a finding that such a facility is so located, the planning commission, the board of adjustment, and the governing body shall, from and after April 23, 1969, be bound by the following: When considering any request for rezoning, exceptions to or variances from the terms of zoning regulations, or changed or additional uses of land within a distance of two miles from the perimeter of any telecommunications research facility of the United States, the planning commission, the board of adjustment, and the governing body shall consider, in a like manner as those criteria set forth in sections 30-28-115 and 31-23-303, C.R.S., and other criteria applied to the consideration of requests for rezoning, exceptions to or variances from zoning regulations, or changed or additional uses of land, any data presented as to the effect that development made pursuant to such request will have on such telecommunications research facility of the United States, including what interference may be caused to said facility by the emanation of electrical impulses from electrical equipment that may be installed if such request is approved.

(2) If approval for any request for rezoning to a zoning district, for an exception to or variance from the terms of any zoning regulation, or for a changed or additional use of land, which will permit hospitals, industrial, business, or commercial uses is sought within a distance of two miles from the perimeter of any telecommunications research facility of the United States, the planning commission, the board of adjustment, and the governing body may request reasonable information regarding the proposed use to be made from the applicant submitting the request for approval, including, but not limited to, a summary of the kinds of industrial electrical equipment expected to be installed on such property if the approval being sought is given.

(3) Within a distance of two miles from the perimeter of any telecommunications research facility of the United States, any approval of a subdivision plat in a residential zoning district and any approval for rezoning from existing districts to other districts that may exist or be created by the zoning resolution of any city, town, or county in which a telecommunications research facility of the United States is located shall be granted only if the covenants set forth in paragraphs (a) to (e) of subsection (4) of this section are included in the subdivision plat or as part of the rezoning request, which covenants shall be filed for recording with the county clerk and recorder following approval by the governing body; but said governing body may, under reasonable circumstances, waive the application of any one or more of said covenants with respect to all or any part of the affected land. The requirements set forth in this subsection (3) shall not apply to the approval of subdivision plats in single-family residential zoning districts where the minimum lot area permitted is one acre or more if the subdivision plat is approved, to requests for rezoning to single-family residential zoning districts in which the minimum lot area on unsubdivided land will be one acre or more if the rezoning request is approved, or to requests for rezoning to forestry or agricultural districts.

(4) The covenants referred to in subsection (3) of this section are as follows:

(a) All electrical distribution lines and service lines and all telephone lines shall be placed underground.

(b) No neon signs of any kind shall be permitted on any part of the property.

(c) No electrical fences shall be erected on any part of the property.

(d) All street lights shall be shielded so as to minimize upward illumination.

(e) No arc welding equipment or remote control garage door openers which employ a radiating type of receiver shall be installed or operated from a permanent location on the property.

(5) No expressways or major arterials shall be authorized or constructed within a distance of one mile from the perimeter of any telecommunications research facility of the United States and, unless the governing body specifically makes an exception therefor, no collector streets shall be authorized or constructed within a distance of one mile from the perimeter of any telecommunications research facility of the United States.

(6) The limitations of this part 6 shall be incorporated in any zoning resolution, building code resolution, or both, in any city, town, or county in which a telecommunications

research facility of the United States is located, and each such city, town, or county shall enforce the same as provided by law.

(7) The governing body shall determine, with the assistance of a surveyor, if necessary, the boundaries of lands located in such city, town, or county, or both, as the case may be, affected by the limitations imposed by this part 6 and shall record such boundaries in the office of the county clerk and recorder of said county.

Source: L. 69: p. 236, § 1. C.R.S. 1963: § 36-26-5. L. 75: (1) amended, p. 1271, § 9, effective May 1.

ARTICLE 12

Local Access to Health Care Pilot Program

Cross references: For the legislative declaration contained in the 2007 act enacting this article, see section 1 of chapter 436, Session Laws of Colorado 2007.

30-12-101.	Short title.	30-12-106.	Division of insurance - participation limited to financial oversight.
30-12-102.	Legislative declaration.		
30-12-103.	Definitions.		
30-12-104.	Pilot programs - local access to health care.	30-12-107.	Repeal of article - repeal of granted authority - reports.
30-12-105.	Annual report.		

30-12-101. Short title. This article shall be known and may be cited as the “Local Access to Health Care Pilot Program Act”.

Source: L. 2007: Entire article added, p. 2091, § 2, effective June 4.

30-12-102. Legislative declaration. The general assembly hereby finds, determines, and declares that it is important to establish pilot programs in rural counties in the state to provide access to health care for individuals and families who may not otherwise have access to health care in order to develop a model that may be used to provide access to health care for similarly situated individuals and families in other parts of the state.

Source: L. 2007: Entire article added, p. 2091, § 2, effective June 4. L. 2009: Entire section amended, (HB 09-1252), ch. 398, p. 2149, § 1, effective June 2.

30-12-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Association” means the San Luis valley county commissioners association.
- (1.5) “Board” means the board of county commissioners of Pueblo county.
- (2) “Contractor” means the nonprofit corporation with whom the board or association contracts to operate a pilot program.
- (3) “Eligible individual” means an individual employed by an employer located in Pueblo county or in the San Luis valley who does not have health insurance and is not eligible for the “Colorado Medical Assistance Act”, articles 4, 5, and 6 of title 25.5, C.R.S., the “Children’s Basic Health Plan Act”, article 8 of title 25.5, C.R.S., or medicare pursuant to Title XVIII of the federal “Social Security Act”, as amended.
- (4) “Employer” means a person, firm, corporation, partnership, or association that is actively engaged in business in Pueblo county or in the San Luis valley, employs individuals in that county or valley, and pays its employees low median wages, as determined by the contractor.
- (5) “Pilot program” means a pilot program for local access to health care authorized by this article.
- (6) “San Luis valley” means the geographic region comprised of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties.

Source: L. 2007: Entire article added, p. 2091, § 2, effective June 4. L. 2009: Entire section amended, (HB 09-1252), ch. 398, p. 2149, § 2, effective June 2.

30-12-104. Pilot program - local access to health care. (1) (a) The board and the association are authorized to create pilot programs in their respective geographical areas of governance to provide access to health care services to individuals employed by employers located in Pueblo county or in the San Luis valley, respectively. If the board and association each create a pilot program, the pilot programs shall operate independent of each other, and an employer and eligible individuals employed by that employer shall be allowed to participate only in the pilot program operated in the geographical area in which the employer is located. The board or association may contract with a nonprofit corporation to operate the pilot program and deliver, either directly or indirectly, health care to eligible individuals and their families. The contractor shall be governed by a board of directors and shall be administered by officers, all of whom shall be appointed with the advice and consent of the board or association. The board, the association, and the individual members of the board and the association shall not be responsible for any financial obligations of the pilot program.

(b) In order to support economic development in Pueblo county and the San Luis valley and to strengthen existing employers in these communities, the contractor operating a pilot program in either Pueblo county or the San Luis valley may give preference in the selection of vendors to perform the various functions of the applicable pilot program to local entities with infrastructure in place that are capable of performing the daily functions of a pilot program, including implementing health benefit designs, paying hospital and professional claims for services, providing employer group billings, providing actuarial and underwriting experience, and managing enrollment and eligibility for participation in a pilot program.

(2) The contract entered into between the board or the association and a contractor for the operation of a pilot program shall clearly state the scope of the contract, the amount of fees that may be charged by the contractor to eligible individuals for participation in the pilot program, and that the contractor is responsible for the operation of the pilot program.

(3) The board, association, or contractor, as appropriate, shall direct individuals seeking access to the pilot program who are eligible for the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S., the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., medicare pursuant to Title XVIII of the federal "Social Security Act", as amended, or the "Colorado Indigent Care Program" established in part 1 of article 3 of title 25.5, C.R.S., to the appropriate state or federal program.

Source: L. 2007: Entire article added, p. 2091, § 2, effective June 4. L. 2009: Entire section amended, (HB 09-1252), ch. 398, p. 2150, § 3, effective June 2.

30-12-105. Annual report. By June 1, the board of directors of the contractor chosen to operate a pilot program shall provide an annual report to the board or the association, as applicable. The annual report shall state the number of individuals served by the pilot program, the cost of providing health care services to those individuals, and the source of funds for the payment of those services. The report shall also include a certified financial statement prepared by a certified public accountant detailing the revenues, expenditures, and other financial information related to operation of the pilot program addressed in the report. The contractor shall provide a copy of the annual report, including the certified financial statement, to the commissioner of insurance.

Source: L. 2007: Entire article added, p. 2092, § 2, effective June 4. L. 2009: Entire section amended, (HB 09-1252), ch. 398, p. 2151, § 4, effective June 2.

30-12-106. Division of insurance - participation limited to financial oversight. Notwithstanding any other provision of law, for purposes of this article, the division of insurance shall not have authority to regulate or otherwise oversee the operations of a pilot program developed pursuant to this article, the contractor that operates a pilot program,

Pueblo county, the board, the San Luis valley, or the association. However, the contractor shall be subject to financial oversight by the division of insurance and shall provide copies of its annual report on the pilot program it operates, including certified financial statements, to the division.

Source: **L. 2007:** Entire article added, p. 2092, § 2, effective June 4. **L. 2009:** Entire section amended, (HB 09-1252), ch. 398, p. 2151, § 5, effective June 2.

30-12-107. Repeal of article - repeal of granted authority - reports. (1) (a) The authority of the board of county commissioners of Pueblo county to create a pilot program pursuant to this article or to contract with a contractor to operate a pilot program in Pueblo county is repealed, effective July 1, 2017.

(b) No later than March 15, 2017, the board of county commissioners of Pueblo county and the board of directors of the contractor shall submit a report to the general assembly regarding the activities of the pilot program operated in Pueblo county. The report shall assess whether the pilot program has benefited Pueblo county, employers located in Pueblo county, and eligible individuals and their families. The report shall also contain any other information deemed appropriate by the board. The board shall distribute the report to the commissioner of insurance, the local government committees of the house of representatives and the senate, or their successor committees, the health and human services committee of the senate, or its successor committee, and the health and environment committee of the house of representatives, or its successor committee.

(2) (a) The authority of the San Luis valley county commissioners association to create a pilot program pursuant to this article or to contract with a contractor to operate a pilot program in the San Luis valley is repealed, effective July 1, 2014.

(b) No later than March 15, 2014, the association and the board of directors of the contractor shall submit a report to the general assembly regarding the activities of the pilot program operated in the San Luis valley. The report shall assess whether the pilot program has benefited the San Luis valley, employers located in the San Luis valley, and eligible individuals and their families. The report shall specify the number of eligible individuals and employers participating in the pilot program, the number of eligible individuals and employers that plan to continue participating in the pilot program, and the number of months that eligible individuals participating in the pilot program were uninsured prior to enrolling in the pilot program. The report shall also contain any other information deemed appropriate by the association. The report shall be distributed to the commissioner of insurance, the local government committee of the house of representatives or its successor committee, the local government and energy committee of the senate or its successor committee, and the health and human services committees of the senate and house of representatives, or their successor committees.

(3) This article is repealed, effective July 1, 2017.

Source: **L. 2007:** Entire article added, p. 2092, § 2, effective June 4. **L. 2009:** Entire section amended, (HB 09-1252), ch. 398, p. 2151, § 6, effective June 2. **L. 2012:** (1) and (3) amended, (HB 12-1017), ch. 136, p. 479, § 1, effective July 1.

ARTICLE 15

Regulation Under Police Power

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

PART 1		
CONTROL AND LICENSING OF PET ANIMALS		ing.
	30-15-102.	Violations - penalties.
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PART 2

CAMPFIRES - EXTINGUISHING

30-15-201. Notice to extinguish campfires - penalty.
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PART 3

UNINCORPORATED AREAS - DISCHARGE OF FIREARMS PROHIBITED

30-15-301. Definitions.
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PART 4

GENERAL REGULATIONS

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30-15-401.5. Fire safety standards.
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30-15-403. Style of ordinances.
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30-15-406. Reading before board of county commissioners - publication.
30-15-407. Reading - adoption of code.
30-15-408. Disposition of fines and forfeitures.
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30-15-410. County courts - jurisdiction.
30-15-411. Conflicts with state statutes.

PART 1

CONTROL AND LICENSING OF PET ANIMALS

Editor's note: This article was numbered as article 12 of chapter 36, C.R.S. 1963. The substantive provisions of this part 1 were repealed and reenacted in 1977, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

30-15-101. Pet animal control and licensing. (1) (a) The board of county commissioners of any county may adopt a resolution for the control and licensing of dogs and other pet animals as provided in this part 1. Such resolution may:

(I) Require licensing of dogs and other pet animals by owners and impose reasonable conditions and fees on the same. No registration permit or license shall be issued by any board of county commissioners unless and until the owner of a dog shall exhibit to such board or designated official a valid rabies vaccination certificate indicating the dog has been vaccinated against rabies by a licensed veterinarian. The county dog control resolution may exempt dogs below a specified age from licensing and registration or vaccination requirements, or both; except that the recommendations of the department of public health and environment shall be followed concerning the minimum age for such vaccination.

(II) Require that dogs and other pet animals be under control at all times and define "control", which may vary from time to time, place to place, and animal to animal;

(III) Define "vicious dog" and "vicious animal";

(IV) Establish a dog pound, or other animal holding facility, and engage personnel to operate it and otherwise to enforce the county dog control resolution or any other resolution concerning the control of pet animals;

(V) Provide for the impoundment of animals which are vicious, not under control, or otherwise not in conformity with the resolutions;

(VI) Establish terms and conditions for the release or other disposition of impounded animals;

(VII) Establish such other reasonable regulations and restrictions for the control of dogs and other pet animals as the board of county commissioners may deem necessary.

(b) The control provisions of such resolution, as provided in subparagraph (II) of paragraph (a) of this subsection (1), shall not apply to dogs while actually working livestock, locating or retrieving wild game in season for a licensed hunter, or assisting law enforcement officers or while actually being trained for any of these pursuits.

(2) In order to implement the provisions of this section, any county or municipality may enter into an intergovernmental agreement pursuant to the provisions of part 2 of article 1 of title 29, C.R.S., to provide for the control, licensing, impounding, or disposition of dogs or other pet animals or to provide for the accomplishment of any other aspect of a county or municipal dog control or pet animal control licensing resolution or ordinance.

(3) For purposes of this part 1, "pet animal" means and includes any animal owned or kept by a person for companionship or protection or for sale to others for such purposes. Except as otherwise provided in this subsection (3), "pet animal" does not include wildlife, livestock used for any purpose or which is estray as defined in section 35-44-101, C.R.S., or animals which are owned or bought and sold through the efforts of those that are licensed, inspected, or both, by the United States Department of Agriculture, the Colorado department of agriculture, or both; however, nothing in this subsection (3) shall be construed to exempt such animals from county control regulations.

Source: **L. 77:** Entire part R&RE, p. 1443, § 1, effective July 7. **L. 94:** Entire section amended, p. 1239, § 10, effective May 22; (1)(a)(I) amended, p. 2799, § 556, effective July 1. **L. 2005:** IP(1)(a) and (1)(a)(I) amended, p. 773, § 55, effective June 1.

Editor's note: (1) This section is similar to former §§ 30-15-101 and 30-15-102 as they existed prior to 1977.

(2) Amendments to this section by House Bill 94-1137 and House Bill 94-1029 were harmonized.

30-15-102. Violations - penalties. (1) Any violation of any provision of a county resolution adopted pursuant to this part 1 not involving bodily injury to any person shall be a class 2 petty offense, and, notwithstanding the provisions of section 18-1.3-503, C.R.S., punishable, upon conviction, by a fine of not more than one thousand dollars pursuant to section 30-15-402 (1), or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment for each separate offense. If authorized by the county resolution, the penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by an animal control officer or any arresting law enforcement officer for any such violation. As part of said county resolution authorizing the penalty assessment procedure, the board of county commissioners may adopt a graduated fine schedule for violations of said resolution not involving bodily injury to any person. Such graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same individual.

(2) Any offense involving bodily injury to any person by a dog or other pet animal shall be a class 2 misdemeanor, and any violator shall be punished as provided in section 18-1.3-501, C.R.S., for each separate offense.

(3) Whenever a county animal control officer has probable cause to believe that a violation of subsection (1) or (2) of this section, of the county's dog control and licensing resolution, or of the county's resolution concerning the control of pet animals has been committed, the officer may issue a citation or summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of said charge to the violator.

Source: **L. 77:** Entire part R&RE, p. 1444, § 1, effective July 7. **L. 81:** (1) amended, p. 2028, § 33, effective July 7. **L. 87:** (3) amended, p. 617, § 11, effective July 1. **L. 91:** (3) amended, p. 417, § 2, effective July 1. **L. 94:** Entire section amended, p. 1240, § 11, effective May 22. **L. 2002:** (1) and (2) amended, p. 1542, § 288, effective October 1. **L. 2003:** (1) amended, p. 2095, § 8, effective July 1.

Editor's note: This section is similar to former § 30-15-101 as it existed prior to 1977.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

30-15-103. Disposition of fines and forfeitures. All fines and forfeitures for the violation of county resolutions adopted pursuant to this part 1 and all moneys collected by the county for licenses or otherwise shall be paid into the treasury of the county at such times and in such manner as may be prescribed by resolution; or, if there is no resolution providing for the payment, it shall be paid to the county treasurer at once.

Source: L. 77: Entire part R&RE, p. 1444, § 1, effective July 14.

Editor's note: This section is similar to former § 30-15-105 as it existed prior to 1977.

30-15-104. Liability for accident or subsequent disease from impoundment. The board of county commissioners, city council, board of trustees, or other governing body of a municipality, any of their assistants or employees, or any other person authorized to enforce the provisions of any dog control resolution or ordinance or any resolution concerning the control of pet animals shall not be held responsible for any accident or subsequent disease that may occur to the animal in connection with the administration of the resolution or ordinance.

Source: L. 77: Entire part R&RE, p. 1444, § 1, effective July 7. L. 94: Entire section amended, p. 1241, § 12, effective May 22.

Editor's note: This section is similar to former § 30-15-104 as it existed prior to 1977.

30-15-105. Animal control officers - peace officer designation. Personnel engaged in animal control, however titled or administratively assigned, may issue citations or summonses and complaints enforcing the county dog control resolution or any other county resolution concerning the control of pet animals or municipal ordinance without regard to the certification requirements of part 3 of article 31 of title 24, C.R.S. Personnel so engaged shall be included within the definition of "peace officer or firefighter engaged in the performance of his or her duties" in section 18-3-201 (2), C.R.S. Nothing in this part 1 is intended to vest authority in any person so engaged to enforce any resolution, ordinance, or statute other than the county dog control resolution or any other county resolution concerning the control of pet animals or municipal ordinance.

Source: L. 77: Entire part R&RE, p. 1445, § 1, effective July 7. L. 83: Entire section amended, p. 962, § 9, effective July 1, 1984. L. 92: Entire section amended, p. 1098, § 8, effective March 6. L. 94: Entire section amended, p. 1241, § 13, effective May 22. L. 97: Entire section amended, p. 1027, § 56, effective August 6.

Editor's note: This section is similar to former § 30-15-103 as it existed prior to 1977.

Cross references: For the legislative declaration contained in the 1992 act amending this section, see section 12 of chapter 167, Session Laws of Colorado 1992.

PART 2

CAMPFIRES - EXTINGUISHING

30-15-201. Notice to extinguish campfires - penalty. (1) It is the duty of the board of county commissioners of each county in this state to cause to be erected and maintained, at suitable distances and in conspicuous places (at the side of the main-traveled highways of each county and at such other places in each county as each board may deem proper),

notices printed in large letters on suitable signboards stating that campfires must not be left unattended and must be totally extinguished before breaking or leaving camp and that violators are subject to a fifty-dollar fine. Any person who leaves a campfire unattended commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of fifty dollars.

(2) The erection of such notices shall be at the expense of each county, and at least twenty notices shall be posted and maintained in each county in this state. The board of governors of the Colorado state university system may also post similar notices, signed by the board and erected and maintained at its expense, at such points throughout the state as it deems necessary or expedient.

Source: L. 1885: p. 161, § 1. L. 1891: p. 115, § 1. R.S. 08: § 1227. C.L. § 8704. CSA: C. 45, § 51. CRS 53: § 36-14-1. C.R.S. 1963: § 36-14-1. L. 73: p. 1402, § 27. L. 74: (1) amended, p. 407, § 21, effective April 11. L. 84: (1) amended, p. 924, § 18, effective May 11. L. 2002: (2) amended, p. 1247, § 21, effective August 7.

Cross references: For transfer of duties of the state board of forestry to the state board of agriculture, see part 2 of article 31 of title 23; for unlawful acts concerning fires, see § 33-15-106.

30-15-202. Penalty for defacing or destroying notices. Any person who willfully destroys, removes, injures, or defaces any such notice erected on any such highway, or willfully injures or defaces any inscription or device comprising such notice, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 1885: p. 162, § 2. R.S. 08: § 1228. C.L. § 8705. CSA: C. 45, § 52. CRS 53: § 36-14-2. C.R.S. 1963: § 36-14-2. L. 64: p. 223, § 54.

Cross references: For the provision in the criminal code concerning the defacing of a posted notice, see § 18-4-510.

PART 3

UNINCORPORATED AREAS - DISCHARGE OF FIREARMS PROHIBITED

30-15-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) “Firearm” or “firearms” means any pistol, revolver, rifle, or other weapon of any description from which any shot, projectile, or bullet may be discharged.

Source: L. 66: p. 4, § 1. C.R.S. 1963: § 36-22-1.

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

30-15-302. Board of county commissioners to designate area. (1) The board of county commissioners of any county in this state may designate, by resolution, areas in the unincorporated territory of such county in which it is unlawful for any person to discharge any firearms, except a duly authorized law enforcement officer acting in the line of duty, but nothing in this subsection (1) shall prevent the discharge of any firearm in shooting galleries or in any private grounds or residence under circumstances when such firearm can be discharged in such a manner as not to endanger persons or property and also in such a manner as to prevent the projectile from any such firearm from traversing any grounds or space outside the limits of such shooting gallery, grounds, or residence.

(2) No area shall be so designated under authority of subsection (1) of this section unless it has an average population density of not less than one hundred persons per square mile in the area designated, and, before making any such designation, the board of county

commissioners shall hold a public hearing thereon at which any interested person shall have an opportunity to be heard. The provisions of article 3 of title 33, C.R.S., concerning the state's liability for damages done to property by wild animals protected by the game laws of the state shall not apply to any area designated by a board of county commissioners under authority of this part 3.

(3) Nothing in this section shall be construed to restrict or otherwise affect any person's constitutional right to bear arms or his right to the defense of his person, his family, or his property.

Source: L. 66: p. 4, § 1. C.R.S. 1963: § 36-22-2.

ANNOTATION

This section does not impliedly ban all firearm hunting within a designated county area. Moss v. Members of Colo. Wildlife Comm'n, 250 P.3d 739 (Colo. App. 2010).

30-15-303. Violation - penalty. Any person violating any provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

Source: L. 66: p. 5, § 1. C.R.S. 1963: § 36-22-3.

30-15-304. Jurisdiction - enforcement. County courts, in their respective counties, have jurisdiction in prosecutions of violations of this part 3. It is the duty of the sheriff and his undersheriffs and deputies, in their respective counties, to enforce the provisions of this part 3.

Source: L. 66: p. 5, § 1. C.R.S. 1963: § 36-22-4.

PART 4

GENERAL REGULATIONS

30-15-401. General regulations - definitions. (1) In addition to those powers granted by sections 30-11-101 and 30-11-107 and by parts 1, 2, and 3 of this article, the board of county commissioners has the power to adopt ordinances for control or licensing of those matters of purely local concern that are described in the following enumerated powers:

(a) (I) (A) To provide for and compel the removal of rubbish, including trash, junk, and garbage, from lots and tracts of land within the county, except industrial tracts of ten or more acres and agricultural land currently in agricultural use as the term agricultural land is defined in section 39-1-102 (1.6), C.R.S., and from the alleys behind and from the sidewalk areas in front of such property at such time, upon such notice, and in such manner as the board of county commissioners may prescribe by ordinance, including removal performed by the county upon notice to and failure of the property owner to remove such rubbish, and to assess the reasonable cost thereof, including five percent for inspection and other incidental costs in connection therewith, upon the lots and tracts from which such rubbish has been removed. Ordinances passed by a board of county commissioners for the removal of rubbish pursuant to this sub-subparagraph (A) shall include provisions for applying for and exercising an administrative entry and seizure warrant issued by a county or district court having jurisdiction over the property from which rubbish shall be removed. Any assessment pursuant to this sub-subparagraph (A) shall be a lien against such lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. In case such assessment is not paid within a reasonable time specified by ordinance, it may be certified by the clerk to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the

same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this sub-subparagraph (A).

(B) A county court or district court having jurisdiction over property from which rubbish shall be removed pursuant to the ordinances authorized by sub-subparagraph (A) of this subparagraph (I) shall issue an administrative entry and seizure warrant for the removal of such rubbish. Such warrant shall be issued upon presentation by a county of ordinance provisions which meet the requirements of sub-subparagraph (A) of this subparagraph (I) and a sworn or affirmed affidavit stating the factual basis for such warrant, evidence that the property owner has received notice of the violation and has failed to remove the rubbish within a reasonable prescribed period of time, a general description of the location of the property which is the subject of the warrant, a general list of any rubbish to be removed from such property, and the proposed disposal or temporary impoundment of such rubbish, whichever the court deems appropriate. Within ten days following the date of issuance of an administrative entry and seizure warrant pursuant to the provisions of this sub-subparagraph (B), such warrant shall be executed in accordance with directions by the issuing court, a copy of such issued warrant shall be provided or mailed to the property owner, and proof of the execution of such warrant, including a written inventory of any property impounded by the executing authority, shall be submitted to the court by the executing authority.

(I.5) (A) To provide for and compel the removal of weeds and brush from residential lots of two and one-half acres or less within the county and from the alleys behind and from the sidewalk areas in front of such property at such time, upon such notice, and in such manner as the board of county commissioners may prescribe by ordinance, including removal performed by the county upon notice to and failure of the property owner to remove such weeds and brush, and to assess the reasonable cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the property from which such weeds have been removed. Ordinances passed by a board of county commissioners for the removal of weeds and brush pursuant to this sub-subparagraph (A) shall include provisions for applying for and exercising an administrative entry and seizure warrant issued by a county or district court having jurisdiction over the property from which weeds and brush shall be removed. Any assessment pursuant to this sub-subparagraph (A) shall be a lien against such property until paid and shall have priority over all other liens except general taxes and prior special assessments.

(B) In case such assessment is not paid within a reasonable time specified by ordinance, it may be certified by the clerk to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of such assessments pursuant to this sub-subparagraph (B).

(C) A county court or district court having jurisdiction over property from which weeds and brush shall be removed pursuant to the ordinances authorized by sub-subparagraph (A) of this subparagraph (I.5) shall issue an administrative entry and seizure warrant for the removal of such weeds and brush. Such warrant shall be issued upon presentation by a county of ordinance provisions which meet the requirements of sub-subparagraph (A) of this subparagraph (I.5) and a sworn or affirmed affidavit stating the factual basis for such warrant, evidence that the property owner has received notice of the violation and has failed to remove the weeds and brush within a reasonable prescribed period of time, a general description of the location of the property which is the subject of the warrant, and the proposed disposal of such weeds and brush. Within ten days following the date of issuance of an administrative entry and seizure warrant pursuant to the provisions of this sub-subparagraph (C), such warrant shall be executed in accordance with directions by the issuing court, a copy of such issued warrant shall be provided or mailed to the property owner, and proof of the execution of such warrant shall be submitted to the court by the executing authority.

(II) To inspect vehicles proposed to be operated in the conduct of the business of transporting ashes, trash, waste, rubbish, garbage, or industrial waste products or any other

discarded materials and to determine, among other things, that any such vehicle has the following:

(A) A permanent cover of canvas or equally suitable or superior material designed to cover the entire open area of the body of such vehicle;

(B) A body so constructed as to be permanently leakproof as to such discarded materials;

(C) Extensions of sideboards and tailgate, if any, constructed of permanent materials;

(III) To contract with persons in the business of transporting and disposing of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials to provide such services, but in no event on an exclusive territorial basis, to every lot and tract of land requiring such services within the unincorporated area of the county or in conjunction with the county on such terms as shall be agreed to by the board of county commissioners. Nothing in this subparagraph (III) shall be deemed to preclude the owner or tenant of any such lot or tract from removing discarded materials from his lot, so long as appropriate standards of safety and health are observed.

(IV) To regulate the activities of persons in the business of transporting ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials within the unincorporated area by requiring each such person to secure a license from the county and charging a fee therefor to cover the cost of administration and enforcement and by requiring adherence to such reasonable standards of health and safety as may be prescribed by the board of county commissioners and to prohibit any person from commercially collecting or disposing of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials within the unincorporated area without a license and when not in compliance with such standards of health and safety as may be prescribed by the board;

(V) To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease, limited to the following:

(A) In addition to the authority given counties under section 18-4-511, C.R.S., to restrain, fine, and punish persons for dumping rubbish, including trash, junk, and garbage, on public or private property;

(B) (Deleted by amendment, L. 2008, p. 2054, § 11, effective July 1, 2008.)

(C) To adopt reasonable regulations for controlling pollution caused by wood smoke;

(D) In addition to the authority given counties under article 5 of title 35, C.R.S., to establish mosquito control areas, to assess the whole cost thereof against those persons especially benefitted by the service, and, if a person's portion of the assessment is not paid within a reasonable time as specified by ordinance, to direct that the assessment, which shall be a lien against the property of such person, be certified by the county clerk and recorder to the county treasurer for collection in the same manner as other taxes are collected;

(VI) To require every person in the business of transporting ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials to and from disposal sites to have, before commencing such operations, in such motor vehicle a motor vehicle liability insurance policy or evidence of such policy issued by an insurance carrier or insurer authorized to do business in the state of Colorado in the sum of not less than one hundred fifty thousand dollars for damages for or on account of any bodily injury to or the death of each person as the result of any one accident, in the sum of not less than one hundred fifty thousand dollars for damages to the property of others as the result of any one accident, and in the total sum of not less than four hundred thousand dollars for damages for or on account of any bodily injury to or the death of all persons and for damages to the property of others. Any liability for failure to comply with the requirements of this subparagraph (VI) shall be borne by the individual, partnership, or corporation who owns such vehicle.

(b) To prevent and suppress riots, routs, affrays, disturbances, and disorderly assemblies in any public or private place;

(c) To suppress bawdy and disorderly houses and houses of ill fame or assignation; to suppress gaming and gambling houses, lotteries, and fraudulent devices and practices for the purpose of gaining or obtaining money or property; and to regulate the promotion or wholesale promotion of obscene material and obscene performances, as defined in part 1 of article 7 of title 18, C.R.S.;

(d) To restrain and punish loiterers and prostitutes;

(d.5) To discourage juvenile delinquency through the imposition of curfews applicable to juveniles, the restraint and punishment of loitering by juveniles, and the restraint and punishment of defacement of, including the affixing of graffiti to, buildings and other public or private property by juveniles by means that may include restrictions on the purchase or possession of graffiti implements by juveniles. The board of county commissioners, when enacting an ordinance to carry out the powers granted by this paragraph (d.5), may make it unlawful for a retailer to sell graffiti implements to juveniles but shall not dictate the manner in which the retailer displays graffiti implements. For purposes of this paragraph (d.5), "juvenile" means a juvenile as defined in section 19-2-103 (10), C.R.S., and "graffiti implement" means an aerosol paint container, broad-tipped marker, gum label, paint stick or graffiti stick, or etching equipment.

(e) To control unleashed or unclaimed animals, except those animals defined in section 35-44-101 (1), C.R.S.;

(f) To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the board of county commissioners;

(g) To authorize the acceptance of a bail bond when any person has been arrested for the violation of any ordinance and a continuance or postponement of trial is granted. When such bond is accepted, it shall have the same validity and effect as bail bonds provided for under the criminal statutes of this state.

(h) To control and regulate the movement and parking of vehicles and motor vehicles on public property; except that misdemeanor traffic offenses and the posted speed limit on any state highway located within the county shall be deemed a matter of statewide interest. The county may establish fire lanes and emergency vehicle access on public or private property zoned commercial or residential and provide for fines and punishment of violators.

(i) To regulate and license escort bureaus, escorts, and escort bureau runners to the extent permitted under article 25.5 of title 12, C.R.S.;

(j) To regulate and license secondhand dealers to the extent permitted under article 13 of title 18, C.R.S.;

(k) To regulate and license pawnbrokers as provided in section 12-56-102, C.R.S.;

(k.5) To require registration of persons who engage in door-to-door selling of merchandise or goods and the delivery thereof within the county; except that nonprofit organizations which are exempt from the income tax imposed under article 22 of title 39, C.R.S., and schools shall not be subject to county requirements imposed under this paragraph (k.5);

(l) (I) To adopt reasonable regulations for the operation of establishments open to the public in which persons appear in a state of nudity for the purpose of entertaining the patrons of such establishment; except that such regulations shall not be tantamount to a complete prohibition of such operation. Such regulations may include the following:

(A) Minimum age requirements for admittance to such establishments;

(B) Limitations on the hours during which such establishments may be open for business; and

(C) Restrictions on the location of such establishments with regard to schools, churches, and residential areas.

(II) The board of county commissioners may enact ordinances which provide that any establishment which engages in repeated or continuing violations of regulations adopted by the board shall constitute a public nuisance. The county attorney of such county, or the district attorney acting pursuant to section 16-13-302, C.R.S., may bring an action in the district court of such county for an injunction against the operation of such establishment in a manner which violates such regulations.

(III) Nothing in the regulations adopted by the board of county commissioners pursuant to this paragraph (l) shall be construed to apply to the presentation, showing, or performance of any play, drama, ballet, or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher education, or other similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the

promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

(m) (I) In addition to the authority given counties in article 12 of title 25, C.R.S., to enact ordinances which regulate noise on public and private property except as provided in subparagraph (II) of this paragraph (m); prohibit the operation of any vehicle that is not equipped with a muffler in constant operation and is not properly maintained to prevent an increase in the noise emitted by the vehicle above the noise emitted when the muffler was originally installed; and prohibit the operation of any vehicle having a muffler that has been equipped or modified with a cutoff and bypass or any similar device or modification. For the purposes of this paragraph (m), "vehicle" shall have the same meaning as that set forth in section 42-1-102 (112), C.R.S.

(II) Ordinances enacted to regulate noise on public and private property pursuant to subparagraph (I) of this paragraph (m) shall not apply to:

(A) Property used for purposes which are exempt, pursuant to section 25-12-103, C.R.S., from noise abatement; and

(B) Property used for: Manufacturing, industrial, or commercial business purposes; public utilities regulated pursuant to title 40, C.R.S.; and oil and gas production subject to the provisions of article 60 of title 34, C.R.S.

(n) To provide for and compel the removal of snow on sidewalks within the county, at such time, upon such notice, and in such manner as the board of county commissioners may prescribe by ordinance, including removal performed by the county upon notice to and failure of the property owner to remove such snow and to assess the whole cost thereof, and other incidental costs in connection therewith, upon the property from which such snow has been removed;

(n.5) (I) To ban open fires to a degree and in a manner that the board of county commissioners deems necessary to reduce the danger of wildfires within those portions of the unincorporated areas of the county where the danger of forest or grass fires is found to be high based on competent evidence.

(II) Subject to subparagraph (IV) of this paragraph (n.5), the board of county commissioners in each county that has a substantial forested area shall, by January 1, 2012, develop an open burning permit system for the purpose of safely disposing of slash. In developing an open burning permit system, the board is encouraged to consult with the Colorado state forest service established in section 23-31-302, C.R.S., and shall:

(A) Collaborate with county and local jurisdictions such as the sheriff's office and fire protection districts, identify the agencies responsible for burner education, permitting, and compliance, and consider developing an education plan to inform private property owners of the benefits, criteria, and required processes for slash pile burning;

(B) Consider and be consistent with existing laws and processes that ban, regulate, or have developed recommendations concerning open burning, including sections 18-13-109, 18-13-109.5, 23-31-312, 23-31-313 (6) (a) (II) and (6) (a) (III), 25-7-106 (7) and (8), 25-7-123, 29-20-105.5, and 30-11-124, C.R.S.;

(C) Consider existing county ordinances;

(D) Consider existing scientific and applied knowledge of safe burning conditions, including consideration of, and the advisability of specifying permit limitations concerning, the number of slash piles that may be burned at one time per person who is monitoring the burn, the size of slash piles, temperature, humidity, snow cover, wind conditions, overhead and other types of electric utility facilities, including adequate distances from such facilities, fuel type and moisture content, slope, and setbacks from real estate improvements;

(E) Exempt broadcast burns conducted within federal and state guidelines that have a written prescribed fire plan and agricultural burns; and

(F) Include mechanisms to notify individuals with respiratory conditions, if requested by the individual, and contiguous landowners of the date, time, and location of slash pile burns.

(III) Nothing in this paragraph (n.5) infringes upon or otherwise affects the ability of agricultural producers to conduct burning on their property.

(IV) A board of county commissioners that has an open burning permit system on the effective date of this subparagraph (IV) need not comply with the requirements of subparagraph (II) of this paragraph (n.5) until the board materially alters the system.

(V) For purposes of this paragraph (n.5):

(A) "Competent evidence" includes the use of the national fire danger rating system and any other similar indices or information.

(B) "County that has a substantial forested area" means a county that has at least forty-four percent forest cover as determined by the state forester appointed pursuant to section 23-31-207, C.R.S.

(C) "Open burning" means fire that a person starts and that is intentionally used for forest management.

(D) "Slash" means woody material less than six inches in diameter consisting of limbs, branches, and stems that are free of dirt. "Slash" does not include tree stumps, roots, or any other material.

(n.7) To prohibit or restrict the sale, use, and possession of fireworks, including permissible fireworks, as defined in section 12-28-101 (3) and (8), C.R.S., for a period no longer than one year within all or any part of the unincorporated areas of the county; except that such an ordinance shall not be in effect between May 31 and July 5 of any year unless the ordinance includes an express finding of high fire danger, based on competent evidence, as defined in paragraph (n.5) of this subsection (1);

(o) In addition to the authority given counties under sections 30-10-513.5 and 30-15-401.5, to enact ordinances to restrain and punish any person who gives, makes, or causes to be given a false alarm of fire and to assess costs associated with such false alarms;

(o.5) To provide by ordinance for the regulation and licensing of alarm systems which transmit information to law enforcement or other public safety officials located within the county;

(p) In addition to the authority given counties under article 7 of title 29, C.R.S., and part 7 of article 20 of this title, to establish by ordinance and regulation the fees for certificates, permits, licenses, and passes for users in order to provide the funds for recreational facility development and to offset the costs of emergency search and rescue operations on public lands and the construction, operation, and maintenance of recreation paths on public property; except that areas, lakes, properties, and facilities under the control and management of the division of parks and wildlife shall be exempt from any such fees for certificates, permits, licenses, passes, or any other special charges;

(q) To provide for and compel the removal of any building or structure, except for a building or structure on affected land subject to the "Colorado Mined Land Reclamation Act", as the term "affected land" is defined in section 34-32-103 (1.5), C.R.S., or on lands subject to the "Colorado Surface Coal Mining Reclamation Act", pursuant to article 33 of title 34, C.R.S., the condition of which presents a substantial danger or hazard to public health, safety, or welfare, or any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard, or subjects adjoining property to danger of damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter, at such time, upon such notice, and in such manner as the board of county commissioners may prescribe by ordinance, including the removal performed by the county upon notice to and failure of the property owner to remove such building or structure, and to assess the whole cost of such removal, including incidental costs and a reasonable fee for inspection which fee shall not exceed five percent of the total amount due in connection therewith, upon the property from which such building or structure has been removed. Any assessment pursuant to this paragraph (q) shall be a lien against such property until paid. If such assessment is not paid within a reasonable time as specified by ordinance, it may be certified by the clerk and recorder to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected.

(r) (I) To regulate distressed real property by requiring that such real property be secured, maintained, and insured by the owner of such real property or, if applicable, by a holder of a lien that has taken possession of such real property pursuant to part 6 of article

38 of title 38, C.R.S., or any receiver appointed to take possession of or to preserve the real property. The county may require that real property owners, a holder in possession pursuant to part 6 of article 38 of title 38, C.R.S., or any receiver appointed to preserve or take possession of real property provide to the county planning and zoning department contact information for the person or entity responsible for the preservation of the real property.

(II) For purposes of this paragraph (r), "distressed real property" means any real property in foreclosure or any vacant or abandoned real property.

(1.5) In addition to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance prohibiting minors from possessing cigarettes or tobacco products, as defined by section 39-28.5-101 (5), C.R.S.

(2) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), the ordinances described in subsection (1) of this section shall apply throughout the unincorporated area of the county including public and state lands and to any incorporated town or city that elects by ordinance or resolution to have the provisions thereof apply.

(II) The board of county commissioners may designate, by resolution, areas in the unincorporated territory of the county exclusively within which an ordinance adopted pursuant to this section shall apply. The board shall set forth a rational basis for the designation and hold a public hearing prior to making the designation at which any interested person shall have an opportunity to be heard.

(b) Any regulation imposed prior to January 1, 1980, by resolution adopted under any provision of law may, upon suitable accommodation to the pertinent ordinance adoption procedure set forth in this part 4, be reimposed by ordinance. In such cases the resolution shall continue in force and effect until the ordinance which replaces it becomes effective.

(c) Nothing in this part 4 shall be construed to affect any proceeding arising under or pursuant to the provisions of law in effect immediately prior to January 1, 1980.

(3) Paragraph (a) of subsection (1) of this section shall not apply to the transportation of sludge and fly ash or to the transportation of hazardous materials, as defined in the rules and regulations adopted by the chief of the Colorado state patrol pursuant to section 42-20-104 (1), C.R.S.

(4) Paragraph (a) of subsection (1) of this section shall not apply to the transporting of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials which are collected by a city, county, city and county, town, or other local subdivision within its jurisdictional limits, provided every vehicle so engaged in transporting the discarded materials has conformed to vehicle standards at least as strict as those prescribed in subparagraph (II) of paragraph (a) of subsection (1). Such governing body shall not grant an exclusive territory or regulate rates for the collection and transportation of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials.

(5) Any provision of paragraph (a) of subsection (1) of this section to the contrary notwithstanding, the governing body of a city and county shall not be precluded from adopting ordinances, regulations, codes, or standards or granting permits issued pursuant to home rule authority; except that such governing body shall not grant an exclusive territory or regulate rates for the collection and transportation of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials.

(6) If the board of county commissioners or the governing body of any other local governmental entity is providing waste services, including the collection and transportation of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials, within the limits of any county or other local subdivision on or after April 19, 1994, any private person seeking also to offer those services shall first give a one-year public notice advising of the intent to offer the services. If a private person or persons are providing waste services within the limits of any county or other local subdivision on or after April 19, 1994, any board of county commissioners or the governing body of any other local governmental entity seeking also to offer those services shall first give a one-year public notice advising of the intent to offer the services. The public notice shall be given in a local newspaper of general circulation in the area served by the waste service provider. The requirements of this subsection (6) shall not apply to any municipality or city and county subject to subsection (7.5) of this section.

(7) (a) Notwithstanding any other provision of law, nothing in this section shall prohibit the providing of waste services by a private person, if that person is in compliance with applicable rules and regulations, within the limits of any municipality or city and county if those services also are provided by a governmental body within the limits of that governmental unit. The governmental body may not compel industrial or commercial establishments or multifamily residences of eight or more units to use or pay user charges for waste services provided by the governmental body in preference to those services provided by a private person.

(b) Subject to the limitation set forth in subsection (6) of this section and notwithstanding paragraph (a) of this subsection (7) and subsection (7.5) of this section or any other provision of law, nothing in this section shall prohibit the providing of waste services by a private person within the limits of any county or other local subdivision if that person is in compliance with applicable rules and regulations. If services also are provided by a governmental body within the limits of the county or other local subdivision, the governmental body shall not compel any resident, including, but not limited to, an owner or tenant of industrial or commercial establishments or multifamily residences, to use or pay user charges for waste services provided by the governmental body in preference to those services provided by a private person.

(7.5) (a) Any requirement that municipal residents use or pay user charges for residential waste services pursuant to paragraph (a) of subsection (7) of this section may be affected by utilization of the initiative and referendum power reserved to the municipal electors in section 1 (9) of article V of the Colorado constitution.

(b) The governing body of any municipality or city and county that chooses, after April 19, 1994, to require use of or to commence the imposition of a fee for residential waste services pursuant to paragraph (a) of subsection (7) of this section in all or any portion of the jurisdiction, including any portion of the jurisdiction annexed after April 19, 1994, may do so subject to the following requirements:

(I) The governing body shall provide written notice to any private person who lawfully provides waste services within the jurisdiction and shall give a six-month public notice in a newspaper of general circulation within the jurisdiction prior to requiring the use or initial imposition of the fee. The notice shall include:

(A) The date upon which, and the area within the jurisdiction where, requiring use of or billing for residential waste services will commence; and

(B) An explanation of the option to request an opportunity to submit a proposal to provide residential waste services to that area.

(II) Any person may, within thirty days following publication or receipt of the notice, request in writing the opportunity to submit a proposal to provide residential waste services within the portion of the jurisdiction where required use of those services or imposition of the fee will commence. A request for an opportunity to submit a proposal shall suspend required use of the services or imposition of the residential waste services fee until a request for proposal process, as set forth in paragraph (c) of this subsection (7.5), is completed. Any person who has requested in writing an opportunity to submit a proposal to provide residential waste services pursuant to this subparagraph (II) is eligible to participate in the proposal process. If no written request is received within the time permitted, the governing body may proceed to require use of or impose a fee for residential waste services without conducting a request for proposal process as set forth in paragraph (c) of this subsection (7.5).

(III) Any municipality or city and county that complies with paragraph (c) of this subsection (7.5) shall not be subject to the provisions of section 31-12-119, C.R.S.

(IV) The requirements set forth in this subsection (7.5) shall not apply to any municipality or city and county that is legally requiring use of or imposing a fee for residential waste services within its jurisdiction pursuant to paragraph (a) of subsection (7) of this section on April 19, 1994, and, having complied with the notice requirements of subsection (6) of this section applicable at the time of the initiation of such residential waste services, chooses to extend the requirement for use of or imposition of the fee for residential waste services to areas within the jurisdiction that have not been annexed after April 19, 1994.

(c) The governing body shall conduct any request for a proposal process required pursuant to this subsection (7.5) as follows:

(I) The governing body shall mail a request for proposals to all private persons who are eligible to submit a proposal. The request for proposals shall include a description of the portion of the jurisdiction to which residential waste services will be provided and shall request a proposed price of providing those services.

(II) When the jurisdiction issuing the request for proposals chooses to submit a proposal, a certification of an independent auditor stating that the public entity's proposed price is not based on subsidization from entity revenue streams or operations unrelated to the provision of waste services shall be appended to the proposal.

(III) Following review of all proposals properly submitted, the governing body shall award a contract for the provision of residential waste services based upon the criteria set forth in the request for proposals.

(d) As used in this subsection (7.5), "residential waste services" means the collection and transportation of ashes, trash, waste, rubbish, garbage or industrial waste products, or any other discarded materials from sources other than industrial or commercial establishments or multifamily residences of eight or more units.

(7.7) (a) If the governing body of a jurisdiction selects a proposal submitted by the jurisdiction, any private person who submitted a proposal may request a review of the selection as provided in this subsection (7.7). A request for review shall be submitted to the governing body in writing within ten days following selection of the jurisdiction's proposal. The filing of a request shall suspend the award until the completion of the review provided in this subsection (7.7).

(b) (I) Upon receipt of a request, the governing body, or its designee, shall promptly select a reviewing auditor to conduct the review. The reviewing auditor shall commence and complete its review as expeditiously as practicable.

(II) As a part of that review, the reviewing auditor shall afford the person who submitted the request for review the opportunity to present the reviewing auditor his or her views with respect to the governing body's determination, subject to any reasonable procedures, guidelines, and limitations as the reviewing auditor may prescribe, including but not limited to requiring that those views be expressed in writing and submitted by a specific date and time. No person shall be permitted to alter any previously submitted proposal in any respect.

(III) The reviewing auditor shall review each of the proposals submitted, but the review shall be limited to determining:

(A) Whether the selection of the jurisdiction's proposal was made in a manner contrary to the procedure set forth in subsection (7.5) of this section or in the request for proposals;

(B) Whether the selection of the jurisdiction's proposal was clearly erroneous in light of the criteria set forth in the request for proposals; and

(C) Whether the certification of an independent auditor provided pursuant to subparagraph (II) of paragraph (c) of subsection (7.5) of this section is materially inaccurate.

(IV) Should the reviewing auditor find that the governing body's selection of a proposal was improper, the determination of the governing body shall be void, and the governing body shall reconsider as expeditiously as is practicable all proposals timely submitted and determine which proposals it will accept, giving due regard to the determination of the reviewing auditor. No person shall be entitled to alter any previously submitted proposal in any respect. If the reviewing auditor finds that the governing body's selection of a proposal was proper, the selection shall be valid and conclusive and shall not be subject to further challenge or review.

(V) The reviewing auditor's fee for performing a review pursuant to this subsection (7.7) shall be paid by the private person requesting the review; except that, if the governing body's selection of a proposal is found to be improper by the reviewing auditor, the municipality or city and county shall pay the fee.

(c) As used in this subsection (7.7), a reviewing auditor shall be a qualified, licensed, independent public accountant or public accounting firm selected by the governing body and shall certify to the governing body in writing that it is not being retained currently, has not been retained within the previous five years, and currently has no basis for believing it

will be retained in the future by the governing body, any persons who have submitted proposals, or, to the accountant's or firm's knowledge after due inquiry, any of the governing body's or person's affiliates, partners, or relatives for the performance of accounting or other services.

(8) No ordinance, resolution, rule, regulation, service, function, or exercise of an authorized power pursuant to this section or section 30-11-101 (1) (f) or (1) (g) or 30-11-107 (1) (u), (1) (w), (1) (y), (1) (z), or (1) (bb) or 25-1-508 (5) (g) or (5) (j), C.R.S., shall apply within the corporate limits of any incorporated municipality, nor to any municipal service, function, facility, or property whether owned by or leased to the incorporated municipality, outside the municipal boundaries, unless the municipality consents. If the municipality consents that any ordinance, resolution, rule, regulation, service, function, or exercise of an authorized power shall apply within the municipality or to municipal services, functions, facilities, or property outside the municipal boundaries, such ordinance, resolution, rule, regulation, service, function, or exercise of an authorized power shall be uniform within the municipality and the applicable unincorporated areas of the county, unless the county and the municipality agree otherwise pursuant to part 2 of article 1 of title 29, C.R.S.

(9) (a) No ordinance, resolution, rule, regulation, service, function, or exercise of an authorized power pursuant to this section shall apply within the jurisdictional boundaries of any special district enumerated in this subsection (9), nor to any special district service, function, facility, or property whether owned by or leased to the special district outside the special district boundaries if such ordinance, resolution, rule, regulation, service, function, or exercise of an authorized power would duplicate or interfere with any service or facility authorized and provided by such special district or contravene any power authorized and exercised by such special district, unless the county is specifically empowered by law to exercise authority with respect thereto, or the county and the special district agree otherwise pursuant to part 2 of article 1 of title 29, C.R.S.

(b) For purposes of this subsection (9), "special district" means any special district established pursuant to article 1 of title 32, C.R.S., the three lakes water and sanitation district established pursuant to article 10 of title 32, C.R.S., the urban drainage and flood control district established pursuant to article 11 of title 32, C.R.S., any metropolitan sewage disposal district established pursuant to part 4 of article 4 of title 32, C.R.S., any drainage district established pursuant to article 20 of title 37, C.R.S., the Cherry Creek basin water quality authority established pursuant to article 8.5 of title 25, C.R.S., any regional service authority established pursuant to article 7 of title 32, C.R.S., and the regional transportation district established pursuant to article 9 of title 32, C.R.S.

(10) (a) Subject to the exemptions found in 8 U.S.C. sec. 1621 (c) (2), to the extent that a license, permit, certificate, or other authorization to conduct business issued by a county constitutes a professional license or commercial license regulated by 8 U.S.C. sec. 1621, a county may issue such authorization to an individual only if the individual is lawfully present in the United States, and shall immediately deny any such authorization or renewal thereof upon determining that the individual is unlawfully present in the United States. The individual shall prove his or her identity with a secure and verifiable document, as that term is defined in section 24-72.1-102, C.R.S. A county shall not sell or utilize for any purpose other than those specified in law the information contained in the secure and verifiable document, and shall keep such information confidential unless disclosure is required by law; except that nothing in this paragraph (a) shall be construed to limit public access to records that are available for public inspection pursuant to article 72 of title 24, C.R.S.

(b) For purposes of this subsection (10), an individual is unlawfully present in the United States if the individual is an alien who is not:

- (I) A qualified alien as defined in 8 U.S.C. sec. 1641;
- (II) A nonimmigrant under the "Immigration and Nationality Act", federal Public Law 82-414, as amended; or
- (III) An alien who is paroled into the United States under 8 U.S.C. sec. 1182 (d) (5) for less than one year.

(c) This subsection (10) shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(11) (a) (I) If a county is the permittee of a municipal separate storm sewer system permit issued pursuant to part 5 of article 8 of title 25, C.R.S., the board of county commissioners may adopt a storm water ordinance to develop, implement, and enforce the storm water management program required by the permit.

(II) The storm water ordinance may specify that the county may:

(A) Provide for and compel the abatement of any condition that causes or contributes to a violation of the permit or requirement from any property located within the unincorporated portion of the county at such time, upon such notice, and in such manner consistent with the terms of the permit as the board of county commissioners may prescribe by ordinance;

(B) Perform the abatement upon notice to and failure of the property owner to abate such condition; and

(C) Assess the reasonable cost of the abatement, including five percent for inspection and other incidental costs in connection therewith, upon the property from which such condition has been abated.

(III) Storm water ordinances adopted pursuant to this subsection (11) shall include provisions for applying for and exercising an administrative entry and seizure warrant issued by a county or district court having jurisdiction over the property from which the condition is to be abated. An assessment pursuant to this subsection (11) shall, once recorded, be a lien against such property until paid and shall have priority based upon its date of recording. If the assessment is not paid within a reasonable time specified by ordinance, the county clerk and recorder may certify that fact to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection (11).

(b) (I) A county court or district court having jurisdiction over the property from which such condition is to be abated pursuant to the storm water ordinance shall issue an administrative entry and seizure warrant for the abatement of such condition upon presentation by a county of:

(A) Ordinance provisions that meet the requirements of paragraph (a) of this subsection (11);

(B) A sworn or affirmed affidavit stating the factual basis for such warrant;

(C) Evidence that the property owner has received notice of the condition and has failed to abate the condition within a reasonable prescribed period;

(D) A general description of the location of the property that is the subject of the warrant; and

(E) A general list of corrective action needed.

(II) Within ten days after the date of issuance of an administrative entry and seizure warrant pursuant to the provisions of this paragraph (b), the executing authority shall:

(A) Execute such warrant in accordance with directions by the issuing court;

(B) Provide or mail a copy of such warrant to the property owner; and

(C) Submit proof of the execution of such warrant, including a written inventory of any property impounded by the executing authority, to the court.

Source: L. 79: Entire part added, p. 1144, § 1, effective May 24. L. 80: (1)(a) amended and (3) to (7) added, p. 744, § 7, effective June 30; (1)(i) added, p. 479, § 2, effective July 1. L. 82: (1)(c) amended, p. 626, § 31, effective April 12. L. 83: (1)(a)(I) amended, p. 1488, § 3, effective June 1; (1)(j) added, p. 718, § 2, effective July 1. L. 84: (1)(n) added, p. 442, § 2, effective March 16. L. 85: (1)(l) added, p. 1059, § 1, effective July 1. L. 86: (1)(c) amended, p. 784, § 6, effective April 21. L. 87: (1)(a)(I) amended and (1)(a)(I.5) added, p. 1208, § 1, effective May 14; (3) amended, p. 1570, § 5, effective July 1. L. 88: (1)(m) added, p. 1115, § 1, effective May 19. L. 90: IP(1), (1)(a)(V), and (1)(h) amended and (1)(n) to (1)(q), (8), and (9) added, p. 1449, §§ 3, 4, effective July 1. L. 91: (1)(p) amended, p. 1919, § 44, effective June 1. L. 92: (1)(a)(I) and (1)(a)(I.5) amended, p. 967, § 11, effective June 1. L. 93: (1)(q) amended, p. 1199, § 18, effective July 1. L. 93, 1st Ex. Sess.: (1)(d.5) added, p. 34, § 2, effective September 13. L. 94: (6) and

(7) amended and (7.5) and (7.7) added, p. 698, § 1, effective April 19; (1)(a)(V)(D) amended and (1)(k.5) and (1)(o.5) added, p. 1238, § 9, effective May 22; (1)(m)(I) and (3) amended, p. 2564, § 77, effective January 1, 1995. **L. 95:** (1)(n.5) added, p. 546, § 1, effective May 22. **L. 98:** (1.5) added, p. 153, § 1, effective July 1; (1)(d.5) amended, p. 826, § 41, effective August 5. **L. 99:** (1)(d.5) amended, p. 270, § 1, effective August 4; (1)(h) amended, p. 368, § 3, effective August 4. **L. 2002, 3rd Ex. Sess.:** (1)(n.5) amended, p. 43, § 1, effective July 18. **L. 2004:** (1)(n.5) amended, p. 1966, § 5, effective August 4. **L. 2006:** (1)(a)(I.5)(A) amended, p. 138, § 1, effective August 7. **L. 2006, 1st Ex. Sess.:** (10) added, p. 29, § 2, effective January 1, 2007. **L. 2007:** (11) added, p. 400, § 1, effective April 9; (1)(n.5) amended and (1)(n.7) added, p. 492, § 2, effective August 3. **L. 2008:** (1)(a)(V)(B) and (8) amended, p. 2054, § 11, effective July 1; (2)(a) amended, p. 58, § 3, effective August 5. **L. 2010:** (1)(r) added, (HB 10-1118), ch. 348, p. 1606, § 1, effective August 11. **L. 2011:** IP(1) and (1)(n.5) amended, (SB 11-110), ch. 110, p. 342, § 2, effective April 13.

Cross references: (1) For similar provisions concerning the exercise of police power by municipalities, see § 31-15-401.

(2) For the legislative declaration in the 2011 act amending the introductory portion to subsection (1) and subsection (1)(n.5), see section 1 of chapter 110, Session Laws of Colorado 2011.

ANNOTATION

Law reviews. For article, "Trash Hauling and Recycling Solutions for Municipalities", see 23 Colo. Law. 2339 (1994). For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

Subsection (1)(I) does not violate the right to equal protection of the laws under the United States and Colorado Constitutions. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Club that offered nude entertainment was "open to the public" and therefore subject to county regulation pursuant to subsection (1)(I). The club was not a private club, despite claims to the contrary, because: The club was not genuinely selective of its members; the membership fee was minimal; the club members had no control over the club's operations; the formalities of a private club such as by-laws and membership meetings were not present; the club was only recently converted to a private format and was advertised as being open to the public and in business in the same location for nineteen years; and the sole purpose of the club's purported conversion to a private club format appeared to be the avoidance of county ordinances. *People v. A Business or Businesses located at 2896 W. 64th Ave.*, 989 P.2d 235 (Colo. App. 1999).

This section does not authorize an ordinance requiring the removal of a building because it was not "neat and orderly". *Hibbard*

v. County of Adams, 900 P.2d 1254 (Colo. App. 1994).

Trial court erred in determining that county possesses requisite authority to require that private access road across ranch parcels comply with county's fire code and its access requirements. The "farms or ranches" exception to the provisions of § 30-15-401.5 (3) found in § 30-15-401.5 (6) does not refer to access, roads, or the purposes thereof. Instead, it refers to the use or status of the land. If the land traversed by the road currently satisfies the "farms or ranches" exception, then so long as the fundamental character of the land does not change in a manner that would make the exception inapplicable, the county may not regulate the road under subsection (1) of this section. *Zweygardt v. Bd. of County Comm'rs of Elbert County*, 190 P.3d 848 (Colo. App. 2008).

Whether a private road that begins at a public road, crosses various parcels, and dead-ends on private land may be regulated in its entirety or not at all should be determined by the predominant use of the private land that it crosses. The predominant use of these various parcels may change, which will affect whether, at some point in time, the county can require the entire road to comply with its fire code, although some parcels may still meet the "farm and ranch" exception. *Zweygardt v. Bd. of County Comm'rs of Elbert County*, 190 P.3d 848 (Colo. App. 2008).

30-15-401.5. Fire safety standards. (1) In addition to any other powers granted by the general assembly, the board of county commissioners of each county has the power to adopt ordinances to provide for minimum fire safety standards which shall be modeled upon those contained in the uniform fire code, including the table of contents, indices, appendices, and tables, as promulgated by the international conference of building officials, the

international fire code institute, and the western fire chiefs association.

(2) A board of county commissioners may adopt such ordinances only after it has approved the formation of and received the recommendations of a permanent commission, to be known as the fire code adoption and revision commission. The commission shall consist of the board or its designees, the fire chiefs whose departments or districts lie partially or wholly within the portion of the affected county encompassed by the proposed fire code, and such other members as the board may appoint. Members of the commission appointed by the board shall serve at the pleasure of the board. Members of the commission shall receive no compensation or reimbursement of expenses for their services on the commission.

(3) Such ordinances shall apply to all or a portion of the unincorporated area of the county and any incorporated town or city which elects by ordinance or resolution to have the provisions thereof apply.

(4) A fire protection district or county improvement district providing fire protection services may propose fire code provisions for its district that may be different from the minimum fire safety standards adopted by the county. Such provisions shall be effective within the petitioning fire protection district or county improvement district providing fire protection services only upon the approval of the board.

(5) No fire code provisions adopted pursuant to this section shall apply within any municipality unless the governing body of the municipality adopts a resolution stating that such provisions shall be applicable within its boundaries.

(6) The provisions of subsection (3) of this section shall not apply to farms or ranches.

(7) Fire protection districts organized pursuant to article 1 of title 32, C.R.S., and county improvement districts providing fire protection services organized pursuant to part 5 of article 20 of this title shall enforce the fire safety standards adopted by county ordinances within the fire district's jurisdiction. The county commissioners may contract with an enforcement agency for areas of the county not receiving fire protection.

(8) Nothing in this section shall be construed to affect the validity of any ordinance adopted by a board of county commissioners before July 1, 1985.

(9) Nothing in this section shall be construed to require a board of county commissioners to provide fire protection services to any area of the county or to require a board of county commissioners to adopt fire safety standards.

(10) Notwithstanding any other provision of this section, no fire protection district shall prohibit the sale of permissible fireworks, as defined in section 12-28-101 (8), C.R.S., within its jurisdiction.

Source: **L. 85:** Entire section added, p. 1061, § 1, effective July 1. **L. 90:** (4) and (7) amended, p. 1459, § 3, effective March 22. **L. 96:** (1) amended and (10) added, p. 282, § 1, effective April 11. **L. 2007:** (10) amended, p. 493, § 3, effective August 3.

ANNOTATION

Law reviews. For article, "The Lawyer's Role in Fire Code Enforcement Actions", see 24 Colo. Law. 2201 (1995).

Trial court erred in determining that county possesses requisite authority to require that private access road across ranch parcels comply with county's fire code and its access requirements. The "farms or ranches" exception to the provisions of subsection (3) found in subsection (6) does not refer to access, roads, or the purposes thereof. Instead, it refers to the use or status of the land. If the land traversed by the road currently satisfies the "farms or ranches" exception, then so long as the fundamental character of the land does not change in a manner that would make the excep-

tion inapplicable, the county may not regulate the road under § 30-15-401 (1). *Zweygardt v. Bd. of County Comm'rs of Elbert County*, 190 P.3d 848 (Colo. App. 2008).

Whether a private road that begins at a public road, crosses various parcels, and dead-ends on private land may be regulated in its entirety or not at all should be determined by the predominant use of the private land that it crosses. The predominant use of these various parcels may change, which will affect whether, at some point in time, the county can require the entire road to comply with its fire code, although some parcels may still meet the "farm and ranch" exception. *Zweygardt v. Bd. of County Comm'rs of Elbert County*, 190 P.3d 848 (Colo. App. 2008).

30-15-401.7. Determination of fire hazard area - community wildfire protection plans - adoption - legislative declaration - definitions. (1) (a) The general assembly hereby finds, determines, and declares that:

(I) Community wildfire protection plans, or CWPPs, are authorized and defined in section 101 of Title I of the federal "Healthy Forests Restoration Act of 2003", Pub.L. 108-148, referred to in this section as "HFRA". Title I of HFRA authorizes the secretaries of agriculture and the interior to expedite the development and implementation of hazardous fuel reduction projects on federal lands managed by the United States forest service and the bureau of land management when these agencies meet certain conditions. HFRA emphasizes the need for federal agencies to work collaboratively with local communities in developing hazardous fuel reduction projects, placing priority on treatment areas identified by the local communities themselves in a CWPP. The wild land-urban interface area is one of the identified property areas that qualify under HFRA for the use of this expedited environmental review process.

(II) The development of a CWPP can assist a local community in clarifying and refining its priorities for the protection of life, property, and critical infrastructure in its wildland-urban interface area. The CWPP brings together diverse federal, state, and local interests to discuss their mutual concerns for public safety, community sustainability, and natural resources. The CWPP process offers a positive, solution-oriented environment in which to address challenges such as local fire-fighting capability, the need for defensible space around homes and housing developments, and where and how to prioritize land management on both federal and nonfederal lands. CWPPs can be as simple or complex as a local community desires.

(III) The adoption of a CWPP brings many benefits to the state and adopting local community, including:

(A) The opportunity to establish a locally appropriate definition and boundary for the wildland-urban interface area;

(B) The opportunity to study the effect of fire ratings and combustibility standards for building materials used in wildland-urban interface areas;

(C) The establishment of relations with other state and local government officials, local fire chiefs, state and national fire organizations, federal land management agencies, private homeowners, electric, gas, and water utility providers in the subject area, and community groups, thereby ensuring collaboration among these groups in initiating a planning dialogue and facilitating the implementation of priority actions across ownership boundaries;

(D) Specialized natural resource knowledge and technical expertise relative to the planning process, particularly in the areas of global positioning systems and mapping, vegetation management, assessment of values and risks, and funding strategies; and

(E) Statewide leadership in developing and maintaining a list or map of communities at risk within the state and facilitating work among federal and local partners to establish priorities for action.

(IV) CWPPs give priority to projects that provide for the protection of at-risk communities or watersheds or that implement recommendations in the CWPP.

(V) CWPPs assist local communities in influencing where and how federal agencies implement fuel reduction projects on federal lands and how additional federal funds may be distributed for projects on nonfederal lands, and in determining the types and methods of treatment that, if completed, would reduce the risk to the community.

(VI) The development of CWPPs promotes economic opportunities in rural communities.

(b) By enacting this section, the general assembly intends to facilitate and encourage the development of CWPPs in counties with fire hazard areas in their territorial boundaries and to provide more statewide uniformity and consistency with respect to the content of CWPPs in counties needing protection against wildfires.

(2) As used in this section, unless the context otherwise requires:

(a) "CWPP" means a community wildfire protection plan as authorized and defined in section 101 of Title I of the federal "Healthy Forests Restoration Act of 2003", Pub.L. 108-148.

(b) "Fire hazard area" means an area mapped by the Colorado state forest service, identified in section 23-31-302, C.R.S., as facing a substantial and recurring risk of exposure to severe fire hazards.

(3) (a) Not later than January 1, 2011, the board of county commissioners of each county, with the assistance of the state forester, shall determine whether there are fire hazard areas within the unincorporated portion of the county.

(b) Not later than one hundred eighty days after determining there are fire hazard areas within the unincorporated portion of a county, the board of county commissioners, in collaboration with the representatives of the organizations or entities enumerated in section 23-31-312 (3), C.R.S., that established the guidelines and criteria, shall prepare a CWPP for the purpose of addressing wildfires in fire hazard areas within the unincorporated portion of the county. In preparing the CWPP, the board shall consider the guidelines and criteria established by the state forester and such representatives pursuant to section 23-31-312 (3), C.R.S.

(c) Notwithstanding any other provision of this section, a county that has already prepared a CWPP or an equivalent plan as of August 5, 2009, and, in connection with such preparation, considered the guidelines and criteria established by the state forester and designated representatives pursuant to section 23-31-312 (3), C.R.S., shall not be required to prepare a new CWPP to satisfy the requirements of this section.

Source: L. 2009: Entire section added, (SB 09-001), ch. 30, p. 125, § 2, effective August 5.

30-15-402. Violations - penalty - surcharges - victim and witness assistance - traumatic brain injury trust fund. (1) Any person who violates any county ordinance adopted pursuant to this part 4 commits a class 2 petty offense or, in the case of traffic offenses, commits a traffic infraction, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars for each separate violation. If authorized by the county ordinance, the penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by any arresting law enforcement officer for any such violation. As part of said county ordinance authorizing the penalty assessment procedure, the board of county commissioners may adopt a graduated fine schedule for such violations. Such graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same individual. In the case of county traffic ordinance violations, the provisions of sections 42-4-1701 and 42-4-1703, C.R.S., and sections 42-4-1708 to 42-4-1718, C.R.S., shall apply; except that the fine or penalty for a violation charged and the surcharge thereon if authorized by county ordinance shall be paid to the county.

(2) In addition to the penalties prescribed in subsection (1) of this section, persons convicted of a violation of any ordinance adopted pursuant to this part 4 are subject to:

(a) A surcharge of ten dollars that shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the moneys to the court administrator of the judicial district in which the offense occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district pursuant to section 24-4.2-103, C.R.S.

(b) (Deleted by amendment, L. 2004, p. 1012, § 1, effective August 4, 2004.)

(3) In addition to the penalties prescribed in subsection (1) of this section, persons convicted of operating a vehicle in excess of the speed limit in violation of an ordinance adopted pursuant to section 30-15-401 (1) (h) are subject to a surcharge of fifteen dollars that shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the moneys to the state treasurer, who shall credit the same to the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S.

Source: L. 79: Entire part added, p. 1145, § 1, effective May 24. **L. 81:** Entire section R&RE, p. 1449, § 1, effective May 22. **L. 93:** Entire section amended, p. 1254, § 2, effective July 1. **L. 96:** (1) amended, p. 334, § 1, effective July 1. **L. 99:** (1) amended, p.

367, § 2, effective August 4. **L. 2002:** (2) amended, p. 1610, § 6, effective January 1, 2004. **L. 2004:** (2) amended and (3) added, p. 1012, § 1, effective August 4. **L. 2009:** (3) amended, (SB 09-133), ch. 392, p. 2119, § 1, effective August 5.

30-15-402.5. Enforcement personnel - peace officer designation. (1) Personnel designated by ordinance duly adopted to enforce county ordinances adopted pursuant to this part 4, however titled or administratively assigned, may issue citations or summonses and complaints enforcing county ordinances without regard to the certification requirements of part 3 of article 31 of title 24, C.R.S.

(2) Nothing in this section is intended to vest authority in any person so engaged to enforce any resolution or ordinance through execution of an administrative entry and seizure warrant issued pursuant to section 30-15-401 or through exercise of any power other than the power to issue a citation or summons and complaint as described in subsection (1) of this section.

Source: L. 94: Entire section added, p. 1241, § 14, effective May 22.

30-15-403. Style of ordinances. The style of the ordinances in counties shall be: "Be it ordained by the board of county commissioners of county."

Source: L. 79: Entire part added, p. 1145, § 1, effective May 24.

30-15-404. Majority must vote for ordinances - proving ordinances. All ordinances shall require for their passage or adoption the concurrence of a majority of the board of county commissioners. All ordinances may be proven by the seal of the county, and, when printed in book or pamphlet form and purporting to be printed and published by authority of the county, the same shall be received in evidence in all courts and places without further proof.

Source: L. 79: Entire part added, p. 1145, § 1, effective May 24.

30-15-405. Record and publication of ordinances. All ordinances, as soon as may be after their adoption, shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the chairman of the board of county commissioners and the county clerk and recorder. All ordinances of a general or permanent nature and those imposing any fine, penalty, or forfeiture, following adoption, shall be published by title only and shall contain the date of the initial publication and shall reprint in full any section, subsection, or paragraph of the ordinance which was amended following the initial publication. Publication following adoption may be in full at the discretion of the board of county commissioners. It is a sufficient defense to any suit or prosecution for such fine, penalty, or forfeiture to show that no publication was made. If there is no newspaper published or having a general circulation within the limits of the county, then, upon a resolution being passed by the board of county commissioners to that effect, ordinances may be published by posting copies thereof in three public places within the limits of the county, to be designated by the board of county commissioners. Except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary in a separate section, such ordinances shall not take effect and be in force before thirty days after they have been so published. The excepted ordinances shall take effect upon adoption. A copy of an appropriate section or sections of the book of ordinances provided for in this section, certified as correct by the county clerk and recorder, shall be taken and considered in all courts of this state as prima facie evidence that such ordinances have been published as provided by law.

Source: L. 79: Entire part added, p. 1145, § 1, effective May 24.

30-15-406. Reading before board of county commissioners - publication. No ordinance shall be adopted by any board of county commissioners of any county in this state

unless the same has been previously introduced and read at a preceding regular or special meeting of such board and published in full in one newspaper of general circulation published in such county at least ten days before its adoption. If there is no such newspaper published in the county, copies of the proposed ordinance shall be posted in at least six public places in such county at least ten days prior to its adoption. Such previous introduction of such ordinance at such preceding meeting of the board of county commissioners and the fact of its publication in such newspapers or by posting shall appear in the certificate and the attestation of the county clerk and recorder on such ordinance after its adoption.

Source: L. 79: Entire part added, p. 1146, § 1, effective May 24.

30-15-407. Reading - adoption of code. Whenever the reading of an ordinance or of a code, which is to be adopted by reference, is required by statute, any such requirement shall be deemed to be satisfied if the title of the proposed ordinance or code is read and the entire text of the proposed ordinance or of any code which is to be adopted by reference is submitted in writing to the board of county commissioners before adoption.

Source: L. 79: Entire part added, p. 1146, § 1, effective May 24.

30-15-408. Disposition of fines and forfeitures. All fines and forfeitures for the violation of ordinances and, except as otherwise provided for surcharges levied pursuant to section 30-15-402 (2) and (3), all moneys collected for licenses or otherwise shall be paid into the treasury of the county at such times and in such manner as may be prescribed by ordinance, or, if there is no ordinance referring to the case, it shall be paid to the treasurer at once.

Source: L. 79: Entire part added, p. 1146, § 1, effective May 24. **L. 93:** Entire section amended, p. 1254, § 3, effective July 1. **L. 2004:** Entire section amended, p. 1013, § 2, effective August 4.

30-15-409. One-year limitation of suits. All suits for the recovery of any fine and prosecutions for the commission of any offense made punishable under any ordinance of any county shall be barred one year after the commission of the offense for which the fine is sought to be recovered.

Source: L. 79: Entire part added, p. 1146, § 1, effective May 24.

30-15-410. County courts - jurisdiction. County courts, in their respective counties, have jurisdiction in prosecutions of violations of county ordinances. The simplified county court procedures set forth in part 1 of article 2 of title 16, C.R.S., and the penalty assessment procedures set forth in part 2 of said article shall be applicable to the prosecution of violations of county ordinances. Any summons and complaint brought in any county court shall be filed in the name of the county by and on behalf of the people of the state of Colorado. Any process issued from a county court shall be likewise denominated. It is the duty of the sheriff and undersheriff and deputies, in their respective counties, to enforce the provisions of county ordinances.

Source: L. 79: Entire part added, p. 1147, § 1, effective May 24. **L. 81:** Entire section R&RE, p. 1449, § 2, effective May 22.

Cross references: For the jurisdiction of the county court generally, see §§ 13-6-103 through 13-6-106.

30-15-411. Conflicts with state statutes. No county shall adopt an ordinance that is in conflict with any state statute.

Source: L. 79: Entire part added, p. 1147, § 1, effective May 24.

ANNOTATION

Determination and effect of conflict. No local government may adopt an ordinance or resolution that is in conflict with a state statute. If it does conflict, the ordinance or resolution is void. However, for a conflict to exist, both the state statute and the local ordinance or resolution must contain express or implied conditions which are inconsistent and irreconcilable one with the other. *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

County ordinance which purportedly conflicts with a state statute may coexist with such state statute if the ordinance does not

have provisions which irreconcilably conflict with state statute, but, if there is such a conflict, the state statute preempts the county ordinance. *Bd. of County Comm'rs. v. Martin*, 856 P.2d 62 (Colo. App. 1993).

A county ordinance and a state statute may both remain effective and enforceable as long as they do not contain express or implied conditions that are irreconcilably in conflict with each other. *Wilkinson v. Bd. of County Comm'rs*, 872 P.2d 1269 (Colo. App. 1993).

Applied in *Hudspeth v. Bd. of County Comm'rs*, 667 P.2d 775 (Colo. App. 1983).

ARTICLE 17

County Assistance for the Poor

Editor's note: This article was numbered as article 10 of chapter 36, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

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		30-17-403.	(Repealed)

PART 1

GENERAL ASSISTANCE

30-17-101. Legislative declaration. It is the intent of the general assembly in the enactment of this part 1 to enable each county to provide a means of temporary general assistance to poor persons who reside in the county or to transients. Such temporary general assistance is necessarily restricted by the limited ability of county government to make appropriations therefor.

Source: **L. 81:** Entire article R&RE, p. 1451, § 1, effective May 22. **L. 82:** Entire section amended, p. 428, § 5, effective July 1.

30-17-102. Counties may provide temporary general assistance to the poor. Each county may provide temporary general assistance to the poor who reside in the county or to transients. If such provision is made, each county may provide eligible recipients with such relief as, in the judgment of the board of county commissioners, is needed.

Source: **L. 81:** Entire article R&RE, p. 1451, § 1, effective May 22.

30-17-103. Standards and guidelines. (1) If a temporary general assistance program is undertaken, the board of county commissioners of each county, by ordinance, shall establish standards and guidelines for determining who is eligible to receive temporary general assistance, what types of assistance shall be offered, what amounts of assistance shall be paid, and for what periods of time such assistance shall be offered.

(2) In adopting and promulgating such standards and guidelines, the board of county commissioners may establish requirements of residency for a specified minimum period, not to exceed six months, and may also set different residency requirements for different types of relief.

(3) The board of county commissioners, in the standards and guidelines adopted pursuant to this article, may require that any applicant for temporary general assistance search for employment and accept employment that is offered and also enroll with the divisions of employment and training and unemployment insurance in order to be eligible to receive temporary general assistance. The requirements, however, do not apply to an applicant who is unable to work due to a temporary disability. The board may require verification of a disability by a medical examination. The requirements to search for employment do not apply to persons who are sixty-five years of age and older.

Source: **L. 81:** Entire article R&RE, p. 1451, § 1, effective May 22. **L. 2012:** (3) amended, (HB 12-1120), ch. 27, p. 112, § 30, effective June 1.

Editor's note: The effective date for amendments to subsection (3) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012 by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

30-17-104. Burial expenses. Each county shall also provide for the decent burial of any person who dies within the county who does not leave sufficient funds for such burial and whose family is either financially unable to provide for such burial or cannot be contacted within a reasonable time.

Source: **L. 81:** Entire article R&RE, p. 1452, § 1, effective May 22.

30-17-105. Temporary general assistance account. Each board of county commissioners, upon its determination to undertake a temporary general assistance program, shall establish a temporary general assistance account for the purpose of providing money for the temporary general assistance program in the county; and each board shall appropriate money for such account for such purpose.

Source: **L. 81:** Entire article R&RE, p. 1452, § 1, effective May 22.

30-17-106. Establishment of poorhouse. (Repealed)

Source: **L. 81:** Entire article R&RE, p. 1452, § 1, effective May 22. **L. 82:** (4) amended, p. 428, § 6, effective July 1. **L. 2003:** Entire section repealed, p. 914, § 23, effective August 6.

30-17-107. Reimbursement to county. If at any time the recipient of temporary general assistance acquires funds or other property, he shall be answerable to the county for the expense of the relief furnished. If the recipient fails to reimburse the county upon demand, the county may assert its claim for reimbursement in any court of competent jurisdiction.

Source: L. 81: Entire article R&RE, p. 1452, § 1, effective May 22.

ANNOTATION

At common law, as a general rule, there was no obligation on the part of a pauper to reimburse public authorities for support furnished. *Denver Dept. of Welfare v. Gomer*, 141 Colo. 65, 346 P.2d 1016 (1959) (decided under former § 36-10-9, CRS 53).

This section was intended to subject to reimbursement only property acquired after

parties are on relief rolls and which is not disclosed on the application for assistance; a home owned and occupied by the parties during the entire time they received assistance with full knowledge of the authorities is not such property. *Denver Dept. of Welfare v. Gomer*, 141 Colo. 65, 346 P.2d 1016 (1959) (decided under former § 36-10-9, CRS 53).

30-17-108. Temporary general assistance payments limited to appropriation. In no event shall payment of temporary general assistance benefits exceed, in the aggregate, the appropriation made by the board of county commissioners for the temporary general assistance account.

Source: L. 81: Entire article R&RE, p. 1452, § 1, effective May 22.

PART 2

COUNTY JOB DIVERSION PROGRAM

30-17-201 to 30-17-206. (Repealed)

Source: L. 91: Entire part repealed, p. 1871, § 24, effective July 1.

Editor's note: This part 2 was added in 1982. For amendments to this part 2 prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

JOB ALTERNATIVE PROGRAM

30-17-301 to 30-17-306. (Repealed)

Source: L. 91: Entire part repealed, p. 1871, § 24, effective July 1.

Editor's note: This part 3 was added in 1986. For amendments to this part 3 prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 4

INTERNSHIP PROGRAM FOR UNEMPLOYMENT CLAIMANTS

30-17-401 to 30-17-403. (Repealed)

Editor’s note: (1) This part 4 was added in 1987. For amendments to this part 4 prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 30-17-403 provided for the repeal of this part 4, effective January 1, 1991. (See L. 87, p. 409.)

ARTICLE 20

Public Improvements

Law reviews: For article, “Choice of Entity: Using Limited Purpose Local Governments to Solve Problems”, see 38 Colo. Law. 59 (October 2009).

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SOLID WASTES DISPOSAL SITES
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- 30-20-201. Legislative declaration.

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PART 12

RURAL CLEAN ENERGY
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PART 1

SOLID WASTES DISPOSAL SITES AND FACILITIES

Law reviews: For article, "Solid Waste Disposal: Caught in the Act?", see 16 Colo. Law. 1010 (1987).

30-20-100.5. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Proper disposal of solid wastes is a matter of mixed statewide and local concern;
 (b) Improper disposal of solid wastes poses significant public health risks, environmental hazards, and long-term liability for the citizens of the state;

(c) (I) Colorado citizens are increasingly voicing their concerns about solid waste issues. Such concerns include the following:

(A) How citizens can make maximum use of waste reduction and recycling programs as part of such citizens' personal environmental commitment;

(B) Concerns of citizens relating to the siting of a solid wastes site and facility near their homes;

(C) Challenges to public officials to react responsibly to assure safe and cost-effective solid waste management and disposal for their community over the next five to ten years.

(II) Reflecting such concerns, private citizens and companies have joined with local and state officials to address the needs of Colorado concerning solid waste.

(d) Optimal solid waste management in Colorado should include the following elements:

(I) The state government, local governments, and private companies and citizens of Colorado each must play important roles in the management of solid waste in Colorado.

(II) A statewide system of integrated solid waste management planning is necessary to meet Colorado's solid waste disposal needs over the next twenty years. Local governments and their citizens should be encouraged to work toward consensus concerning their solid waste disposal needs and concerning the types and numbers of solid wastes sites and facilities necessary or desirable in their areas.

(III) State and local efforts in this area must be focused toward the reduction of the volume and toxicity of the waste stream. Realistic waste reduction goals should be established and state and local solid waste management goals should strive to achieve such goals through source reduction, recycling, composting, and similar waste management strategies.

(IV) Renewed efforts and new mechanisms are needed to ensure the full participation of the public in all phases of solid waste decision-making. All participants and concerned

parties must contribute to a continuing, dedicated effort to inform and educate the public concerning solid waste and its impact on public health and the environment.

(V) A strong component of statewide waste management efforts shall be the minimization of illegal disposal of solid wastes through the provision of the appropriate kinds and numbers of solid waste sites and facilities as needed to handle, treat, and dispose of solid waste in all areas of the state.

Source: L. 91: Entire section added. p. 963, § 1, effective June 5.

30-20-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Approved site or facility" means a site or facility for which a certificate of designation has been obtained, as provided in this part 1.

(1.5) "Closed site or facility" means a site or facility that has been closed in accordance with provisions of the federal regulations pursuant to subtitle D of the federal "Resource Conservation and Recovery Act of 1976", as amended, as published in 40 CFR 258.60, and in the manner specified in the approved certificate of designation application at the time of approval of the site or facility or in a closure plan that has been approved by the department.

(2) "Department" means the department of public health and environment.

(2.3) "Excluded scrap metal" means processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(2.5) "Governing body having jurisdiction" means the board of county commissioners if a site and facility is located in any unincorporated portion of a county and means the governing body of the appropriate municipality if a site and facility is located within an incorporated area.

(2.6) "Home scrap metal" means scrap metal generated by steel mills, foundries, and refineries, including, but not limited to, turnings, cuttings, punchings, and borings.

(2.7) "Landfill gases" means gases formed by the decomposition of buried solid waste. Landfill gases include, but are not limited to, methane.

(2.8) "Municipality" means a home rule or statutory city, town, or city and county or a territorial charter city.

(3) "Person" means an individual, partnership, private or municipal corporation, firm, board of a metropolitan district or sanitation district, or other association of persons.

(3.5) "Processed scrap metal" means scrap metal that has been manually or physically altered to separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to:

(a) Scrap metal that has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type; and

(b) Fines, drosses, and related materials that have been agglomerated.

(3.7) "Prompt scrap metal" means scrap metal generated by the metal working or fabrication industries, including, but not limited to, turnings, cuttings, punchings, and borings. "Prompt scrap metal" includes industrial metal scrap and new scrap metal.

(4) "Recyclable materials" means any type of discarded or waste material that is not regulated under section 25-8-205 (1) (e), C.R.S., and can be reused, remanufactured, reclaimed, or recycled, but not including recycled auto parts or excluded scrap metal that is being recycled, or scrap that is composed of worn out metal or a metal product that has outlived its original use, commonly referred to as obsolete scrap.

(5) "Recycling operation" means that part of a solid wastes disposal facility or a part of a general disposal facility at which recyclable materials may be separated from other materials for further processing.

(5.5) "Shredded circuit boards" means shredded electronic circuit boards that:

(a) Are stored in containers that are sufficient to prevent any release to the environment prior to recovery; and

(b) Do not contain mercury switches, mercury relays, nickel-cadmium batteries, or lithium batteries.

(5.8) "Solid and hazardous waste commission" means the solid and hazardous waste commission created in section 25-15-302, C.R.S.

(6) (a) “Solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial or commercial operations or from community activities.

(b) “Solid waste” does not include:

- (I) Any solid or dissolved materials in domestic sewage;
- (II) Agricultural wastes;
- (III) Solid or dissolved materials in irrigation return flows;
- (IV) Industrial discharges which are point sources subject to permits under the provisions of the “Colorado Water Quality Control Act”, article 8 of title 25, C.R.S.;
- (V) Materials handled at facilities licensed pursuant to the provisions on radiation control in article 11 of title 25, C.R.S.;

(VI) Exploration and production wastes, as defined in section 34-60-103 (4.5), C.R.S., except as such wastes may be deposited at a commercial solid waste facility;

(VII) Excluded scrap metal that is being recycled; or

(VIII) Shredded circuit boards that are being recycled.

(7) “Solid wastes disposal” means the storage, treatment, utilization, processing, or final disposal of solid wastes.

(8) “Solid wastes disposal site and facility” means the location and facility at which the deposit and final treatment of solid wastes occur.

(8.5) (Deleted by amendment, L. 2006, p. 1133, § 14, effective July 1, 2006.)

(9) “Transfer station” means a facility at which refuse, awaiting transportation to a disposal site, is transferred from one type of containerized collection receptacle and placed into another or is processed for compaction.

(10) “Water quality control commission” means the water quality control commission created in section 25-8-201, C.R.S.

Source: L. 67: p. 759, § 1. C.R.S. 1963: § 36-23-1. L. 71: p. 340, §§ 1, 2. L. 83: (6) R&RE, p. 1239, § 1, effective July 1. L. 91: (2.5) and (2.7) added, p. 964, § 2, effective June 5. L. 92: (1.5) added and (7) and (9) amended, p. 1275, § 1, effective July 1. L. 94: (8.5) added, p. 32, § 1, effective March 9; (2) amended, p. 2800, § 557, effective July 1. L. 95: (6) amended, p. 120, § 2, effective March 31. L. 98: (2.3), (2.6), (3.5), (3.7), (5.5), (6)(b)(VII), and (6)(b)(VIII) added and (6)(b)(V) amended, pp. 171, 172, §§ 2, 3, effective April 6; (3) amended, p. 1071, § 4, effective June 1; (4) amended, p. 880, § 5, effective July 1. L. 2001: (2.7) amended and (2.8) added, p. 1100, § 2, effective July 1. L. 2006: (8.5) amended and (5.8) and (10) added, p. 1133, § 14, effective July 1.

Editor’s note: Subsection (5.8) was originally numbered as (5.5) in Senate Bill 06-171 but has been renumbered on revision for ease of location.

Cross references: (1) For definitions applicable to this part 1, see § 30-26-301 (2)(d).

(2) For the legislative declaration contained in the 1995 act amending subsection (6), see section 1 of chapter 42, Session Laws of Colorado 1995. For the legislative declaration contained in the 1998 act enacting subsections (2.3), (2.6), (3.5), (3.7), (5.5), (6)(b)(VII), and (6)(b)(VIII) and amending subsection (6)(b)(V), see section 1 of chapter 68, Session Laws of Colorado 1998. For the legislative declaration contained in the 1998 act amending subsection (4), see section 1 of chapter 236, Session Laws of Colorado 1998.

ANNOTATION

Law reviews. For article, “1974 Land Use Legislation in Colorado”, see 51 Den. L.J. 467 (1974). For article, “Synthetic Fuels — Policy and Regulation”, see 51 U. Colo. L. Rev. 465 (1980).

Denver is a “person” subject to the provisions of the solid wastes act. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

Applied in *PII of Colo., Inc. v. District Court*, 197 Colo. 239, 591 P.2d 1316 (1979).

30-20-101.5. Additional powers of the department - legislative declaration.
(1) The general assembly hereby finds and declares that a solid waste management

program shall be created in and administered by the department and shall be implemented to protect human health and the environment in a manner that:

- (a) Promotes a community ethic to reduce or eliminate waste problems;
- (b) Is credible and accountable to the industry and the public;
- (c) Is innovative and cost effective; and
- (d) Protects the environmental quality of life for affected residents as required by the requirements of this part 1 and any rules promulgated in connection therewith.

(2) The department shall develop, implement, and continuously improve as necessary policies and procedures for carrying out its statutory responsibilities at the lowest possible cost while satisfying the legislative intent expressed in subsection (1) of this section. At a minimum, the policies and procedures shall, to the extent practicable, include the establishment of the following:

(a) Cost-effective level-of-effort guidelines for reviewing submittals, including without limitation permit applications and design and operation plans to assure conformity with regulatory requirements, taking into consideration the degree of risk addressed and the complexity of the issues raised;

(b) Cost-effective level-of-effort guidelines for performing inspections that focus on major violations of regulatory requirements that pose an immediate and significant threat to human health and the environment;

(c) Cost-effective level-of-effort guidelines for enforcement activity;

(d) Schedules for the timely completion of department activities including without limitation submittal reviews, inspections, and inspection reports;

(e) A prioritization methodology for completing activities that focuses on actual risk to human health and the environment;

(f) A preference for compliance assistance with at least ten percent of the annual budget amount of the program being allocated to compliance assistance efforts;

(g) A preference for alternative dispute resolution mechanisms to timely resolve disputed issues; and

(h) A mechanism that continuously assesses and provides incentives for further improvements and policies and procedures of the department.

(3) On or before February 1, 2008, and not later than February 1 of each year thereafter, the department shall submit a report to the standing committee of reference in each house of the general assembly exercising jurisdiction over matters concerning public health and the environment that describes the status of the solid waste management program, the department's efforts to satisfy its statutory responsibilities at the lowest possible cost while meeting the legislative intent specified in subsection (1) of this section, and the department's implementation of the authority to accept environmental covenants created pursuant to section 25-15-321, C.R.S.

Source: L. 2007: Entire section added, p. 1142, § 9, effective July 1.

Cross references: For the short title ("Recycling Resources Economic Opportunity Act") and legislative declaration contained in the 2007 act enacting this section, see sections 1 and 2 of chapter 278, Session Laws of Colorado 2007.

30-20-102. Unlawful to operate site and facility without certificate of designation - exceptions. (1) Except as otherwise specified in this section, a person who owns or operates a solid wastes disposal site and facility shall first obtain a certificate of designation from the governing body having jurisdiction over the area in which such site and facility is located.

(2) Except as otherwise specified in this section, solid wastes disposal by any person is prohibited except on or at a solid wastes disposal site and facility for which a certificate of designation has been obtained as provided in section 30-20-105.

(3) A person other than a governmental unit may dispose of the person's own solid wastes on the person's own property, as long as such solid wastes disposal site and facility complies with the rules of the solid and hazardous waste commission and does not constitute a public nuisance. For the purposes of this part 1, such solid wastes disposal site

and facility shall be an approved site for which obtaining a certificate of designation under section 30-20-105 is unnecessary. This subsection (3) does not preclude any person from applying for a certificate of designation for the disposal of the person's own solid wastes on the person's own property.

(4) A person who is engaged in mining operations pursuant to a permit issued by the mined land reclamation board or office of mined land reclamation that contains an approved plan of reclamation may dispose of solid wastes generated by such operations within the permitted area for such operations. For the purposes of this part 1, such solid wastes disposal site and facility is an approved site for which obtaining a certificate of designation under section 30-20-105 is unnecessary.

(5) Any site and facility operated for the purpose of processing, reclaiming, or recycling recyclable materials shall not be considered a solid wastes disposal site and facility and shall not require a certificate of designation as a solid wastes disposal site and facility; except that, after an initial accumulation period specified by rule, such a site or facility shall maintain documentation that proves recyclable materials are being recycled at the site at a rate that approximately equals the rate at which recyclable materials are being collected. The solid and hazardous waste commission shall promulgate rules to specify what time periods and volumes of recyclable materials constitute operations that qualify for this exemption and to define what materials shall be deemed to be recyclable materials for the purposes of this subsection (5); except that such rules shall not define the term "recyclable materials" to include materials that are likely to contaminate groundwater or create off-site odors as a result of processing, reclaiming, recycling, or storage prior to recycling. This subsection (5) does not apply to activities regulated under section 25-8-205 (1) (e), C.R.S.

(6) The final use for beneficial purposes, including fertilizer, soil conditioner, fuel, and livestock feed, of biosolids that have been processed and certified or designated as meeting all applicable rules of the solid and hazardous waste commission and the department of agriculture does not require a certificate of designation for such final use. In addition, the use of manure as a fertilizer or soil conditioner or the composting on the site of generation of manure with other compatible materials necessary for effective composting as part of a standard agricultural practice does not require a certificate of designation.

(7) A transfer station shall not be deemed to be a solid wastes disposal site and facility and shall not require a certificate of designation as a solid wastes disposal site and facility. The department shall promulgate regulations establishing health and safety standards for the operation of transfer stations.

(7.5) (a) On or after August 8, 2012, a governing body having jurisdiction shall not require a certificate of designation for waste impoundments or other solid wastes disposal operations of drinking water treatment residuals generated on-site at a drinking water treatment facility. A certificate of designation for waste impoundments or other solid wastes disposal operations of drinking water treatment residuals generated on-site at a drinking water treatment facility issued before August 8, 2012, is voidable at the option of the facility.

(b) A drinking water treatment facility that does not require a certificate of designation pursuant to paragraph (a) of this subsection (7.5) shall comply with the rules of the solid and hazardous waste commission for waste impoundments and solid wastes disposal.

(c) Nothing in paragraph (a) or (b) of this subsection (7.5) limits the application of other local government land use regulations to waste impoundments or solid wastes disposal operations at a drinking water treatment facility.

(8) The solid and hazardous waste commission, by rule, may specify types of composting facilities, by size, volume, or other suitable criteria that provide equivalent protection of public health and the environment that would not be required to obtain a certificate of designation.

Source: L. 67: p. 759, § 2. C.R.S. 1963: § 36-23-2. L. 71: p. 341, § 3. L. 76: (3) added, p. 694, § 1, effective April 19. L. 77: (1) amended, p. 286, §§ 56, 57, effective July 1. L. 79: (1.5) added, p. 1148, § 1, effective July 1. L. 81: Entire section amended, p. 1358, § 2, effective July 1. L. 83: (2) amended, p. 1239, § 2, effective July 1. L. 89: (5) amended, p. 1282, § 1, effective July 1. L. 91: (1) and (2) amended, p. 965, § 3, effective

June 5. **L. 92:** (1) amended, p. 2177, § 37, effective June 2; (4) amended, p. 1971, § 77, effective July 1; (5) amended and (7) added, p. 1275, § 2, effective July 1. **L. 94:** (3) and (6) amended, p. 32, § 2, effective March 9. **L. 98:** (5) and (6) amended and (8) added, p. 881, § 6, effective July 1. **L. 2006:** (3), (5), (6), and (8) amended, p. 1133, § 15, effective July 1. **L. 2012:** (1), (2), (3), (4), and (6) amended and (7.5) added, (HB 12-1078), ch. 48, p. 177, § 1, effective August 8.

Editor's note: (1) Subsection (7) was originally numbered as (6) in Senate Bill 92-130 but has been renumbered on revision for ease of location.

(2) Section 2 of chapter 48, Session Laws of Colorado 2012, provides that the act amending subsections (1), (2), (3), (4), and (6) and adding (7.5) applies to solid wastes impounded or disposed of before, on, or after August 8, 2012.

ANNOTATION

Private parties who are adversely affected or aggrieved have standing to seek judicial review of the department's action. Nat'l Wild-

life Fed'n v. Cotter Corp., 665 P.2d 598 (Colo. 1983).

30-20-102.5. Requirement for certificate of designation deemed satisfied - when. A certificate of designation for a hazardous waste disposal site issued pursuant to article 15 of title 25, C.R.S., shall be deemed to satisfy any requirement for a certificate of designation imposed by this part 1.

Source: **L. 81:** Entire section added, p. 1359, § 3, effective July 1.

30-20-103. Application for certificate. (1) Any person desiring to own or operate a solid wastes disposal site and facility shall make application to the governing body having jurisdiction over the area in which such site and facility is or is proposed to be located for a certificate of designation. Such application shall be accompanied by a fee to be established by the governing body having jurisdiction, which fee shall be based on the anticipated costs that may be incurred by such governing board in the application review and approval process and shall not be refundable. The application shall set forth the location of the site and facility; the type of site and facility; the type of processing to be used, such as sanitary landfill, composting, or incineration; the hours of operation; the method of supervision; the rates to be charged, if any; and such other information as may be required by the governing body having jurisdiction over the area. The application shall also contain such engineering, geological, hydrological, and operational data as may be required by the department by rule. All such applications shall be referred to the department for review and for recommendation as to approval or disapproval, which shall be based upon criteria established by the solid and hazardous waste commission, the water quality control commission, and the air quality control commission. Such review and recommendation of an application by the department shall include a technical review of the environmental and public health issues provided in section 30-20-110 that are raised by the proposed site and facility. As a part of the department's review of an application for a solid wastes site and facility, the department shall provide a period of not less than thirty days during which members of the public may review and make comments concerning such application.

(2) Upon receiving an application for a solid wastes disposal site and facility, the department shall perform an initial examination to establish the completeness of the information submitted. Such initial examination shall be completed within thirty days after the department receives such application. The department shall mail written notification to the applicant within such time period of the department's decision either to begin its review of such application or to reject such application because of incompleteness.

(3) After the initial approval of an application pursuant to the provisions of subsection (2) of this section, the department shall determine whether it shall complete the review of the application or whether it shall offer the applicant the option of having such application reviewed by a private contractor. Such determination shall be made pursuant to the

provisions of section 30-20-103.7 (1). If the department reviews such application, the department shall complete such review within one hundred fifty days after the date of issuance of its initial approval of such application.

Source: **L. 67:** p. 759, § 3. **C.R.S. 1963:** § 36-23-3. **L. 71:** p. 341, § 4. **L. 79:** Entire section amended, p. 1059, § 7, effective June 20. **L. 84:** Entire section amended, p. 819, § 1, effective July 1. **L. 91:** Entire section amended, p. 965, § 4, effective June 5; entire section amended, p. 955, § 1, effective July 1. **L. 2006:** (1) amended, p. 1134, § 16, effective July 1.

Editor's note: Amendments to this section by Senate Bill 91-168 and Senate Bill 91-174 were harmonized.

ANNOTATION

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-103.5. Existing solid wastes disposal sites and facilities - application procedures. Except as specified in section 30-20-109 (1.5), no existing solid wastes disposal site and facility that is operating pursuant to a valid certificate of designation shall be deemed to be in violation of any provision of this part 1 because of any failure to comply with application procedures that are enacted after the issuance of such certificate of designation.

Source: **L. 91:** Entire section added, p. 966, § 5, effective June 5. **L. 2008:** Entire section amended, p. 2170, § 3, effective June 4.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 421, Session Laws of Colorado 2008.

30-20-103.7. Review of applications by private contractors. (1) (a) Upon issuing an initial approval of an application for a solid wastes disposal site and facility under the provisions of section 30-20-103 (2), the department shall determine whether it will be able to complete review of such application within one hundred fifty days. If the department determines that it is capable of completing the review within the required time period, it shall commence review under the provisions of section 30-20-103. If the department determines that it cannot complete the review of an application within such time period, the department shall offer the applicant the option of having such application reviewed by a private contractor within one hundred fifty days or having such application reviewed by the department. If the applicant chooses to have such application reviewed by the department, the department shall not be required to complete its review within the one-hundred-fifty-day time period.

(b) A county shall not reject an application for a solid wastes disposal site and facility solely because the review of such application was performed by a private contractor under the provisions of this section.

(2) (a) The department shall maintain a register of private contractors to review applications for solid wastes disposal sites and facilities. The department is hereby authorized to contract with such private contractors pursuant to the provisions of part 14 of article 30 of title 24, C.R.S., for inclusion on such register. Any such contract shall be between the department and the private contractor. An applicant shall be responsible for the fee charged by a private contractor for the review of such applicant's application, but shall not be a party to such contract. The department shall contract with a sufficient number of private contractors to allow reassignment of an application if it is necessary to disqualify one or more private contractors because of conflicts of interest or other reasons.

(b) If the department assigns an application to a private contractor under the provisions of this section, such private contractor shall provide the department and the applicant with

the fee schedule of such private contractor and with an estimate of the fee to be charged for the review of such application.

(c) Upon being notified of the identity of the assigned private contractor and upon receiving such private contractor's fee schedule and estimated fee, an applicant has the option to allow the application review to commence or to reject the private contractor. If such applicant rejects a private contractor, the department shall assign a second private contractor. If such applicant rejects the second private contractor, the department shall review such applicant's application, but the department shall not be required to complete such review within the one-hundred-fifty-day time period.

(d) The review of an application for a solid wastes disposal site and facility by a private contractor shall be based upon the same criteria as is used by the department of public health and environment under the provisions of section 30-20-103.

(e) During the review period for an application, a private contractor shall contact the applicant and the department concerning any problems such private contractor finds in such application and shall offer the applicant an opportunity to provide such materials or explanations as the private contractor determines are necessary to complete review of such application or to make necessary amendments to such application.

(3) Any moneys which are collected by the department from solid wastes disposal site and facility applicants in payment for private contractor application review fees shall be transmitted to the state treasurer, who shall credit the same to the solid waste management fund created in section 30-20-118. Such moneys collected for the fees charged by private contractors shall be annually appropriated by the general assembly to the department for the sole purpose of transferring such fees to such private contractors in payment for their services.

Source: L. 91: Entire section added, p. 956, § 2, effective July 1. **L. 94:** (2)(d) amended, p. 2800, § 558, effective March 9.

30-20-104. Factors to be considered. (1) In considering an application for a proposed solid wastes disposal site and facility, the governing body having jurisdiction shall take into account:

(a) The effect that the solid wastes disposal site and facility will have on the surrounding property, taking into consideration the types of processing to be used, surrounding property uses and values, and wind and climatic conditions;

(b) The convenience and accessibility of the solid wastes disposal site and facility to potential users;

(c) The ability of the applicant to comply with the health standards and operating procedures provided for in this part 1 and such rules and regulations as may be prescribed by the department;

(d) Recommendations by county, district, or municipal public health agencies.

(2) Except as provided in this part 1, designation of approved solid wastes disposal sites and facilities shall be discretionary with the governing body having jurisdiction, subject to judicial review by the district court of appropriate jurisdiction.

(3) (a) Prior to the issuance of a certificate of designation, the governing body having jurisdiction shall require that the report, which shall be submitted by the applicant under section 30-20-103, be reviewed and a recommendation as to approval or disapproval be made by the department and shall be satisfied that the proposed solid wastes disposal site and facility conforms to the local government's comprehensive land use plan and zoning restrictions, if any. Any technical conditions of approval made by the department in its final report shall be incorporated as requirements in the certificate of designation. The application, report of the department, comprehensive land use plan, relevant zoning ordinances, and other pertinent information shall be presented to the governing body having jurisdiction at a public hearing to be held after notice. Such notice shall contain the time and place of the hearing, shall state that the matter to be considered is the applicant's proposal for a solid wastes disposal site and facility, shall provide a description of such proposed site and facility, and shall provide a description of the geographic area that is within three miles of such proposed site and facility. The notice shall be published in a newspaper having general

circulation in the county or municipality in which the proposed solid wastes disposal site and facility is located at least ten but no more than thirty days prior to the date of the hearing. In addition, the notice of such public hearing shall be posted at a conspicuous point in at least one location at the offices of the governing body having jurisdiction and in at least one location at the proposed site. Such notice shall be posted for a period beginning at least thirty days before the public hearing and continuing through the date of such hearing.

(b) At the public hearing held pursuant to the provisions of this subsection (3), the governing body shall hear any written or oral testimony presented by governmental entities and residents concerning such proposed site or facility. All such testimony shall be considered by the governing body having jurisdiction in making a decision concerning such application. For the purposes of this subsection (3), "residents" means all individuals who reside within the geographic area controlled by the governing body having jurisdiction or within three miles of the proposed site and facility or who own property which lies within three miles of such proposed site and facility without regard to which county or municipality such individuals reside within.

Source: L. 67: p. 760, § 4. C.R.S. 1963: § 36-23-4. L. 71: p. 341, § 5. L. 91: Entire section amended, p. 966, § 6, effective June 5. L. 98: (3)(a) amended, p. 881, § 7, effective July 1. L. 2010: (1)(d) amended, (HB 10-1422), ch. 419, p. 2119, § 164, effective August 11.

ANNOTATION

Quasi-judicial action must be preceded by reasonable notice. Under the solid wastes act (§§ 30-20-101 through 30-20-116), quasi-judicial action by county commissioners must be preceded by reasonable notice. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

Proper notice of quasi-judicial agency action must reasonably describe the subject matter of the hearing, any charges to be considered, and the action contemplated. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

Solid Wastes Act provides a local government with authority to regulate disposal sites, incidental to which may be inferred the authority to delay the approval of permits for certificates of designation while guidelines and regulations are being developed. *Dill v. Bd. of County Comm'rs of Lincoln County*, 928 P.2d 809 (Colo. App. 1996).

30-20-104.5. Closure and postclosure care estimates - corrective action cost estimates - financial assurance requirements - rules. (1) The solid and hazardous waste commission shall promulgate rules that implement financial assurance requirements for the final closure of solid wastes disposal sites and facilities, the conduct of postclosure care for such sites and facilities, and the undertaking of any corrective action made necessary by the migration of contaminants from such sites and facilities into groundwater. Such rules shall include, but are not limited to, the following requirements:

(a) That the owner or operator of any solid wastes disposal site and facility shall maintain:

(I) A detailed written estimate of the cost of hiring a third party to close the largest area of such site and facility which has or will require a cover during the active life of such site and facility; and

(II) A detailed written estimate of the cost of hiring a third party to conduct postclosure care at such site and facility;

(b) That the owner or operator of any solid wastes disposal site and facility that is required to undertake a corrective action program pursuant to the requirements of subpart E of the federal regulations promulgated pursuant to the provisions of subtitle D of the federal "Resource Conservation and Recovery Act of 1976", as amended, shall maintain a detailed written estimate of the cost of hiring a third party to perform such corrective action;

(c) That the owner or operator of any solid wastes disposal site and facility shall notify the department when the cost estimates required by paragraphs (a) and (b) of this subsection (1) have been placed in the operating file for such site and facility;

(d) That the owner or operator of any solid wastes disposal site and facility shall:

(I) Express the cost estimates required by paragraphs (a) and (b) of this subsection (1) in current dollars;

(II) Annually adjust such cost estimates to account for inflation; and

(III) Increase such cost estimates under the following circumstances:

(A) The cost estimate for the cost of hiring a third party to close such site and facility maintained pursuant to the provisions of subparagraph (I) of paragraph (a) of this subsection (1) shall be increased if changes to the closure plan for such site and facility or changes in the conditions of such site and facility increase the maximum cost of closure at any time during the remaining active life of such site and facility.

(B) The cost estimate for the cost of hiring a third party to conduct postclosure care for such site and facility maintained pursuant to the provisions of subparagraph (II) of paragraph (a) of this subsection (1) shall be increased if changes to the postclosure plan for such site and facility or changes in the conditions of site and facility increase the maximum cost of postclosure care for such site and facility.

(C) The cost estimate, if any, for the cost of hiring a third party to undertake corrective action for such site and facility maintained pursuant to the provisions of paragraph (b) of this subsection (1) shall be increased if changes in the corrective action program for such site and facility or changes in the conditions of such site and facility increase the maximum cost of corrective action for such site and facility.

(e) That the owner or operator of any solid wastes disposal site and facility shall comply with the financial assurance requirements mandated by the rules of the solid and hazardous waste commission promulgated pursuant to subsection (3) of this section.

(2) The owner or operator of a solid wastes disposal site and facility may reduce the amount of a cost estimate maintained pursuant to the provisions of paragraph (a) or (b) of subsection (1) of this section if such cost estimate exceeds the maximum cost of completing the actions contemplated by such cost estimate.

(3) (a) The solid and hazardous waste commission shall promulgate rules that require the owner or operator of a solid wastes disposal site and facility to establish sufficient financial assurance to pay for the cost estimates required by paragraphs (a) and (b) of subsection (1) of this section. No solid wastes disposal site and facility shall operate without being in compliance with the financial assurance requirements contained in such rules. Such rules shall include, but shall not be limited to, provisions that define the mechanisms that may be used by the owner or operator of a solid wastes disposal site and facility to establish sufficient financial assurance pursuant to this section. The mechanisms to establish financial assurance that are defined by the commission shall include, but are not limited to, those mechanisms authorized by the federal regulations promulgated pursuant to subtitle D of the federal "Resource Conservation and Recovery Act of 1976", as amended.

(b) (I) The sufficiency of the financial assurance provided pursuant to the provisions of paragraph (a) of this subsection (3) for any proposed solid wastes disposal site and facility shall be reviewed as part of the department's review of the application for such proposed site and facility pursuant to the provisions of this section.

(II) The sufficiency of the financial assurance provided pursuant to the provisions of paragraph (a) of this subsection (3) for any solid wastes disposal site and facility that is in existence at the time the applicable regulations of the department become effective shall be reviewed pursuant to the procedures established by the department. Such review may be performed either by the department or by a private contractor hired by the department for the purpose of completing such review. The department is authorized to impose a fee for any such review that is performed by the department; except that such fee shall not exceed the actual documented costs incurred by the department in the performance of such review. Except as otherwise provided in this section, any such review that is performed by a private contractor shall be conducted pursuant to the provisions of section 30-20-103.7.

(3.5) The department, pursuant to the provisions of part 14 of article 30 of title 24, C.R.S., is authorized to contract with one or more private contractors for the purpose of conducting the third-party closure, postclosure care, or corrective action at a solid waste facility as may be necessary. The department is authorized to expend such moneys for closure, postclosure care, or corrective action as is made available to the department by

operation of law from the financial assurance mechanisms provided by the owner or operator of the solid wastes site and facility. Any such contract shall be between the department and the private contractor. The owner or operator shall not be a party to such contract. The department may disallow a contractor because of conflicts of interest or other reasons. The department may contract with the governing body that issued the certificate of designation to conduct such closure, postclosure care, or corrective action.

(4) The rules promulgated by the solid and hazardous waste commission pursuant to this section shall comply with the federal regulations promulgated pursuant to subtitle D of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such rules shall require that all solid wastes disposal sites and facilities be fully in compliance with such rules by the date established in the federal "Resource Conservation and Recovery Act of 1976", as amended, and its regulations.

Source: **L. 92:** Entire section added, p. 1276, § 3, effective July 1. **L. 94:** (4) amended, p. 33, § 3, effective March 9. **L. 98:** (3.5) added, p. 882, § 8, effective July 1. **L. 2006:** IP(1), (1)(e), (3)(a), and (4) amended, p. 1135, § 17, effective July 1.

30-20-105. Certificate - state financial assurance requirements. (1) If the governing body having jurisdiction deems that a certificate of designation should be granted to the applicant, it shall issue the certificate, and such certificate shall be displayed in a prominent place at the site and facility. Such governing body shall not issue a certificate of designation if the department has recommended disapproval pursuant to section 30-20-103.

(2) No governing body having jurisdiction shall require an applicant for a certificate of designation to obtain any financial assurance mechanism or amount in addition to that required by the provisions of section 30-20-104.5.

(3) The department, on behalf of the solid and hazardous waste commission, shall consult the governing body having jurisdiction prior to the promulgation of the rules called for in this section and prior to accepting a financial assurance. The recommendations of such governing body shall be considered in formulating the rules and establishing the amount of financial assurance to be posted.

Source: **L. 67:** p. 760, § 5. **C.R.S. 1963:** § 36-23-5. **L. 71:** p. 342, § 6. **L. 91:** Entire section amended, p. 967, § 7, effective June 5. **L. 92:** Entire section amended, p. 1279, § 4, effective July 1; (2) amended, p. 2187, § 71, effective July 1. **L. 2006:** (3) amended, p. 1135, § 18, effective July 1.

ANNOTATION

Applied in *PII of Colo., Inc. v. District Court*, 197 Colo. 239, 591 P.2d 1316 (1979).

30-20-106. Private disposal prohibited - when. (Repealed)

Source: **L. 67:** p. 760, § 6. **C.R.S. 1963:** § 36-23-6. **L. 71:** p. 343, § 7. **L. 81:** Entire section repealed, p. 1360, § 7, effective July 1.

30-20-107. Designation of exclusive sites and facilities. The governing body of any county or municipality may by ordinance designate and approve one or more solid wastes disposal sites and facilities, either within or without its corporate limits, if designated and approved by the governing body having jurisdiction, as its exclusive solid wastes disposal site and facility or sites and facilities, and thereafter each such site and facility shall be used by such county or municipality for the disposal of its solid wastes; but, prior to any such designation and approval, such governing body shall hold a public hearing to review the disposal method to be used and the fees to be charged, if any.

Source: **L. 67:** p. 760, § 7. **C.R.S. 1963:** § 36-23-7. **L. 71:** p. 343, § 8. **L. 91:** Entire section amended, p. 967, § 8, effective June 5.

30-20-107.5. Operation of landfill gas facilities within solid wastes disposal sites and facilities. The governing body of any municipality or county shall have the authority to make such provisions as may be necessary for the operation of landfill gas facilities within any solid wastes disposal site or facility under its jurisdiction to enable the municipality or county to exercise its powers relating to landfill gas operations under sections 30-11-307 and 31-15-716, C.R.S.

Source: L. 80: Entire section added, p. 653, § 4, effective July 1.

30-20-108. Contracts with governmental units authorized. (1) An approved solid wastes disposal site and facility may be operated by any person pursuant to contract with any governmental unit.

(2) Any municipality or county acting by itself or in association with any other such governmental unit may establish and operate an approved site and facility under such terms and conditions as may be approved by the governing bodies of the governmental units involved.

(3) Any county or municipality acting by itself or in association with any other such governmental unit may acquire by condemnation such sites as are needed for trash disposal purposes.

Source: L. 67: p. 760, § 8. **C.R.S. 1963:** § 36-23-8. **L. 71:** p. 343, § 9. **L. 91:** (2) and (3) amended, p. 968, § 9, effective June 5.

ANNOTATION

Operation of site through contract under governmental unit's certificate. A governmental unit which has received a certificate of designation for an "approved solid wastes disposal site and facility", may then operate that site and

facility through contract under the governmental unit's certificate, as long as the site and facility comply with the solid wastes act (§§ 30-20-101 through 30-20-116). *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-109. Commission to promulgate rules - definitions. (1) The solid and hazardous waste commission shall promulgate rules for the engineering design and operation of solid wastes disposal sites and facilities, which may include:

(a) The establishment of engineering design criteria applicable, but not limited, to protection of surface and subsurface waters, suitable soil characteristics, distance from solid wastes generation centers, access routes, distance from water wells, disposal facility on-site traffic control patterns, insect and rodent control, methods of solid wastes compaction in the disposal fill, confinement of windblown debris, recycling operations, fire prevention, and final closure of the compacted fill;

(b) The establishment of criteria for solid wastes disposal sites and facilities which will place into operation the engineering design for such disposal sites and facilities;

(c) (Deleted by amendment, L. 91, p. 958, § 3, effective July 1, 1991.)

(d) The establishment of a reviewing fee to be charged by the department for the review of any written recommendation and findings of a private contractor who has acted in lieu of the department to review an application for a solid wastes disposal site and facility under the provisions of section 30-20-103.7 for compliance with the state's requirements. Such fee shall not exceed actual and reasonable costs and shall not exceed five thousand dollars.

(e) The establishment of a fee for the technical review described in section 30-20-119 (2), which fee shall not exceed ten thousand dollars, or the actual cost of such technical review.

(1.5) (a) As used in this subsection (1.5):

(I) "EP waste" means exploration and production waste, as that term is defined in section 34-60-103, C.R.S.

(II) "EP waste disposal facility" means a commercial solid wastes disposal site and facility that accepts the deposit of EP waste.

(b) The solid and hazardous waste commission shall promulgate rules that are specifically applicable to the deposit of EP waste at an EP waste disposal facility. The rules shall include the following:

(I) Mandatory set-backs of EP waste disposal facilities of one-half mile from all residences, educational facilities, day care centers, hospitals, nursing homes, jails, hotels, motels, other occupied structures, or outside activity areas such as parks and playing fields as designated in the rules;

(II) Mandatory fabricated liners and monitoring requirements as necessary to prevent the migration of EP waste to groundwater;

(III) Waste analysis and reporting requirements to ensure that only EP waste is disposed of at an EP waste disposal facility;

(IV) Fencing and netting requirements to prevent the public and wildlife from accessing EP waste disposal facilities;

(V) Contingency plans to respond to emergencies, including adequate freeboard, overflow ponds, or both; and

(VI) Financial assurance requirements that are adequate to cover closure and reclamation costs.

(c) Except as provided in paragraph (e) of this subsection (1.5), an EP waste disposal facility that accepted EP waste on or before June 4, 2008, and that had not begun closure by June 4, 2008, shall:

(I) File an application pursuant to section 30-20-103 within three months after the rules promulgated pursuant to this subsection (1.5) become effective with the governing body having jurisdiction to amend the facility's certificate of designation to incorporate the requirements specified in the rules; and

(II) Comply with the rules promulgated pursuant to this subsection (1.5) within twenty-four months after they become effective, unless the EP waste disposal facility demonstrates to the department no later than eighteen months after the rules become effective why it cannot timely comply with the rules and the department agrees to a compliance schedule. In such case, the department may extend the compliance deadline to no more than thirty-six months after the rules become effective; except that nothing in this subsection (1.5) shall be deemed to:

(A) Require an EP waste disposal facility that lawfully accepted EP waste on or before June 4, 2008, to comply with the set-back requirements of this subsection (1.5); or

(B) Place an EP waste disposal facility into noncompliance because of an alleged violation of a set-back requirement of this subsection (1.5) due solely to the fact that a residential or other occupied structure or a designated outside activity area is established within the set-back distance on or after issuance of the certificate of designation pursuant to this subsection (1.5).

(d) The department shall:

(I) Coordinate with the Colorado oil and gas conservation commission created in section 34-60-104, C.R.S., governing bodies having jurisdiction, and the federal bureau of land management to identify potential EP waste disposal sites that are located reasonably close to oil and gas operation areas on either federal or nonfederal land and that meet the set-back requirements of this subsection (1.5); and

(II) To the extent practicable, encourage governing bodies having jurisdiction and the federal bureau of land management to approve the siting of EP waste disposal sites at locations identified pursuant to this paragraph (d) when so requested by a commercial operator.

(e) (I) Upon the recommendation of the department, the solid and hazardous waste commission may waive, for individual impoundments, the requirement imposed pursuant to paragraph (c) of this subsection (1.5) that an EP waste disposal facility that accepted EP waste on or before June 4, 2008, but had not begun closure by that date, must install fabricated liners. The department may recommend a waiver only if all of the following conditions are met:

(A) There have been no unpermitted discharges to groundwater or surface water from the operation of the facility;

(B) Each impoundment for which a waiver is requested is located more than one thousand feet from any public or private water well or surface water;

(C) The owner or operator complies with mandatory monitoring and reporting requirements as determined by the department, including, but not limited to, individual impoundment leak detection monitoring; and

(D) The owner or operator is not subject to any outstanding compliance orders or enforcement actions with regard to the design, operation, or closure of the facility.

(II) If, at any time, the department determines that one or more of the conditions specified in subparagraph (I) of this paragraph (e) are no longer met, the department may bring the relevant information to the solid and hazardous waste commission with a recommendation to rescind the waiver of the requirement to install fabricated liners. If the solid and hazardous waste commission determines that one or more of the conditions are no longer being met, the solid and hazardous waste commission may rescind the waiver and instruct the department to establish a compliance schedule for the owner or operator to install fabricated liners.

(2) The solid and hazardous waste commission may promulgate rules concerning:

(a) The establishment of an initial examination of each application for a solid wastes disposal site and facility to establish the completeness of the information submitted. Such initial examination shall be completed within thirty days after the department receives such application, and the department shall mail written notification to an applicant and to the governing body having jurisdiction within such time period stating the decision of the department to begin its review of such application or to reject the application based on incompleteness.

(b) The establishment of a fee for the review of solid wastes disposal site and facility submittals and the preoperation inspection for such site and facility, for the attendance of department staff at public meetings and associated activities, and for the assessment of remediation activities concerning closed or old disposal sites or spill and incident clean-ups. The total fee charged for the review of an application or amendments to an application shall not exceed the actual documented costs incurred by the department in the performance of these activities and shall be subject to the maximum levels established in accordance with the provisions of subsection (2.5) of this section. Such review shall be completed within one hundred fifty days from date of issuance of the department's decision to begin its review. Moneys from the collection of such fees shall be credited to the solid waste management fund pursuant to the provisions of section 30-20-118. Such moneys shall be used solely to support the application review process and to support the staff of the department involved with such process.

(c) (Deleted by amendment, L. 98, p. 882, § 9, effective July 1, 1998.)

(d) The establishment of criteria for composting sites and facilities for which a certificate of designation is not required under section 30-20-102 (8).

(2.5) The solid and hazardous waste commission shall promulgate rules pertaining to the assessment of annual fees and document review and activity fees to offset program costs from solid waste disposal sites and facilities in accordance with the following requirements:

(a) Annual fees shall be established for solid waste disposal sites and facilities that are not required to pay solid waste user fees imposed pursuant to section 25-16-104.5, C.R.S. The fee imposed by this paragraph (a) shall not exceed five thousand dollars per year per facility; except that a monofill facility that contains coal combustion products shall be exempt from the fee imposed by this paragraph (a). The annual fee shall be uniform among owners of the same type of, and similarly sized, facility and shall consider the department's level of effort in regulating the facilities.

(b) The hourly charge for the document review and activity fees shall be established at a rate comparable to industry rates for performing similar tasks with maximum levels on document review and activity fees that reflect timely and cost-effective reviews.

(c) The department shall provide a receipt for the fees paid pursuant to this subsection (2.5), shall transmit such payments to the state treasurer, and accept the state treasurer's receipt in return for the payments transmitted. The state treasurer shall credit one hundred percent of the fees transmitted pursuant to this paragraph (c) to the solid waste management

fund created in section 30-20-118 (1) to be used by the department in carrying out its duties and responsibilities concerning solid waste management.

(2.7) If the department determines that a site or facility is or has been subject to payment of the annual fee requirements pursuant to subsection (2.5) of this section and has not paid any portion of the amount of fees due and owing, in addition to any other remedies the department may have in such circumstances as provided by law, the department may assess the site or facility an additional fee to offset program costs caused by the site or facility, which additional fee shall be equivalent to double the amount of the estimated annual fee, without interest, that the site or facility would have paid the department if the fee had been paid as required by law.

(3) Any applicant aggrieved by a recommendation of the department concerning an application for a solid wastes disposal site and facility shall be entitled to a hearing and review pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(4) (a) Any and all rules promulgated by the department of public health and environment prior to the transfer of its rule-making authority under this section to the state board of health shall remain in full force and effect after the date of such transfer.

(b) All acts, orders, and rules adopted by the state board of health under the authority of this part 1 prior to July 1, 2006, that were valid prior to said date and not otherwise subject to judicial review shall, to the extent that they are not inconsistent with said part, be deemed and held to be legal and valid in all respects, as though issued by the solid and hazardous waste commission under the authority of this part 1. No provision of this part 1 shall be construed to validate any actions, orders, or rules that were not valid when adopted by the board of health prior to such date.

Source: **L. 67:** p. 761, § 9. **C.R.S. 1963:** § 36-23-9. **L. 71:** p. 343, § 10. **L. 85:** (1)(c) added, p. 1065, § 1, effective July 1. **L. 91:** Entire section amended, p. 968, § 10, effective June 5; (1)(c) amended and (1)(d) and (2) added, pp. 958, 954, §§ 3, 2, 4, effective July 1. **L. 93:** (1)(d) amended, p. 475, § 1, effective April 21. **L. 94:** IP(1), IP(2), and (2)(c)(I) amended and (4) added, p. 33, § 4, effective March 9; (2)(c)(I) and (4) amended, pp. 2616, 2620, 2800, §§ 26, 33, 559, effective July 1. **L. 95:** IP(2) and (2)(c) amended, p. 156, § 1, effective July 1. **L. 96:** (2)(c)(I) amended, p. 33, § 1, effective March 18. **L. 98:** (1)(d), IP(2), (2)(b), and (2)(c) amended and (2)(d) added, p. 882, § 9, effective July 1. **L. 2006:** IP(1), IP(2), and (4) amended, p. 1136, § 19, effective July 1. **L. 2007:** (1)(d) and (2)(b) amended and (2.5) and (2.7) added, p. 1144, § 10, effective July 1. **L. 2008:** (1.5) added, p. 2168, § 2, effective June 4. **L. 2009:** IP(1.5)(c) amended and (1.5)(e) added, (HB 09-1056), ch. 301, p. 1607, § 3, effective May 21.

Editor's note: Amendments to this section by Senate Bill 91-160, Senate Bill 91-168, and Senate Bill 91-174 were harmonized. Amendments to subsection (2)(c)(I) by House Bill 94-1077 and House Bill 94-1029 were harmonized.

Cross references: (1) In 2007, subsections (1)(d) and (2)(b) were amended by the "Recycling Resources Economic Opportunity Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 278, Session Laws of Colorado 2007.

(2) For the legislative declaration contained in the 2008 act enacting subsection (1.5), see section 1 of chapter 421, Session Laws of Colorado 2008.

ANNOTATION

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-110. Minimum standards. (1) The rules promulgated by the solid and hazardous waste commission and implemented by the department shall contain the following minimum standards:

(a) Such sites and facilities shall be located, operated, and maintained in a manner so

as to control obnoxious odors and prevent rodent and insect breeding and infestation, and they shall be kept adequately covered during their use.

(b) Such sites and facilities shall comply with the health laws, standards, rules, and regulations of the department, the water quality control commission, and all applicable zoning laws and ordinances.

(c) No radioactive materials or materials contaminated by radioactive substances shall be disposed of in sites or facilities not specifically designated for that purpose.

(d) A site and facility operated as a sanitary landfill shall provide means of finally disposing of solid wastes on land in a manner to minimize nuisance conditions such as odors, windblown debris, insects, rodents, and smoke; and shall provide compacted fill material; shall provide adequate cover with suitable material and surface drainage designed to prevent ponding and water and wind erosion and prevent water and air pollution; and, upon being filled, shall be left in a condition of orderliness and good esthetic appearance and capable of blending with the surrounding area. In the operation of such a site and facility, the solid wastes shall be distributed in the smallest area consistent with handling traffic to be unloaded; shall be placed in the most dense volume practicable using moisture and compaction or other method approved by the department; shall be fire, insect, and rodent resistant through the application of an adequate layer of inert material at regular intervals; and shall have a minimum of windblown debris which shall be collected regularly and placed into the fill.

(e) Sites and facilities shall be adequately fenced so as to prevent waste material and debris from escaping therefrom, and material and debris shall not be allowed to accumulate along the fence line.

(f) Solid wastes deposited at any site and facility shall not be burned, other than by incineration in accordance with a certificate of designation issued pursuant to section 30-20-105; except that, in extreme emergencies resulting in the generation of large quantities of combustible materials, authorization for burning under controlled conditions may be given by the department.

(g) All facilities shall have a waste characterization plan approved by the department that is consistent with the certificate of designation for the facility. The plan shall outline screening methodologies and waste handling procedures and shall include a hazardous waste exclusion plan.

(h) Material that is beneficially used shall be incorporated into the soil in the shortest time frame that is practicable, allowing for weather conditions. Materials that may be beneficially used under this section may not be stockpiled for long periods or used in such a manner that the material constitutes a public nuisance.

(i) Minimum standards for facilities that do not need a certificate of designation under section 30-20-102 (5) shall include an annual report of quantities of materials managed at the site.

(j) Such minimum standards shall require the reporting, documentation, or remediation of spills at illegal disposal sites, abandoned disposal sites, or contaminated sites.

(2) Any provision of section 25-7-108, C.R.S., to the contrary notwithstanding, the board of county commissioners in any county with less than twenty-five thousand population, according to the latest federal census, and any municipality within a county which county has a population under ten thousand and subject to approval of the board of county commissioners, is authorized to develop regulations, by resolution or ordinance, permitting the noncommercial burning of trash in the unincorporated area and, if appropriate, the incorporated areas of said county; except that no permit shall be issued which shall allow the county, or municipality if appropriate, to exceed primary and secondary ambient air quality standards as prescribed by federal laws and regulations adopted pursuant thereto, or which would contribute to any other county or municipality exceeding primary or secondary ambient air quality standards as prescribed by federal laws and regulations adopted pursuant thereto.

(3) As used in subsection (2) of this section, "noncommercial burning of trash" includes the burning of wood waste in wigwam wood waste burners.

Source: L. 67: p. 761, § 10. C.R.S. 1963: § 36-23-10. L. 71: p. 344, § 11. L. 79: (3) added, p. 1059, § 8, effective June 20; (1)(f) amended and (2) added, p. 1148, § 2, effective

June 29. **L. 81:** IP(1) amended, p. 1359, § 4, effective June 19. **L. 89:** (2) amended, p. 1284, § 1, effective April 12. **L. 98:** IP(1) amended and (1)(g) to (1)(j) added, p. 884, § 10, effective July 1. **L. 2006:** IP(1) amended, p. 1136, § 20, effective July 1.

Cross references: For the "Colorado Air Pollution Prevention and Control Act", see article 7 of title 25; for water quality control, see article 8 of title 25.

ANNOTATION

Noncommercial burning may not be authorized by implication or inaction but only by regulations adopted in accordance with subsection (2) of this section. *Westfall v. Town of Hugo*, 851 P.2d 299 (Colo. App. 1993).

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-110.5. Beneficial use of biosolids - water quality control commission to set fees - fund created. (1) The water quality control commission shall establish, and may revise as necessary, a schedule of nonrefundable fees to cover the reasonable costs of implementing a program for the beneficial use of biosolids. Such fees shall be imposed upon the producers of biosolids that are applied for beneficial use. In no event shall the fee exceed two dollars and forty cents per dry ton of biosolids.

(2) Repealed.

(3) All fees collected pursuant to subsection (1) of this section shall be transmitted to the state treasurer, who shall credit the same to the biosolids management program fund, which fund is hereby created. The moneys in such fund shall be subject to annual appropriation to the department by the general assembly, which shall review expenditures of such moneys to assure that they are used to accomplish the purposes of this section. Any interest earned on moneys in the fund shall remain in the fund to be used for purposes of this section.

Source: **L. 86:** Entire section added, p. 1042, § 1, effective July 1. **L. 96:** (2) repealed, pp. 1217, 1245, §§ 6, 111, effective August 7. **L. 2006:** (1) and (3) amended, p. 1136, § 21, effective July 1.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

30-20-111. Departments to render assistance. The department and county, district, and municipal public health agencies shall render technical advice and services to owners and operators of solid wastes disposal sites and facilities and to municipalities and counties in order to assure that appropriate measures are being taken to protect the public health, safety, and welfare. In addition, the department has the duty to coordinate the solid wastes program under this part 1 with all other programs within the department and with the other agencies of state and local government which are concerned with solid wastes disposal.

Source: **L. 67:** p. 761, § 12. **C.R.S. 1963:** § 36-23-12. **L. 71:** p. 344, § 12. **L. 2010:** Entire section amended, (HB 10-1422), ch. 419, p. 2119, § 165, effective August 11.

30-20-112. Revocation of certificate. The governing body having jurisdiction, after reasonable notice and public hearing, shall temporarily suspend or revoke a certificate of designation that has been granted by it for failure of a site and facility to comply with all applicable laws, resolutions, and ordinances or to comply with the provisions of this part 1 or any rule or regulation adopted pursuant thereto.

Source: **L. 67:** p. 761, § 13. **C.R.S. 1963:** § 36-23-13. **L. 71:** p. 344, § 13. **L. 91:** Entire section amended, p. 970, § 11, effective June 5.

ANNOTATION

Quasi-judicial action must be preceded by reasonable notice. Under the solid wastes act (§§ 30-20-101 through 30-20-116), quasi-judicial action by county commissioners must be preceded by reasonable notice. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

Proper notice of quasi-judicial agency action must reasonably describe the subject matter of the hearing, any charges to be considered, and the action contemplated. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-113. Inspection - enforcement - nuisances - violations - civil penalty. (1) No person shall:

(a) Abandon a solid wastes disposal site and facility or operate, maintain, or close such a facility in a manner that violates any of the provisions of this part 1, any rule or regulation adopted pursuant thereto, or any certificate of designation issued under section 30-20-104;

(b) Dispose of solid waste at a location other than a site designated for such use by a county or municipality, unless otherwise exempted by this part 1 or unless the person is disposing of his or her own waste on his or her own property;

(c) Dispose of solid wastes in any manner that violates any of the provisions of part 10 of this article or any rule adopted pursuant thereto;

(d) Collect, transport, store, process, or dispose of trap grease in any manner that violates section 30-20-123 or any rule promulgated pursuant thereto.

(2) (a) Whenever the department finds that any solid wastes disposal site and facility or any person is in violation of subsection (1) of this section, the department may issue an order requiring that the site and facility or person comply with any such requirement, rule, or certificate of designation and may request the attorney general to bring suit for injunctive relief or for penalties pursuant to this section. The department shall not be required to conduct a hearing in accordance with section 24-4-105, C.R.S., before issuing an order pursuant to this subsection (2).

(b) (I) An order issued pursuant to this subsection (2) may include an administrative penalty assessment as provided in subsection (4) or (5) of this section. In lieu of imposing an administrative penalty assessment for a violation of subsection (1) of this section, the department may seek to have a civil penalty imposed, as provided in subsection (4) or (5) of this section, for such violation. The department shall bring an action for a civil penalty in the district court for the judicial district in which the violation occurred.

(II) If the department issues an order that does not contain an administrative penalty assessment, the department shall not be precluded from subsequently imposing an administrative penalty assessment or seeking a civil penalty for the violations detailed in the order.

(c) The department shall serve an order issued pursuant to this subsection (2) on the person who is the subject of the order by personal service or by certified mail. In addition to imposing an administrative penalty, the order may prohibit the person from engaging in specified activity in violation of subsection (1) of this section or may require the person to comply with the requirements of part 1 or part 10 of this article. The order shall take effect upon issuance unless otherwise specified in the order.

(2.5) (a) A person against whom an order has been issued, referred to in this section as the "requesting party", may submit a written request to the office of administrative courts in the department of personnel for a hearing on the order and shall provide a copy of the request to the executive director of the department or the executive director's designee. The requesting party shall file the request for hearing by personal service or by certified mail within thirty calendar days after the effective date of the order. An administrative law judge from the office of administrative courts shall conduct the hearing in accordance with section 24-4-105, C.R.S., except as otherwise specified in this section.

(b) If a request for a hearing is filed, payment of any monetary penalty is stayed pending a final decision by the administrative law judge after the hearing on the merits. Absent a motion to stay the order pursuant to paragraph (c) of this subsection (2.5), the requesting party shall comply with any other requirements of the order. If the administrative law judge grants a motion to stay the order, the department shall not be precluded from

imposing a penalty against the requesting party for subsequent violations of subsection (1) of this section.

(c) (I) The requesting party may submit a motion to the administrative law judge to stay the enforcement of the order pending the outcome of the hearing. The administrative law judge may grant the motion to stay any portion of the order if he or she determines that the balance of equities favors the requesting party. In making his or her determination, the administrative law judge shall consider the following factors:

(A) The probability of serious harm to the requesting party if the motion for a stay is denied;

(B) The probability that no serious harm to the public health or the environment will occur if the motion for a stay is granted;

(C) The merits of the requesting party's case; and

(D) The public interest.

(II) If the administrative law judge grants a stay of all or a portion of the order, the requesting party shall not be excused from its obligations under applicable laws, rules, permits, and valid, existing orders.

(III) The administrative law judge shall expedite hearings and determinations on a motion to stay an order. The requesting party bears the burden of proof in a motion to stay an order.

(d) Except as provided in subparagraph (III) of paragraph (c) of this subsection (2.5), the department bears the burden of proof by a preponderance of the evidence in a hearing pursuant to this subsection (2.5).

(e) (I) Upon the motion of a party to the hearing, and in the discretion of the administrative law judge, an administrative law judge may request an interpretive rule from the solid and hazardous waste commission pertaining to any rule that is at issue in the hearing, but only if there is no genuine issue of material fact or the parties have stipulated to the material facts for the purposes of the interpretive rule. The administrative law judge may adjust the schedule of the hearing to accommodate the receipt of an interpretive rule. In making a determination on a motion to request an interpretive rule, the administrative law judge shall consider the following factors:

(A) Whether the plain language of the rule in question is clear and unambiguous;

(B) Whether the proposed construction of the rule in question would lead to an absurd result; and

(C) Whether the solid and hazardous waste commission has previously issued an interpretive rule concerning the subject of the request for an interpretive rule.

(II) Notwithstanding section 24-4-103 (1), C.R.S., if the administrative law judge requests, and the solid and hazardous waste commission agrees to issue, an interpretive rule, the commission shall give notice to the public of the interpretive rule-making proceeding in accordance with section 24-4-103, C.R.S. The commission shall provide the notice within forty-five days after receipt of the request. The commission shall accept written material, not to exceed fifteen pages in length, from any interested person if it is provided within fifteen days after the date that notification is given. The commission shall issue the written interpretive rule no later than thirty days after the deadline for the submission of written material. The legal effect of any such interpretive rule shall be determined in accordance with applicable law and is not presumed to be binding on any party to the hearing.

(f) Notwithstanding section 24-4-105 (15), C.R.S., any appeal of a determination of the administrative law judge pursuant to this subsection (2.5) shall be filed in the appropriate district court in accordance with section 24-4-106, C.R.S.

(2.7) The department shall bring an action for a violation of subsection (1) of this section within two years after the date the department discovers an alleged violation or within five years after the date the alleged violation occurred, whichever date occurs earlier; except that the limitation period is tolled during any period that a person intentionally conceals the alleged violation. For the purposes of this section, "intentionally" shall have the meaning provided for such term in section 18-1-501 (5), C.R.S.

(3) Any solid wastes disposal site and facility found to be abandoned or inactive or that is operated, maintained, or closed in a manner so as to violate any of the provisions of this part 1 and part 10 of this article or any rule adopted pursuant thereto shall be deemed a

public nuisance, and such violation may be enjoined by the department, the board of county commissioners of the county wherein the violation occurred, or the governing body of the municipality wherein the violation occurred.

(4) Any person who violates paragraphs (b) and (c) of subsection (1) of this section shall be subject to a clean-up and cease-and-desist order issued by the department or by the board of county commissioners if the violation occurred in the unincorporated area of the county or by the governing body of a municipality if the violation occurred within the municipality. Any person who fails to comply with such orders shall be subject to an administrative or civil penalty of not more than ten thousand dollars for each day of such violation. The violation and civil penalty shall be determined and enforced by a court of competent jurisdiction upon action instituted by the board or governing body that issued the orders. The violation and administrative penalty shall be determined and enforced in accordance with subsections (2), (2.5), and (5.5) of this section. Any penalty collected shall be distributed to the county or municipality that instituted the action.

(5) (a) Any person who is found pursuant to subsection (2) of this section to be in violation of subsection (1) of this section or who fails to comply with an order issued by the department shall be subject to an administrative or civil penalty of not more than ten thousand dollars for each day of such violation.

(b) Any penalty collected by the department under this part 1 or part 10 of this article shall be paid to the state treasurer; however, notwithstanding this paragraph (b), the department may enter into settlement agreements regarding any penalty or claim under this part 1 or part 10 of this article. Any settlement agreement may include but is not necessarily limited to the payment or contribution of moneys to state or local agencies for environmentally beneficial purposes.

(5.5) (a) In determining the amount of an administrative or civil penalty imposed pursuant to subsection (4) or (5) of this section for a violation of subsection (1) of this section, the department, the administrative law judge, or the court shall consider the following factors:

- (I) The seriousness of the violation;
- (II) Whether the violation was intentional, reckless, or negligent;
- (III) The impact upon or the threat to public health or the environment as a result of the violation;
- (IV) The degree, if any, of recalcitrance or recidivism upon the part of the violator;
- (V) The economic benefit realized by the violator as a result of the violation;
- (VI) The voluntary and complete disclosure by the violator of the violation in a timely manner after discovery of, and prior to the department's knowledge of, the violation, as long as all reports required to be submitted under state environmental laws have been submitted as and when required;
- (VII) The full and prompt cooperation by the violator following disclosure of the violation, including, when appropriate, entering into and implementing a good faith and legally enforceable agreement to undertake compliance and remedial efforts;
- (VIII) The existence of a regularized and comprehensive environmental compliance program or an environmental audit program that was adopted in a timely and good faith manner and that includes sufficient measures to identify and prevent future noncompliance; and
- (IX) Other aggravating or mitigating circumstances or factors.

(b) The factors contained in subparagraphs (VI), (VII), and (VIII) of paragraph (a) of this subsection (5.5) shall be mitigating factors and may be applied, together with other factors, to reduce the amount of the penalty.

(6) The department, by its duly authorized representatives, shall have the power to enter and inspect each solid wastes disposal site and facility, as well as any property, premises, or place in which solid waste is reasonably believed to be located for the purposes of determining compliance with the requirements, rules, and certificate of designation issued pursuant to this part 1 and part 10 of this article. Such employee or representative shall have access to all such sites and facilities during any time when the site or facility is open to the public. If such entry or inspection is denied or not consented to and no emergency exists, the department is empowered to and shall obtain from the district court for the judicial

district in which such property, premises, or place is located a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district courts of this state are empowered to issue such warrants upon a showing that such entry and inspection is required to verify that the purposes of this part 1 and part 10 of this article are being carried out.

(7) The solid and hazardous waste commission shall establish such rules as are necessary to implement this section.

(8) Nothing in this section shall preclude or preempt the authority of a county or municipality to adopt or enforce its own local resolutions or ordinances.

(9) Notwithstanding any other provision of this part 1 or part 10 of this article other than section 30-20-110.5, the processing, application, storage, or composting of biosolids or other materials under rules promulgated pursuant to section 25-8-205 (1) (e), C.R.S., shall be excluded from this part 1 and part 10 of this article.

Source: L. 67: p. 762, § 14. C.R.S. 1963: § 36-23-14. L. 71: p. 345, § 14. L. 83: Entire section amended, p. 1240, § 3, effective July 1. L. 85: Entire section amended, p. 1067, § 1, effective July 1. L. 98: Entire section amended, p. 884, § 11, effective July 1. L. 2005: (1)(c) added and (3), (4), (5)(b), (6), and (9) amended, p. 1257, §§ 3, 4, effective August 8. L. 2006: (7) and (9) amended, p. 1137, § 22, effective July 1. L. 2009: (2), (4), and (5)(a) amended and (2.5), (2.7), and (5.5) added, (HB 09-1056), ch. 301, p. 1603, § 1, effective May 21. L. 2010: (1)(d) added, (HB 10-1125), ch. 349, p. 1608, § 1, effective August 11. L. 2012: (1)(d) amended, (SB 12-077), ch. 87, p. 287, § 2, effective April 6.

Cross references: For the legislative declaration contained in the 2005 act enacting subsection (1)(c) and amending subsections (3), (4), (5)(b), (6), and (9), see section 1 of chapter 285, Session Laws of Colorado 2005.

ANNOTATION

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-114. Violation - penalty. Any person who violates any provision of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. Nothing in this part 1 shall preclude or preempt a municipality from enforcement of its local ordinances. Each day of violation shall be deemed a separate offense under this section.

Source: L. 67: p. 762, § 15. C.R.S. 1963: § 36-23-15. L. 71: p. 345, § 15. L. 83: Entire section amended, p. 1240, § 4, effective July 1. L. 91: Entire section amended, p. 970, § 12, effective June 5. L. 2009: Entire section amended, (HB 09-1056), ch. 301, p. 1607, § 2, effective May 21.

ANNOTATION

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

30-20-115. Solid wastes disposal site and facility fund - tax - fees. (1) Any governing body having jurisdiction is authorized to establish a solid wastes disposal site and facility fund. The governing body having jurisdiction may levy a solid wastes disposal site and facility tax, in addition to any other tax authorized by law, on the taxable property within a county or municipality, the proceeds of which shall be deposited to the credit of said fund and appropriated to pay the cost of land, labor, equipment, and services needed in the operation of solid wastes disposal sites and facilities and for any other solid wastes

management purpose in or on behalf of that county or municipality. Any governing body having jurisdiction is also authorized, after a public hearing, to fix, modify, and collect service charges from users of solid wastes disposal sites and facilities or transfer stations for the purpose of financing solid wastes management in that county or municipality. In the event that a countywide solid waste disposal site and facility tax has been imposed with the consent of a majority of the voters in the county, that tax may continue to be collected countywide and may accrue to the county's solid waste disposal site and facility fund, notwithstanding any subsequent taxes as may be levied by any municipalities within the county under this section.

(2) (a) Nothing in subsection (1) of this section shall be construed to authorize any governing body having jurisdiction to collect service charges from users of any privately owned or operated site and facility that is for the primary purpose of processing, reclaiming, or recycling:

- (I) Recyclable materials;
- (II) Excluded scrap metal;
- (III) Auto parts; or
- (IV) Scrap that is composed of worn out metal or a metal product that has outlived its original use, commonly referred to as obsolete scrap.

(b) Nothing in this subsection (2) shall be construed to prohibit any governing body having jurisdiction from levying or collecting service charges from users of a solid wastes disposal site and facility at which recycling occurs.

Source: L. 67: p. 762, § 16. C.R.S. 1963: § 36-23-16. L. 71: p. 345, § 16. L. 81: Entire section amended, p. 1359, § 5, effective June 19. L. 89: Entire section amended, p. 1282, § 2, effective July 1. L. 91: Entire section amended, p. 970, § 13, effective June 5. L. 92: Entire section amended, p. 1279, § 5, effective July 1. L. 2010: Entire section amended, (HB 10-1329), ch. 358, p. 1704, § 5, effective June 7.

30-20-116. Privately owned solid wastes disposal site and facility - user fees. Unless otherwise provided by home rule charter or contractual agreements, user fees to be charged at any privately owned solid wastes disposal site and facility shall not be increased unless notice of such increase is published in a newspaper of general circulation within the county where such site and facility is located at least once thirty days prior to the effective date of such increase. The provisions of this section shall not apply to any hazardous waste disposal site.

Source: L. 81: Entire section added, p. 1360, § 6, effective June 19.

30-20-117. Siting and operation of solid waste-to-energy incineration system. The siting and operation of a solid waste-to-energy incineration system by any county or municipality separately or according to an intergovernmental agreement as authorized in part 9 of this article or part 10 of article 15 of title 31, C.R.S., shall not be subject to the provisions of this part 1, but such exemption shall, in no manner, limit the authority of a county or municipality to regulate a solid waste-to-energy incineration system as otherwise provided by law.

Source: L. 83: Entire section added, p. 1241, § 1, effective May 31.

30-20-118. Solid waste management fund - created. (1) There is hereby created in the state treasury a fund to be known as the solid waste management fund, which shall consist of moneys collected pursuant to sections 30-20-103.7, 30-20-109, and 30-20-123, as well as that portion of the fee designated for solid waste management under section 25-16-104.5 (2), C.R.S. Such moneys shall be appropriated annually to the department by the general assembly. Except as provided in section 25-15-314, C.R.S., the moneys in the solid waste management fund shall not be credited or transferred to the general fund or any other fund of the state.

(2) Moneys in the solid waste management fund may be appropriated by the general assembly for the implementation of the department's solid waste program pursuant to this part 1.

Source: **L. 85:** Entire section added, p. 1065, § 2, effective June 6. **L. 91:** Entire section amended, p. 971, § 14, effective June 5; entire section amended, p. 954, § 3, effective July 1; entire section amended, p. 960, § 5, effective July 1. **L. 98:** Entire section amended, p. 886, § 12, effective July 1. **L. 2006:** (1) amended, p. 1137, § 23, effective July 1. **L. 2010:** (1) amended, (HB 10-1125), ch. 349, p. 1608, § 2, effective August 11.

Editor's note: Amendments to this section by Senate Bill 91-160, Senate Bill 91-168, and Senate Bill 91-174 were harmonized.

30-20-119. Disposal of low-level radioactive waste. (1) No person shall dispose of low-level radioactive waste generated through the production of nuclear power or nuclear weapons, or any tools and equipment contaminated with slight amounts of radioactivity at power plants, hospitals, or research laboratories, that the United States nuclear regulatory commission or department of energy classified as low-level radioactive waste as of July 3, 1990, but which may be classified as below regulatory concern after that date, at any solid wastes disposal site and facility without the express written permission of the appropriate governmental entity which has the authority to grant a certificate of designation for such solid wastes disposal site and facility pursuant to section 30-20-102. This prohibition does not apply to products and materials specifically exempted by the United States nuclear regulatory commission prior to July 3, 1990; however, all other federal, state, and local regulations governing any other toxic or hazardous property of these products and materials shall still apply.

(2) The appropriate governmental entity described in subsection (1) of this section shall require a technical review by the department of the low-level radioactive waste proposed to be disposed when permission is requested pursuant to subsection (1) of this section, and the department shall make a written recommendation to the governmental entity as to whether such waste should be accepted. The appropriate governmental entity shall charge a fee established pursuant to section 30-20-109 (1) (d) to the applicant for such technical review and transmit such fee to the department.

Source: **L. 91:** Entire section added, p. 953, § 1, effective July 1.

30-20-120. Imminent and substantial endangerment from solid waste - definitions.

(1) As used in this section, "imminent and substantial endangerment from solid waste" means:

(a) Conditions involving landfill gases, groundwater contamination, landfill leachate, or discharges to surface water; and

(b) Physical hazards originating from solid waste that present a threat to public health and safety or the environment.

(2) (a) The department is authorized to expend moneys from the solid waste management fund created in section 30-20-118 to respond to and mitigate imminent and substantial endangerment from solid waste.

(b) When expending any moneys pursuant to this section, the department shall give priority to mitigating the imminent nature of the endangerment instead of expending moneys for characterizing the endangerment. The department shall use its best efforts to minimize moneys expended for characterizing the endangerment.

(3) The department shall not pursue an action under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 to 9675, to seek recovery of its costs incurred pursuant to this section.

(4) At any reasonable time, in order to implement this section, the department, upon consent or upon obtaining a search warrant, shall have free and unimpeded access to all property that is the site of the solid waste, including all buildings, yards, warehouses, and

storage facilities on such property in which it is reasonably believed that an imminent and substantial endangerment from solid waste exists.

(5) The provisions of this section shall not apply to sites regulated by the oil and gas conservation commission, created by section 34-60-104, C.R.S., or the oil inspection section of the department of labor and employment, pursuant to article 20 of title 8, C.R.S.

(6) Nothing in this section shall be construed to constitute a waiver of immunity that is otherwise applicable to the department or its employees, agents, or representatives.

(7) Repealed.

Source: **L. 2001:** Entire section added, p. 1100, § 3, effective July 1. **L. 2003:** (7) amended, p. 1811, § 2, effective May 21. **L. 2008:** (7) repealed, p. 177, § 18, effective March 24.

30-20-121. Moratorium on monofill for tires - whole tire disposal ban - reports - plan - definition - repeal. (1) On and after July 1, 2004, to and including June 30, 2014, a governing body having jurisdiction shall not grant an application for a landfill designated only for the disposal of tires. Nothing in this section shall limit modifications to existing landfills that accept waste tires.

(2) Subsection (1) of this section and this subsection (2) are repealed, effective July 1, 2014.

(3) No person shall dispose of a waste tire in a monofill tire landfill unless the person shreds the waste tire into twelve-inch long or smaller pieces.

(4) Each county that has a monofill tire landfill shall annually report to the department regarding the status of the landfill. The department shall adopt a plan to eliminate all monofill tire landfills within ten years after August 5, 2009.

(5) For purposes of this section, "monofill tire landfill" means a "waste tire monofill" as defined in section 30-20-1001.

Source: **L. 2004:** Entire section added, p. 1785, § 1, effective July 1. **L. 2009:** (2) amended and (3), (4), and (5) added, (SB 09-289), ch. 314, p. 1699, § 2, effective August 5.

30-20-122. Additional duties of the department - data collection on recycling, solid waste, and solid waste diversion - report. (1) (a) The department shall collect information and data on recycling, solid waste, and solid waste diversion. Data required to be collected by the department on recycling, solid waste, and solid waste diversion as required by this subsection (1) shall include without limitation:

(I) Statewide and regional solid waste stream components such as type of material, quantities of each material, and flow of each material;

(II) The proportion of solid waste generated in the state that has been diverted to other uses that may be based upon a model established by the federal environmental protection agency for the purpose of calculating a recycling rate;

(III) Reutilized materials, amounts, and rates;

(IV) Technical and innovative solid waste management developments;

(V) A statewide inventory of sites and facilities performing recycling or other solid waste processing or diversion;

(VI) The number of jobs created and any other economic impacts resulting from the awarding of recycling resources economic opportunity grants made available pursuant to section 25-16.5-106.7, C.R.S.; and

(VII) Other data as necessary to further the purposes of this part 1.

(b) On or before February 1, 2009, and annually on or before February 1 of each calendar year thereafter, the department shall submit a report to the standing committee of reference in each house of the general assembly exercising jurisdiction over matters concerning public health and the environment that includes a summary of the information or data collected pursuant to paragraph (a) of this subsection (1) and all evaluations and conclusions drawn from the information or data collected.

(2) The department shall hold any information or data submitted to it by solid waste entities pursuant to subsection (1) of this section as confidential business information upon request of the submitting entity if the information or data satisfies the definition of trade secret as specified in sections 7-7-102 (4) and 18-4-408 (2) (d), C.R.S. The burden of proving that the information or data is protected as a trade secret shall be upon the party asserting the claim.

Source: L. 2007: Entire section added, p. 1145, § 11, effective July 1.

Cross references: For the short title ("Recycling Resources Economic Opportunity Act") and legislative declaration contained in the 2007 act enacting this section, see sections 1 and 2 of chapter 278, Session Laws of Colorado 2007.

30-20-123. Trap grease - registration - fees - record-keeping - violations - rules - definitions - legislative declaration. (1) The general assembly hereby finds, determines, and declares that the safe and proper collection, transportation, and disposal of trap grease is a matter of statewide concern and that state oversight of persons and vehicles engaged in such actions is necessary to protect the public health and environment. The general assembly further declares that the state's sharing of data generated under this section with local entities that regulate waste disposal will enhance protection of the public health and environment, and, to that end, the department is encouraged to share such information with such other regulating entities.

(2) As used in this section, unless the context otherwise requires:

(a) "Collect" means to gather; except that "collect" does not include moving grease from one area or container to another area or container on the same premises.

(b) "Commission" means the solid and hazardous waste commission created in section 25-15-302, C.R.S.

(c) "Facility" means any real property location used for the collection, transportation, storage, processing, or disposal of grease, including, without limitation, a processing plant, transfer station, or trans-shipment location. "Facility" does not include a domestic wastewater treatment works as defined in section 25-8-103, C.R.S., that processes waste grease as part of its operations that are regulated by the department pursuant to article 8 of title 25, C.R.S.

(d) "Grease" means trap grease in a quantity in excess of an amount determined by the commission by rule.

(e) "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of grease during its transportation from the point of generation to the point of storage, treatment, or disposal.

(f) "Registrant" means a person registered under subsection (3) of this section.

(g) "Store" means to possess, impound, contain, or control grease; except that "store" does not apply to the temporary retention of grease on the premises where the grease was initially generated.

(h) "Transport" means to use a vehicle to haul, ship, carry, convey, or transfer grease from one place to another. "Transport" does not include moving grease generated on site into another on-site container, whether indoors or outdoors.

(i) "Trap grease" means the residual yellow grease, waste water, debris principally derived from food preparation or processing, or other waste, that is intercepted by and contained in grease traps or grease interceptors.

(j) "Yellow grease" means used cooking oil, spent shortenings, or any other inedible kitchen grease or waste vegetable oil produced by restaurant and food facilities.

(3) (a) **Registration.** (I) Except as otherwise provided in this section, on and after the date specified by rule of the commission pursuant to subparagraph (III) of paragraph (a) of subsection (9) of this section:

(A) No person shall collect, transport, store, process, or dispose of grease unless the person is validly registered with the department in accordance with this section and rules adopted by the commission under this section;

(B) No facility, including a transfer station, shall accept grease for processing, handling, or storage unless the facility is validly registered with the department in accordance with this section and rules adopted by the commission under this section and prominently displays a decal issued pursuant to paragraph (b) of this subsection (3); and

(C) No vehicle shall be used to transport grease unless the vehicle is validly registered with the department in accordance with this section and rules adopted by the commission under this section and displays a decal issued under paragraph (b) of this subsection (3).

(II) A person registering a person, vehicle, or facility under this subsection (3) shall:

(A) Submit to the department a registration application containing all the information required by the commission, in the form and manner specified by the commission;

(B) Pay an annual registration fee, in a reasonable amount to cover the direct and indirect costs incurred by the department in administering this section, as determined by rule of the commission in accordance with paragraph (a.5) of subsection (9) of this section; and

(C) Post, at the time of registration, a surety bond or other debt instrument or method of financial assurance, as determined by rule of the commission, with the department in an amount determined by the department to be reasonably sufficient to remediate any environmental or health harm caused by noncompliant disposal, dumping, or other release of grease.

(III) Each person, facility, and vehicle engaged in the collection, transportation, processing, storage, or disposal of grease shall be separately registered; except that, if a person so engaged employs another person to collect, transport, process, store, or dispose of grease, the individual so employed is not required to be separately registered.

(IV) Upon receiving the application, fee, and bond or other instrument of financial assurance required under subparagraph (II) of this paragraph (a), the department shall register the person, facility, or vehicle. At that time, the department shall provide to the registrant any necessary decals as described under paragraph (b) of this subsection (3).

(b) **Decals.** (I) Upon registration of a facility or vehicle under paragraph (a) of this subsection (3), the department shall issue to the registrant decals necessary to comply with this subsection (3), which the registrant shall promptly affix to the registered facility or vehicle.

(II) Decals shall be valid for a period determined by the commission by rule, not to exceed five years. A decal issued pursuant to this section shall contain the information required by rule promulgated by the commission, including at least an expiration date and the decal number.

(c) **Uniform manifests.** (I) No registrant shall accept grease for transportation unless the registrant has completely filled out a uniform manifest on a form established or approved by the department and containing the information specified by rule promulgated by the commission, including at least the following:

(A) The manifest number;

(B) The decal number of the registered vehicle used to transport the grease;

(C) The registrant's signature under penalty of perjury, name, address, telephone number, and registration number;

(D) The current date; the facility registration number, name, address, and telephone number of the source of the grease; and the facility registration number, name, address, and telephone number of the facility to which the grease will be transported; and

(E) The amount of grease in the load.

(II) The registrant transporting the grease shall retain one copy of the manifest and shall provide one copy of the manifest to the source of the grease and the registered facility to which the grease is transported.

(III) The registrant transporting the grease and the registered facility to which the grease is transported shall each keep a copy of the manifest for at least three years after the date stated on the manifest.

(IV) The uniform manifest required under this section shall be available from the department's web site in such a manner that enables a person to either print a hard copy of the manifest or complete, store, and submit the manifest electronically. A uniform manifest

shall be maintained using the same medium in which it was filled out and in accordance with this section and rules promulgated by the commission.

(4) A registrant shall keep and maintain, for at least two calendar years, certain records as prescribed by the commission, including manifests pursuant to paragraph (c) of subsection (3) of this section. The records shall be made available to the department for inspection upon request.

(5) A registrant shall submit, on or before a date specified by rule of the commission, an annual report to the department regarding the registrant's collection, transportation, storage, processing, or disposal of grease. The information required in the report shall be specified by rule of the commission. The department shall keep confidential volumetric and proprietary information contained in the report.

(6) A person arranging for the transportation or disposal of grease shall not contract with, engage, employ, or otherwise use a person other than a registrant for such purposes.

(7) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), a person collecting or transporting grease for personal use shall comply with this subsection (7).

(II) A person collecting, transporting, using, or storing grease for conversion to, and use by the person as, biofuel is exempt from paragraphs (b) and (c) of this subsection (7).

(b) As used in this subsection (7), "personal use" means that the person collecting or transporting the grease intends to use the grease, and that such grease is limited to:

(I) The transportation of at least a minimum quantity of grease, as determined by rule of the commission, and no more than fifty-five gallons of grease at a time; and

(II) The possession of at least a minimum quantity of grease, as determined by rule of the commission, and no more than one hundred sixty-five gallons of grease at a time, which amount includes the quantity of grease being transported under subparagraph (I) of this paragraph (b).

(c) On and after the date specified in subparagraph (III) of paragraph (a) of subsection (9) of this section, a person collecting or transporting grease for personal use shall register annually with the department as a personal user. The registration shall include identification of any vehicles or physical locations involved in the personal use. A person registering under this section shall pay a fee, in an amount sufficient to recover the direct and indirect costs of administering this section as determined by the commission in accordance with paragraph (a.5) of subsection (9) of this section, at the time of registration.

(d) A person collecting or transporting grease under this subsection (7) shall not:

(I) Barter, trade, or sell any portion of the grease to any person; or

(II) Take any grease from any container owned by a registrant without the registrant's written permission.

(8) All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the solid waste management fund created in section 30-20-118.

(9) (a) By December 31, 2011, the commission shall promulgate reasonable rules to implement and administer this section, including rules specifying:

(I) Appropriate methods to collect, transport, store, process, and dispose of grease;

(II) The minimum amount of grease, the collection or transportation of which requires a person to register as a personal user under subsection (7) of this section; and

(III) The date by which persons engaged in collecting, transporting, or disposing of grease must be registered under subsection (3) or (7) of this section, which date shall be ninety days after the date that the rules are adopted.

(a.5) The fee amounts established by the commission under this section shall not exceed:

(I) One thousand one hundred forty dollars per nonvehicle registrant;

(II) Five hundred seventy dollars per vehicle; and

(III) Ninety-six dollars per person registering as a personal user under subsection (7) of this section.

(b) The commission may promulgate rules periodically as it deems necessary or convenient for the administration of this section.

(10) Nothing in this section shall be construed to require registration by any person who is neither engaged in the business of, nor otherwise knowingly, collecting, transporting, or disposing of grease. However, if a solid waste hauler discovers grease that the hauler

reasonably believes is in a quantity regulated by the department, the hauler shall immediately notify the department. The department shall then determine whether the hauler is required to register under this section in order to collect, transport, or dispose of the grease.

(11) The department may make the data it collects under this section available to regulating entities.

(12) (a) A person may store on the person's property grease that the person intends to use.

(b) Notwithstanding any provision of law to the contrary, the department has exclusive authority to regulate the storage of grease.

(13) The department is not authorized to regulate any yellow grease that is not intercepted by and contained in grease traps or grease interceptors.

Source: L. 2010: Entire section added, (HB 10-1125), ch. 349, p. 1609, § 3, effective August 11. **L. 2012:** (1), (2)(d), and (2)(i) amended and (13) added, (SB 12-077), ch. 87, p. 286, § 1, effective April 6.

PART 2

DISPOSAL DISTRICTS (1953 ACT)

Cross references: For the "Special District Act", see article 1 of title 32.

30-20-201. Legislative declaration. It is declared that the creation of disposal districts, having purposes and powers provided in this part 2, will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of said districts.

Source: L. 53: p. 475, § 1. **CRS 53:** § 89-11-1. **C.R.S. 1963:** § 89-11-1.

30-20-202. Creation - proviso. (1) Whenever a county has established and maintains a county public health agency or, in conjunction with one or more adjacent counties, a district public health agency as provided by part 5 of article 1 of title 25, C.R.S., such county may establish one or more disposal districts. Such district shall be composed of the unincorporated area benefited by the establishment of the proposed disposal district for the collection and disposal of garbage, waste, and trash. The boundaries of such district are to be designated by the board of county commissioners of the county.

(2) It is the duty of the county board of health or the district board of health, which the county maintains under the authority of part 5 of article 1 of title 25, C.R.S., upon request from the board of county commissioners of such county, to formulate a tentative plan for the formation of such disposal district, said plan to include: Recommendations as to the area to be benefited; a detailed estimate of annual costs for the operation and maintenance of the district affairs and the equipment and personnel thereof; boundaries and the approximate valuation for assessment therein; and proposed rules, regulations, and schedules for the district. Upon completion of said plan, the board of health shall certify such plan to the board of county commissioners.

(3) Before the adoption of any resolution of the board of county commissioners creating a disposal district, a public hearing shall be held by the board to ascertain the sentiment of residents within the proposed area toward the establishment of such district. For the purposes of such hearing, the board of county commissioners shall give notice thereof, which notice shall set forth the time, date, place, and purpose of such hearing, shall set forth a description of the proposed boundaries, and shall be published once weekly for three consecutive weeks in a newspaper published and of general circulation in the county. The date for such hearing shall not be sooner than five days nor later than thirty days following the date of the last publication of said notice.

(4) After the hearing, the board of county commissioners may, at any regularly scheduled meeting, change, amend, reject, or adopt the certified plan, and by resolution create a disposal district.

(5) Any provisions in this part 2 to the contrary notwithstanding, no tract or parcel of real estate used for manufacturing, mining, railroad, or industrial purposes, which, together with the buildings, improvements, machinery, and equipment thereon situate, shall have a valuation for assessment in excess of twenty-five thousand dollars at the date of the adoption by the board of county commissioners of a resolution creating a disposal district, shall be included in any district organized under this part 2 without the written consent of the owner thereof. No personal property shall be included within any district which is situate upon real estate not included in such district. If, contrary to the provisions of this subsection (5), any such tract, parcel, or personal property is included in any district, the owner thereof, on petition to the board of county commissioners which adopted the resolution creating the district, shall be entitled to have such property excluded from the district free and clear of any contract, obligations, lien, or charge to which it may or might have been liable as a part of the district.

Source: L. 53: p. 475, § 2. CRS 53: § 89-11-2. C.R.S. 1963: § 89-11-2. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2119, § 166, effective August 11.

30-20-203. Powers. (1) The board of county commissioners, following the creation of such district and acting on behalf thereof:

(a) Shall in each year determine the amount of money necessary to be raised by taxation after taking into consideration all sources of revenue of the district, and shall fix, in addition to such other taxes as may be levied by such board of county commissioners, a rate of levy, not to exceed one-half mill, to be levied upon every dollar of valuation for assessment of the property within the district, which levy, together with other revenues of the district, will raise the amount required by the district annually to supply funds for paying the expenses, acquisition of equipment, costs of operation, maintenance, and employment of personnel therefor;

(b) May establish and fill a position of county sanitation engineer to supervise and manage the manner of collection and disposing of trash, waste, and garbage of the district, and fix the compensation attached to such position to be paid from the funds of the district, or may authorize an administrative official of the county to assume the functions of such position in addition to his customary duties, and provide for the additional compensation that may be allowed for such official to be paid from the funds of the district;

(c) May provide with the funds of the district for the employment of personnel to operate and manage the facilities for the collection and disposal of trash, waste, and garbage within the district;

(d) May enter into and execute contracts on behalf of the district with any firm, corporation, or individual to provide for the collection or disposal, or both, of trash, wastes, and garbage within the district, the revenues from which, if any, shall be solely for the uses and benefits of the district;

(e) May enter into and execute contracts on behalf of the district with any incorporated village, town, city, or other district for the joint operation of any dump, sanitary fill, or other satisfactory means of garbage and trash disposal, the revenue from which, if any, shall be solely for the uses and benefits of the district;

(f) May by lease, contract, or otherwise provide areas or dumps within or without the boundaries of the district for the disposal of waste, trash, and garbage collected by the district, the costs for which shall be borne by the district;

(g) May acquire by purchase or lease or otherwise provide for equipment for the collection and disposal of garbage, waste, and trash, the costs of which shall be borne by the district;

(h) May promulgate and adopt on behalf of the district such schedules, rules, or regulations as may be necessary for the orderly collection of trash, wastes, or garbage from the district, and for the maintenance and operation of dumps, sanitary fills, or other satisfactory disposal methods and collection areas, which, when so adopted, may be administered and enforced by the county or district public health agency, as the case may be, as provided in other cases by sections 25-1-506 and 25-1-514, C.R.S.;

(i) May enlarge the area of the district by inclusion of other unincorporated areas, after giving notice of and holding a public hearing thereof, as provided for the creation of the district under section 30-20-202. The area to be included may or may not be adjacent to the district.

(j) May exclude any area from the district or dissolve any district created under this part 2, after giving notice of and holding a public hearing thereon, as provided for the creation of the district under section 30-20-202.

Source: L. 53: p. 476, § 3. CRS 53: § 89-11-3. C.R.S. 1963: § 89-11-3. L. 2008: (1)(h) amended, p. 2054, § 12, effective July 1.

ANNOTATION

Law reviews. For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law. 2527 (1982).

30-20-204. Budget. The operations of the disposal district shall be conducted pursuant to the provisions of the local government budget law of Colorado.

Source: L. 53: p. 478, § 4. CRS 53: § 89-11-4. C.R.S. 1963: § 89-11-4.

Cross references: For the local government budget law, see § 29-1-101 et seq.

30-20-205. Character of this part 2. Nothing in this part 2 shall repeal or affect any other law. It is intended that this part 2 shall provide a separate method of accomplishing its objects, and not an exclusive one.

Source: L. 53: p. 478, § 5. CRS 53: § 89-11-5. C.R.S. 1963: § 89-11-5.

PART 3

PUBLIC PROJECTS

30-20-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Governmental agency" means any county or municipality in the state only.

(2) "Public project" means any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public education (where county boundaries and school district boundaries are coterminous), public welfare, or the conservation of natural resources, including the planning of any such lands, buildings, improvements, structures, works, machinery, equipment, or facilities, and shall also include existing lands, buildings, improvements, structures, works, and facilities, as well as improvements, renovations, or additions to any such lands, buildings, improvements, structures, works, or facilities.

(3) "Public purposes" includes, but is not limited to, the supplying of public water services and facilities, public sewer services and facilities, and lands, buildings, improvements, equipment, and facilities for public education (where county boundaries and school district boundaries are coterminous).

(4) Repealed.

Source: L. 55: p. 259, § 1. CRS 53: § 36-20-1. L. 57: p. 315, § 1. C.R.S. 1963: § 36-19-1. L. 71: p. 339, § 1. L. 77: (2) and (3) amended and (4) added, p. 1448, § 1, effective June 1. L. 78: (2) and (3) amended and (4) repealed, pp. 272, 273, §§ 93, 94, effective May 23. L. 91: (1) amended, p. 744, § 6, effective April 4.

Cross references: For definitions applicable to this part 3, see § 30-26-301 (2)(d).

ANNOTATION

No unconstitutional delegation of legislative power. Vesting in the county commissioners authority to acquire, construct, and maintain public projects particularly defined in the act as intended for use in the promotion of the public health is not so broad or vague as to constitute an unconstitutional delegation of legislative power. *Garel v. Bd. of County Comm'rs*, 167 Colo. 351, 447 P.2d 209 (1968).

The purpose of the general welfare clause in a statute is to extend the powers of a municipality beyond those specifically enumerated to other things which are necessary to

accomplish the purposes of municipal government. *Garel v. Bd. of County Comm'rs*, 167 Colo. 351, 447 P.2d 209 (1968).

A sewage system is a public necessity, and may be authorized to make all regulations necessary to secure the general health. *Garel v. Bd. of County Comm'rs*, 167 Colo. 351, 447 P.2d 209 (1968).

The power to issue the anticipation warrants for the financing of the proposed project is expressly vested by the act. *Garel v. Bd. of County Comm'rs*, 167 Colo. 351, 447 P.2d 209 (1968).

30-20-302. Public improvements within and without boundaries. Any governmental agency may acquire, construct, maintain, add to, and improve any public project, which public project may be located within or without or partly within and partly without the territorial limits of such governmental agency.

Source: L. 55: p. 259, § 2. CRS 53: § 36-20-2. C.R.S. 1963: § 36-19-2. L. 91: Entire section amended, p. 744, § 7, effective April 4.

30-20-303. Anticipation warrants. For the purpose of defraying the cost of construction, erection, reconstruction, or improvement of existing facilities, the legislative body of any governmental agency may, pursuant to a resolution or ordinance, issue anticipation warrants, which order, resolution, or ordinance shall set forth the proposed public project, the amount of warrants to be issued, and the maximum rate of interest. In every instance, the order, resolution, or ordinance shall provide that the project is being undertaken under the provisions of this part 3.

Source: L. 55: p. 259, § 3. CRS 53: § 36-20-3. C.R.S. 1963: § 36-19-3. L. 91: Entire section amended, p. 744, § 8, effective April 4.

30-20-304. Power to lease. Any governmental agency is authorized to rent or lease such public project or any portion thereof to any persons, partnerships, associations, or corporations, either public or private.

Source: L. 55: p. 260, § 4. CRS 53: § 36-20-4. C.R.S. 1963: § 36-19-4.

30-20-305. Terms and interest. All anticipation warrants issued under the provisions of this part 3 shall bear interest at a rate not exceeding a net effective interest rate to be established by the official legislative body of the governmental agency prior to the sale or issuance of such warrants. All warrants shall be executed in such a manner and be payable serially in annual installments beginning not later than two years and extending not more than twenty years from the date thereof and at such place as the governmental agency determines.

Source: L. 55: p. 260, § 5. CRS 53: § 36-20-5. L. 57: p. 315, § 1. C.R.S. 1963: § 36-19-5. L. 69: p. 233, § 1. L. 70: p. 147, § 1. L. 91: Entire section amended, p. 744, § 9, effective April 4.

30-20-306. Revenue and sinking fund - pledge of general income prohibited. The official legislative body of any governmental agency is authorized to set aside a special

sinking fund in the office of the treasurer of the governmental agency for the payment of anticipation warrants authorized by and issued under the provisions of this part 3 and for the payment of interest due on such warrants; except that the general income of the governmental agency shall not be pledged for the payment of the principal of the warrants and interest thereon. The treasurer of the governmental agency shall deposit in said sinking fund all rents, royalties, fees, rates, and charges derived from or rendered by the project.

Source: L. 55: p. 260, § 6. CRS 53: § 36-20-6. L. 57: p. 316, § 1. C.R.S. 1963: § 36-19-6. L. 91: Entire section amended, p. 744, § 10, effective April 4.

30-20-307. Donations or gifts. Any governmental agency is authorized to accept donations or gifts to the public project from any source, to be used in the best interests of such project.

Source: L. 55: p. 260, § 7. CRS 53: § 36-20-7. C.R.S. 1963: § 36-19-7.

30-20-308. Authentication before delivery. In case any of the officers whose signatures or countersignatures appear on the said anticipation warrants or coupons attached thereto cease to be such officers before delivery of such warrants, such signatures and countersignatures shall nevertheless be valid and sufficient for all purposes, with the same force and effect as if they had remained in office until such delivery.

Source: L. 55: p. 260, § 8. CRS 53: § 36-20-8. C.R.S. 1963: § 36-19-8.

30-20-309. Obligations payable from project revenue only. Nothing in this part 3 shall be construed to authorize or permit any governmental agency to incur any obligation of any kind or nature, except such as shall be payable solely from moneys accruing to the special sinking fund created pursuant to section 30-20-306, and it shall be plainly stated on the face of each warrant that has been issued under the provisions of this part 3 that it does not constitute an indebtedness of the governmental agency within the meaning of any constitutional provision or limitation.

Source: L. 55: p. 260, § 9. CRS 53: § 36-20-9. C.R.S. 1963: § 36-19-9. L. 91: Entire section amended, p. 744, § 11, effective April 4.

30-20-310. Numbering and retirement. The anticipation warrants issued under this part 3 shall be serially numbered and shall be paid off and retired in the order in which they were issued.

Source: L. 55: p. 261, § 10. CRS 53: § 36-20-10. C.R.S. 1963: § 36-19-10.

PART 4

SEWER AND WATER SYSTEMS

30-20-401. Definitions. As used in this part 4, unless the context otherwise requires:

- (1) "Board" means the board of county commissioners.
- (2) "Consumer" means any public or private user of water facilities or sewerage facilities, or both.
- (3) "Joint system" or "joint water and sewer system" means water facilities and sewerage facilities combined, operated, and maintained as a single public utility and income-producing project.
- (4) "Sewerage facilities" means any one or more of the various devices used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature, or storm, flood, or surface drainage waters, including all inlets, collection, drainage, or disposal lines, intercepting sewers, joint storm and sanitary sewers, sewage disposal plants,

and outfall sewers; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions, and alterations thereof; and any and all rights or interest in such sewerage facilities.

(5) "System" means sewerage facilities or water facilities or water and sewerage facilities combined.

(6) "Water facilities" means any one or more devices used in the collection, treatment, or distribution of water for domestic and other legal uses, including systems of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gaging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, and filtration and treatment plants and works; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such water facilities.

Source: L. 71: p. 354, § 1. C.R.S. 1963: § 36-29-1.

Cross references: For definitions applicable to this part 4, see § 30-26-301 (2)(d).

30-20-402. Powers. (1) In addition to the powers which it may now have, any county without an election of the qualified electors thereof has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities, or both, wholly within or wholly without the county, or partially within and partially without the county, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities, or both, for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the county, but no water service or sewerage service, or combination of them, shall be furnished in any other county or in any municipality unless the approval of such other county or municipality is obtained as to the territory in which the service is to be rendered;

(c) To accept loans or grants, or both, from the United States under any federal law to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities or sewerage facilities, or both;

(d) To accept loans or grants, or both, from the United States under any federal law for the construction of necessary water facilities or sewerage facilities, or both;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities or sewerage facilities, or both, whether acquired or constructed by the county or consumer, and to accept grants and contributions from consumers for the construction of water facilities or sewerage facilities, or both. When determined by its board to be in the public interest and necessary for the protection of the public health, any county is authorized to enter into and perform contracts, whether long-term or short-term, but in no event exceeding fifty years, with any consumer for the provision and operation by the county of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by a consumer and the payment periodically by the consumer to the county of amounts at least sufficient, in the determination of such board, to compensate the county for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such consumer.

(f) To prescribe, revise, and collect in advance or otherwise from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom rates, fees, tolls, and charges, or any combination thereof, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from, such water facilities or sewerage facilities, or both, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, including but not necessarily limited to interest on delinquencies from any date due at a rate of not exceeding

one percent per month, or fraction thereof, reasonable attorney fees, and other costs of collection, without any modification, supervision, or regulation of any such rates, fees, tolls, or charges by any board, agency, bureau, commission, or official other than the board of county commissioners collecting them; and, in anticipation of the collection of the revenues of such water facilities or sewerage facilities, or joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the water facilities or sewerage facilities, or both; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or sewerage facilities, or both, including the revenues of improvements, betterments, or extensions thereto, thereafter constructed or acquired, as well as the revenues of existing water facilities or sewerage facilities, or both;

(h) To enter into and perform contracts and agreements with other counties or with municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities, or both, and the maintenance and operation thereof. Any such counties or municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their boards or governing bodies may deem proper for the supervision and general management of the water facilities or sewerage facilities, or both, and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof.

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds; except that no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the county is created thereby, and except that no property, other than money, of the county is liable to be forfeited or taken in payment of said bonds, and except that no debt on the credit of the county is thereby incurred in any manner for any purpose; and

(j) To issue water, or sewer, or joint water and sewer refunding revenue bonds to refund, pay, or discharge all or any part of its outstanding water, or sewer, or joint water and sewer revenue bonds issued under this part 4 or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any county water facilities or sewerage facilities, or both, as provided in section 30-20-410.

Source: L. 71: p. 355, § 1. C.R.S. 1963: § 36-29-2.

ANNOTATION

Section gives counties legally protected interest and therefore standing to file suit. *Bd. of County Comm'rs v. Denver Bd. of Water Comm'rs*, 718 P.2d 235 (Colo. 1986).

Authority to serve noncounty users. Denver is also a county as well as a city, and, as such, could be said to have parallel powers to serve noncounty water users under subsection (1)(b). *Colo. Open Space Council, Inc. v. City & County of Denver*, 190 Colo. 122, 543 P.2d 1258 (1975).

Permissive grants of power that allow the county to construct, operate, improve, and extend storm water facilities and levy taxes to finance the acquisition, construction, operation, improvement, and extension thereof, do not impose a mandatory duty to remedy a particular harm and, therefore, do not establish a clear legislative intent to create a private cause of action. *Larry H. Miller Corp.-Denver v. Bd. of County Comm'rs*, 77 P.3d 870 (Colo. App. 2003).

30-20-403. Authorization of facilities and bonds. (1) The acquisition, construction, reconstruction, lease, improvement, betterment, or extension of any water facilities or sewerage facilities, or both, and the issuance in anticipation of the collection of revenues of such facilities of bonds to provide funds to pay the cost thereof may be authorized under this part 4 by action of the board of county commissioners taken at a regular or special meeting

by a vote of a majority of the members of the board.

(2) The board, in determining such cost, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; interest which it is estimated will accrue during the construction or other acquisition period and for a period of not exceeding one year thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part 4; any discount on the sale of the bonds; costs of financial, professional, and other estimates and advice; contingencies; any administrative, operating, and other expenses of the county prior to and during such acquisition period and for a period of not exceeding one year thereafter, as may be determined by the board; and all other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of any water or sewerage facilities, joint water and sewer system, or part thereof, and the placing of the same in operation; and also such provision or reserves for working capital, operation, maintenance, or replacement expenses or for payment or security of principal of or interest on any bonds during or after such an acquisition or improvement and equipment as the board may determine; and also reimbursements to the federal government, or any agency, instrumentality, or corporation thereof, of any moneys theretofore expended for or in connection with any such water or sewerage facilities, or both.

Source: L. 71: p. 357, § 1. C.R.S. 1963: § 36-29-3.

30-20-404. Bond provisions. (1) Revenue bonds issued under this part 4 shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the county; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The resolution authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued in one or more series, may bear such date, may mature at such time not exceeding the estimated life of the water facilities or sewerage facilities, or both, to be acquired with the bonds proceeds, as determined by the board, but in no event beyond forty years from their respective dates, may be in such denomination, may be payable in such medium of payment, at such place within or without the state, including but not limited to the office of the county treasurer, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by the board.

(2) The board may provide for preferential security for any bonds, both principal and interest, to be issued under this part 4 to the extent deemed feasible and desirable by such board over any bonds that may be issued thereafter.

(3) Said bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(4) Bonds may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and, where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon; and the bonds generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details as may be provided by the board, except as otherwise provided in this part 4.

(5) Subject to the payment provisions in this part 4 specifically provided, said bonds, any interest coupons thereto attached, and any temporary bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the board may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise

provided, is and shall be fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S.

(6) Notwithstanding any other provision of law, the board in any proceedings authorizing bonds under this part 4:

(a) May provide for the initial issuance of one or more bonds, in this subsection (6) called "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing or payments of interest on such bonds; and

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(7) If lost or completely destroyed, any security in this part 4 authorized may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the board: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(8) Any officer authorized to execute any bond, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature any bond authorized in this part 4 if such a filing is not a condition of execution with a facsimile signature of any interest coupon and if at least one signature required or permitted to be placed on each such bond, excluding any interest coupon, shall be manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

(9) The county clerk and recorder may cause the seal of the county to be printed, engraved, stamped, or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(10) The resolution authorizing any bonds or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds, including, without limiting the generality of the foregoing, covenants designated in section 30-20-407.

Source: L. 71: p. 357, § 1. C.R.S. 1963: § 36-29-4. L. 75: (5) amended, p. 219, § 61, effective July 16.

30-20-405. Signatures on bonds. (1) The bonds and any coupons bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the county, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the county issuing the same.

(2) Any officer authorized or permitted to sign any bond or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the bond or coupons appertaining thereto, or upon both the bond and such coupons.

Source: L. 71: p. 359, § 1. C.R.S. 1963: § 36-29-5.

30-20-406. Tax exemption. The bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 71: p. 359, § 1. C.R.S. 1963: § 36-29-6.

30-20-407. Covenants in bond resolution. (1) Any resolution under this part 4 authorizing the issuance of bonds, or trust indentures, or other instruments appertaining thereto to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of water facilities or sewerage facilities, or both, may contain covenants as to:

(a) The rates, fees, tolls, or charges, or combination thereof, to be charged for the services, facilities, and commodities of said water facilities or sewerage facilities, or both, and the use and disposition thereof, including but not limited to the foreclosure of liens for, and collection of, delinquencies, the discontinuance of services, facilities, or commodities, or use of any water system or any sewer system, or joint system, prohibition against free service, the collection of penalties and collection costs, including disconnection and reconnection fees, and the use and disposition of any revenues of the county, derived or to be derived from any water facilities or sewerage facilities, or both;

(b) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof to secure the payment of the principal of and interest on any bonds or of operation and maintenance expenses of any water system, sewer system, joint system, or part thereof; the determination or definition of revenues from any water system, sewer system, or joint system and of the expenses of operation and maintenance of such system; and the source, custody, security, use, and disposition of any such reserves or sinking funds, including but not limited to the powers and duties of any trustee with regard thereto;

(c) A fair and reasonable payment by the county to the account of said water facilities or sewerage facilities, or both, for the services, commodities, or facilities furnished said county by said water facilities or sewerage facilities, or both;

(d) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of such water facilities or sewerage facilities, or both; the payment of the principal of and interest on any bonds and the sources and methods thereof; the rank or priority of any bonds as to any lien or security for payment, or the acceleration of any maturity of any bonds, or the issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and encumbrances thereagainst and limitations thereon; and the purpose to which the proceeds of the sale of bonds may be applied and the custody, security, use, expenditure, application, and disposition thereof;

(e) Books of account, the inspection and audit thereof, and other records appertaining to a water system, sewer system, or joint system; the insurance to be carried by the county and use and disposition of insurance moneys; the acquisition of completion or surety bonds appertaining to any project, funds or personnel, and the use and disposition of any proceeds of such bonds; the assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of a water system, sewer system, or joint system or any securities having or which may have a lien on any part of any revenues of such system; and limitations on the powers of the county to acquire or operate, or permit the acquisition or operation of, any plants, structures, facilities, or properties which may compete or tend to compete with the water system, sewer system, or joint system;

(f) The rights, liabilities, powers, and duties arising upon the breach by the county of any covenants, conditions, or obligations; defining events of default; the payment of costs or expenses incident to the enforcement of the bonds or of the provisions of the resolution authorizing the bonds or any trust indenture or other instrument appertaining thereto or of any covenant or contract with the holders of the bonds; the procedure, if any, by which the terms of any covenant or contract with, or duty to, the holders of bonds, the bond resolution, any trust indenture, or other instrument may be amended or abrogated; the amount of bonds to which the holders, or any trustee, must consent and the manner in which such consent may be given or evidenced; and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(g) The terms and conditions upon which the holders of the bonds or any portion or percentage of them may enforce any covenants or provisions made under this part 4 or duties imposed thereby; and

(h) All such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the discretion of the board of county commissioners, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this part 4, it being the intention of this part 4 to give a county power to do all things in the issuance of bonds and for their security consistent with continued public ownership of the sewerage facilities or water facilities.

Source: L. 71: p. 359, § 1. C.R.S. 1963: § 36-29-7.

30-20-408. No county liability on bonds. Revenue bonds issued under this part 4 shall not constitute an indebtedness of the county within the meaning of any constitutional or statutory limitations. Each bond issued under this part 4 shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that said bond does not constitute a debt of the county within the meaning of any constitutional or statutory limitations.

Source: L. 71: p. 361, § 1. C.R.S. 1963: § 36-29-8.

30-20-409. Remedies of bondholders. (1) Subject to any contractual limitations binding upon the holders of any issue of bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the county and its board and any of its officers, agents, and employees and to require and compel such county or such board or any such officers, agents, or employees to perform and carry out their duties and obligations under this part 4 and their covenants and agreements with the bondholders;

(b) By action or suit in equity to require the county and the board thereof to account as if they were the trustee of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders; and

(d) To bring suit upon the bonds.

(2) No right or remedy conferred by this part 4 upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 4 or by any other law.

Source: L. 71: p. 361, § 1. C.R.S. 1963: § 36-29-9.

30-20-410. Refunding bonds. (1) Any bonds issued for any refunding purpose authorized in section 30-20-402 (1) (j) may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this part 4.

(2) No bonds may be refunded under this part 4 unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds or unless the holders thereof voluntarily surrender them for exchange or payment. No maturity of any bond refunded may be extended over fifteen years. The rate of interest on such refunding bonds shall be determined by the board. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, excluding from the computation of such limitation the amount of the principal of any refunding bonds issued to pay any interest in arrears or about to become due on the bonds refunded.

(3) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment

of the bonds upon their presentation therefor. Any escrowed proceeds, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient to pay the bonds refunded as they become due at their respective maturities or due at prior redemption dates as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom.

(4) Refunding revenue bonds may be made payable from any revenues derived from the operation of any water facilities or sewerage facilities or of both water facilities and sewerage facilities comprising a joint water and sewer system, notwithstanding the pledge of any such revenues for the payment of the outstanding bonds issued by the county which are to be refunded is thereby modified.

(5) Bonds for refunding and bonds for any other purpose authorized in this part 4 may be issued separately or issued in combination in one series or more.

(6) Except as expressly provided or necessarily implied in this section and in section 30-20-402 (1) (j), the relevant provisions in this part 4 pertaining to revenue bonds not issued for refunding purposes shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the bond resolution, rates, fees, tolls, service charges, and other aspects of the bonds.

(7) The determination of the board, that the limitations under this part 4 imposed upon the issuance of refunding bonds have been met, shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 71: p. 362, § 1. C.R.S. 1963: § 36-29-10. L. 89: (3) amended, p. 1114, § 23, effective July 1.

30-20-411. Incontestable recital in bonds. Any resolution authorizing, or any trust indenture or other instrument appertaining to, any bonds under this part 4 may provide that each bond therein authorized shall recite that it is issued under authority of this part 4. Such recital shall conclusively impart full compliance with all of the provisions of this part 4, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 71: p. 363, § 1. C.R.S. 1963: § 36-29-11.

30-20-412. Application of bond proceeds. (1) All moneys received from the issuance of any bonds authorized in this part 4 shall be used solely for the purpose for which issued and the cost of any project thereby delineated.

(2) Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the bonds, or both interest and principal, or shall be deposited in a reserve therefor, as the board may determine.

(3) Any unexpended balance of such bond proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the bonds and the proceedings authorizing or otherwise appertaining to their issuance, or into a reserve therefor.

(4) The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the bonds are issued.

(5) The purchaser of the bonds shall in no manner be responsible for the application of the proceeds of the bonds by the county or any of its officers, agents, and employees.

Source: L. 71: p. 363, § 1. C.R.S. 1963: § 36-29-12.

30-20-413. Continuing rights of bondholders. The failure of any holder of any bond or coupon issued under this part 4 to proceed, as provided in section 30-20-409, or in any proceedings appertaining to the issuance of such bond or coupon, shall not relieve the county, its board, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

Source: L. 71: p. 363, § 1. C.R.S. 1963: § 36-29-13.

30-20-414. Validation. All revenue bonds or other obligations payable solely from revenues of a water or sewer system, and any coupons appertaining thereto, appertaining to a water system, sewer system, or joint water and sewer system issued or purportedly issued prior to June 2, 1971, and all acts and proceedings had or taken or purportedly had or taken before that date, by or on behalf of any county under law or under color of law, preliminary to and in the authorization, execution, sale, and issuance of all water revenue bonds, sewer revenue bonds, and joint water and sewer revenue bonds, including any coupons appertaining thereto, the authorization and execution of all other contracts, and the exercise of other powers in this part 4, are validated, ratified, approved, and confirmed, except as provided in section 30-20-415, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such securities, acts, and proceedings in such authorization, execution, sale, and issuance and in such exercise of powers; and such securities and other contracts are and shall be binding, legal, valid, and enforceable obligations of such county to which they appertain in accordance with their terms and their authorization proceedings.

Source: L. 71: p. 363, § 1. C.R.S. 1963: § 36-29-14.

30-20-415. Effect of and limitations upon validation. This part 4 shall operate to supply such legislative authority as may be necessary to validate any such securities issued prior to June 2, 1971, and other contracts of such counties executed before said date and any acts and proceedings taken before said date appertaining to the issuance of such securities or execution of other contracts by such counties or otherwise which the general assembly could have supplied or provided for in the law under which such securities were issued or such other contracts were executed and such acts or proceedings were taken; but this part 4 shall be limited to the validation of such securities, other contracts, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. This part 4 shall not operate to validate, ratify, approve, confirm, or legalize any bond or coupon, other contract, act, proceedings, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined, and it shall not operate to confirm, validate, or legalize any bond or coupon, other contract, act, proceedings, or other matter which was determined in any legal proceeding prior to June 2, 1971, to be illegal, void, or ineffective.

Source: L. 71: p. 364, § 1. C.R.S. 1963: § 36-29-15.

30-20-416. Compulsory sewer connections - owner to be notified. (1) In addition to the powers already had by counties, they have the following powers as enumerated below:

(a) Whenever the board of county commissioners of a county having a public sewerage system determines that the county sewer line is within four hundred feet of the boundary line of any premises located within the county and the board deems it necessary for the protection of public health that the owners of one or more of such premises shall connect their premises with the public sewer, thirty days' notice in writing shall be given to said owners, by registered mail, notifying them to connect their premises with the sewer, the date of the notice to begin as of the date of registering the same for mailing.

(b) If the work of making the connection is not begun within thirty days, the board shall notify the county engineer to prepare plans and specifications for making the connection

with the public sewer, including water and service pipe for flushing purposes, if the owner has given notice and proof to said board of his financial inability to make the connection himself and if it is only for the necessary connection of a water closet or of a privy in an outhouse or both.

Source: L. 71: p. 364, § 1. C.R.S. 1963: § 36-29-16.

30-20-417. Resolution adopted. The plans or specifications shall be filed in the county clerk and recorder's or engineer's office, and a resolution shall be adopted by the board ordering or prescribing in general terms the contemplated sewerage connections, giving location of the premises and the name of the owner and authorizing the county clerk and recorder to advertise for bids. The advertisement for bids shall be the same as is now provided for in other cases wherein counties receive bids. The board of county commissioners shall let the contract to the lowest responsible bidder who shall furnish satisfactory security, but it shall have the right to reject all bids.

Source: L. 71: p. 364, § 1. C.R.S. 1963: § 36-29-17.

30-20-418. Cost of connection. The entire costs of all sewerage and water connections, closets, equipment pipe, sewer pipe, labor, and necessary engineering, legal, and publication expenses shall be ascertained by the board of county commissioners, including an amount of six percent additional for costs of inspection, collections, and other incidentals. The cost to each owner shall be determined according to the material used and work done under the contract in connecting such property to the public sewer and water main. The engineering, legal, and publication expenses shall be charged in proportion as each connection bears to the whole. The cost to each owner shall be billed to him and if unpaid shall be collected in the same manner as other rates, fees, tolls, and charges of the system.

Source: L. 71: p. 365, § 1. C.R.S. 1963: § 36-29-18.

30-20-419. Appropriation from system. The board of county commissioners may make adequate appropriations from the revenues of the system to defray such costs until such time as the charges are received, and, when received, the system shall be reimbursed to the amount of any such appropriation.

Source: L. 71: p. 365, § 1. C.R.S. 1963: § 36-29-19.

30-20-420. Failure to pay rates and charges - lien. In the event any user of the system neglects, fails, or refuses to pay the rates, fees, tolls, and charges fixed by the board of county commissioners for the connection with and use of the system, said user shall not be disconnected from said system or refused the use of said system unless the user is outside the boundaries of the county, but the rates, fees, tolls, and charges due therefor may be certified by the county clerk and recorder to the board of county commissioners of the county in which said delinquent user's property is located and shall become a lien upon the real property so served by said system and collected in the manner as though they were part of the taxes.

Source: L. 71: p. 365, § 1. C.R.S. 1963: § 36-29-20.

30-20-421. Prior rates and charges declared valid. Any such rates and charges for the connections with, and use of, the system of any county declared or established prior to June 2, 1971, by resolution of the board of county commissioners are, and the same are declared to be, valid and ratified.

Source: L. 71: p. 365, § 1. C.R.S. 1963: § 36-29-21.

30-20-422. Construction of this part 4. The powers conferred by this part 4 shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this part 4 shall not affect, the powers conferred by any other law. Bonds may be issued under this part 4 without regard to the provisions of any other law. The water facilities or sewerage facilities, or both, may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this part 4 for said purposes, notwithstanding that any law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including, but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this part 4 are inconsistent with the provisions of any other law, the provisions of this part 4 shall be controlling.

Source: L. 71: p. 365, § 1. C.R.S. 1963: § 36-29-22.

PART 5

COUNTY PUBLIC IMPROVEMENT DISTRICT ACT

Law reviews: For article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (January 2001).

30-20-501. Short title. This part 5 shall be known and may be cited as the "County Public Improvement District Act of 1968".

Source: L. 68: p. 162, § 2. C.R.S. 1963: § 36-25-2.

30-20-502. Legislative declaration. It is hereby declared that the organization of public improvement districts, having the purposes and powers provided in this part 5, shall serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of said districts.

Source: L. 68: p. 162, § 1. C.R.S. 1963: § 36-25-1.

30-20-503. Definitions. As used in this part 5, unless the context otherwise requires:

(I) (a) (I) (A) An "elector" of a district is a person who, at the designated time or event, is registered to vote in general elections in this state; and

(B) Who has been a resident of the district or the area to be included in the district for not less than thirty days; or

(C) Who or whose spouse owns taxable real or personal property within the district or the area to be included in the district whether or not said person resides within the district.

(II) Where the owner of taxable real or personal property specified in sub-subparagraph (C) of subparagraph (I) of this paragraph (a) is not a natural person, an "elector" of the district shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the county clerk and recorder. Only one such person may be designated by an owner.

(b) A "taxpaying elector" of a district is an elector of a district who or whose spouse owns taxable real or personal property within the district or the area to be included within the district, whether or not said person resides within the district. Where the owner of taxable real or personal property specified in this paragraph (b) is not a natural person, a "taxpaying elector" of the district shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the county clerk and recorder. Only one such person may be designated by an owner.

(c) A person who is obligated to pay general taxes under a contract to purchase real property within the district shall be considered an owner within the meaning of this

subsection (1). The ownership of property on which a specific ownership tax is paid pursuant to law shall not qualify a person as an elector nor as a taxpaying elector. Taxable property means real or personal property subject to general ad valorem taxes.

(d) Registration pursuant to the general election laws or any other laws shall not be required.

(2) "Governing body" means a board of county commissioners in a county.

(3) "Improvement district", referred to in this part 5 as a "district", means a taxing unit that may be created by any county in this state for the purpose of constructing, installing, acquiring, operating, or maintaining any public improvement or for the purpose of providing any service so long as the county that forms the district is authorized to perform such service or provide such improvement under the county's home rule charter, if any, or the laws of this state, and except as otherwise provided in this subsection (3). "Public improvement" or "service" shall not include any facility identified in section 30-20-101 (8) or (9), nor shall the terms include services identified in section 30-15-401 (4) to (7.7) unless the district provides such services consistent with part 4 of article 15 of this title. No such district shall provide the same improvement or service as an existing special district within the territory of such existing special district unless the existing special district consents. A district may consist of noncontiguous tracts or parcels and may be organized wholly or partially within an existing special district if it is not providing the same service as the special district. For purposes of this part 5, a district may be created by or within a county for the purpose of constructing, installing, acquiring, operating, maintaining or providing fire protection regardless of whether or not the county is authorized to provide fire protection improvements or services. For purposes of this subsection (3), "fire protection" shall have the same meaning as "firehouses, equipment, and firefighters" as described in section 30-35-201 (22).

(4) "Publication", if no manner of publication is specified, means publication once a week for three consecutive weeks in a newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three consecutive weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the day of the first publication and the day of the last publication, and publication shall be complete on the day of the last publication.

Source: L. 68: p. 162, § 3. C.R.S. 1963: § 36-25-3. L. 69: p. 234, § 1. L. 70: p. 141, § 10. L. 71: p. 336, § 2. L. 81: Entire section amended, p. 1454, § 1, effective May 27. L. 85: (5) amended, p. 1069, § 1, effective April 24. L. 90: (3) amended, p. 1458, § 1, effective March 22. L. 96: (1)(a) amended, p. 1767, § 60, effective July 1. L. 99: (3) amended, p. 506, § 1, effective April 30. L. 2002: (1)(a) and (1)(b) amended, p. 267, §§ 1, 2, effective August 7. L. 2005: (3) amended, p. 265, § 1, effective August 8.

Cross references: For definitions applicable to this part 5, see § 30-26-301 (2)(d).

30-20-504. Authority of governing body. (1) Within the unincorporated territory of any county, the governing body of such county is hereby vested with jurisdiction, power, and authority to establish districts for the acquisition, construction, installation, operation, or maintenance of improvements or the provision of services authorized by this part 5. The governing body of a county may establish a district wholly or partially within the boundaries of any municipality or partially within the unincorporated territory of another county if such municipality or county consents by resolution to the establishment of such district.

(2) If a municipality annexes or incorporates any territory within an established district, such territory shall remain in the district unless the municipality notifies the district's board of the municipality's intent to exclude the territory annexed or incorporated from the district. If the municipality notifies the board of its intent to exclude such territory, such exclusion shall take effect January 1 of the year following such notice. Any property excluded from the district under this subsection (2) shall remain subject to payment of its share of any indebtedness or bonds that are outstanding on the date of such exclusion.

(3) At such time as all of the territory included within an existing district that has no outstanding indebtedness or bonds is annexed or incorporated into a municipality, the governing body of the municipality shall exercise all duties of the governing body of the district but continue to act under this section as if it were the board of county commissioners. The presiding officer of the governing body of the municipality shall be ex officio the presiding officer of the board, the clerk of the municipality shall be ex officio the secretary of the board, and the treasurer of the municipality shall be ex officio the treasurer of the board and district.

Source: L. 68: p. 163, § 4. C.R.S. 1963: § 36-25-4. L. 99: Entire section amended, p. 507, § 2, effective April 30. L. 2002: (3) added, p. 268, § 3, effective August 7.

30-20-505. Organization petition - contents. (1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the board of county commissioners of the county creating the district. The petition shall be signed by not less than thirty percent or two hundred of the electors of the proposed district, whichever is less. After the filing of a petition, no signer shall be permitted to withdraw his or her name therefrom.

(2) The petition shall set forth:

(a) The name of the proposed district, which shall include the name of the county creating the district, a descriptive name or number, and the words "public improvement district";

(b) A general description of the improvements to be constructed, installed, acquired, operated, or maintained or the services to be provided by the district;

(c) The estimated cost of the proposed improvements or the estimated annual cost of providing the proposed services;

(d) A general description of the boundaries of the district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his or her property is within the district;

(e) The names of three persons who shall represent the petitioners and who have the power to enter into agreements relating to the organization of the district, which agreements shall be binding on the district, if created;

(f) A prayer for the organization of the district; and

(g) A statement that either:

(I) The boundaries of the proposed district include at least one hundred eligible electors;

(II) The boundaries of the proposed district include at least one eligible elector for each five acres of land included within the proposed district; or

(III) The petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed district.

(3) No petition with the requisite signatures shall be declared void on account of alleged defects. The governing body, at any time, may permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and together shall be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the governing body the same as though filed with the first petition.

(4) If the petition is signed by one hundred percent of the owners of the taxable real property to be included in the district and the petition contains a waiver request, the board of county commissioners may, at its discretion, waive all or any of the requirements for notice, publication, and a hearing set forth in sections 30-20-507 and 30-20-508.

Source: L. 68: p. 163, § 5. C.R.S. 1963: § 36-25-5. L. 69: p. 234, § 2. L. 70: p. 141, § 11. L. 81: (1) amended, p. 1458, § 1, effective July 1. L. 85: (3) amended, p. 1069, § 2, effective April 24. L. 99: (1) and (2) amended and (4) added, p. 507, § 3, effective April 30. L. 2002: (2)(e) amended, p. 268, § 4, effective August 7.

30-20-506. Bond of petitioners. At the time of filing the petition or at any time prior to the time of hearing on said petition a bond shall be filed, with security approved by the governing body, or cash deposit made sufficient to pay all expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the organization proceedings the governing body is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 68: p. 164, § 6. **C.R.S. 1963:** § 36-25-6.

30-20-507. Notice of hearing. As soon as possible after the filing of such petition, the governing body shall fix, by order, a place and time, not less than twenty days nor more than forty days after the petition is filed, for a hearing thereon. Thereupon the clerk of the governing body shall cause notice by publication to be made of the pendency of the petition, of the purposes and boundaries of the proposed district, and of the time and place of hearing thereon. The clerk shall also forthwith cause a copy of said notice to be mailed to each elector of the district at the elector's last-known address, as disclosed by the tax records of the counties and the last official voter registration lists. The clerk shall also cause a copy of said notice to be mailed to each municipality located within three miles of the boundaries of the proposed district at the same time notice is mailed to the electors of the district.

Source: L. 68: p. 164, § 7. **C.R.S. 1963:** § 36-25-7. **L. 70:** p. 142, § 12. **L. 99:** Entire section amended, p. 509, § 4, effective April 30.

30-20-508. Hearing - dismissal - findings - declaration - when action barred.

(1) On the day fixed for such hearing or at any adjournment thereof or, if the hearing is waived under section 30-20-505 (4), at any meeting at which a resolution creating a district is considered, the governing body shall ascertain from the tax rolls of the counties in which the district is located, from the last official registration list, and from such other evidence which may be adduced, the total number of electors of the district.

(2) If it appears that said petition is not signed by at least the number of electors required under section 30-20-505 (1) or if it is shown that the proposed improvement or service will not confer a general benefit on the district or that the cost of the improvement or service would be excessive as compared with the value of the property in the district, the governing body shall thereupon dismiss the petition and adjudge the cost against those executing the bond filed to pay such costs. No appeal or other remedy shall lie from an order dismissing said proceeding. Nothing in this section shall be construed to prevent the filing of subsequent petitions for similar improvements or services or for a similar district. The right so to renew such proceeding is hereby expressly granted and authorized.

(3) The finding of the governing body upon the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive on all parties in interest, whether appearing or not.

(4) (a) Upon the hearing, if required, or without a hearing pursuant to section 30-20-505 (4), if it appears that a petition for the organization of a district has been duly signed and presented in conformity with this part 5 and that the allegations of the petition are true, the governing body, by resolution duly adopted and made effective, shall adjudicate all questions of jurisdiction and may order that the question of the organization of the district and such other matters as the governing body deems appropriate including, but not limited to, the issuance of bonds or other matters for which voter approval is required under section 20 of article X of the Colorado constitution, be submitted to the electors at an election to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S. Unless provided otherwise in section 20 of article X of the Colorado constitution, such election may be held either at a special election within not less than sixty days but not

more than one hundred eighty days after the date the governing body adopted the resolution or in conjunction with a general election, ballot issue election, or ballot question election.

(b) At an election held under paragraph (a) of this subsection (4), the electors of the district shall vote for or against the organization of the district and such other matters as the governing body deems appropriate, including, but not limited to, the issuance of bonds or matters for which voter approval is required under section 20 of article X of the Colorado constitution. If a majority of the votes cast at the election are in favor of the organization, the governing body shall adopt a resolution declaring the district organized.

(c) If a petition filed with the governing body complies with section 30-20-505 (4), the governing body may adopt a resolution declaring the district organized without any notice, hearing, election, or the filing of a bond.

(d) If the governing body adopts a resolution in accordance with paragraph (b) or (c) of this subsection (4), the governing body shall give the district the corporate name specified in the petition by which, in all proceedings, it shall thereafter be known. Thereupon the district shall be a public or quasi-municipal subdivision of the state of Colorado and a body corporate with the limited proprietary powers set forth in this part 5.

(e) Nothing in this subsection (4) authorizes a governing body to waive an election otherwise required under section 20 of article X and section 6 of article XI of the Colorado constitution or to hold an election inconsistent with the election requirements in said section 20.

(5) If a resolution is adopted establishing the district, such resolution shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adoption of such resolution.

Source: L. 68: p. 164, § 8. C.R.S. 1963: § 36-25-8. L. 70: p. 142, § 13. L. 81: (1) and (2) amended, p. 1458, § 2, effective July 1. L. 99: (1), (2), and (4) amended, p. 509, § 5, effective April 30.

30-20-508.1. Exclusion proviso. (Repealed)

Source: L. 81: Entire section added, p. 1459, § 3, effective July 1. L. 99: Entire section repealed, p. 526, § 28, effective April 30.

30-20-509. Recording of resolution. Within thirty days after a district is organized, the clerk of the governing body shall transmit for recording a copy of the resolution establishing the district to the county clerk and recorder of each of the counties in which the district or a part thereof is located.

Source: L. 68: p. 165, § 9. C.R.S. 1963: § 36-25-9. L. 83: Entire section amended, p. 1227, § 8, effective July 1. L. 99: Entire section amended, p. 510, § 6, effective April 30.

30-20-510. Governing body constitutes board - duties. The governing body of the county in which the district is located shall constitute ex officio the board of directors of the district. The presiding officer of the governing body shall be ex officio the presiding officer of the board, the clerk of the governing body shall be ex officio the secretary of the board, and the treasurer of the county shall be ex officio the treasurer of the board and district. Such board shall adopt a seal. The secretary shall keep in a visual text format that may be transmitted electronically a record of all its proceedings, minutes of all meetings, certificates, contracts, and all corporate acts, which shall be open to inspection by the owners of property in the district, as well as by all other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the district.

Source: L. 68: p. 165, § 10. C.R.S. 1963: § 36-25-10. L. 2009: Entire section amended, (HB 09-1118), ch. 130, p. 561, § 6, effective August 5.

30-20-511. Meetings. The board shall hold meetings, which shall be open to the public, in a place to be designated by the board as often as the needs of the district require, on notice to each member of the board. A quorum of the governing body shall constitute a quorum at any meeting. Notice of time and place of all regular and special meetings shall be posted in three public places within the limits of the district and in the county courthouse at least three days previous to such meetings.

Source: L. 68: p. 165, § 11. C.R.S. 1963: § 36-25-11.

Cross references: For quorum of the governing body of a county, see § 1-4-205.

30-20-512. General powers of district. (1) The district has the following limited powers:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued, and be a party to suits, actions, and proceedings;
- (d) Except as otherwise provided in this part 5, to enter into contracts and agreements affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities. A notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of one thousand dollars or more. The district may reject any and all bids, and if it appears that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do.

- (e) To borrow money and incur general obligation indebtedness and evidence the same by bonds, certificates, warrants, notes, and debentures in accordance with the provisions of this part 5 and to issue revenue bonds or special assessment bonds in accordance with the provisions of this part 5;

- (f) To acquire, construct, install, operate, and maintain the improvements or provide the services contemplated by this part 5, including improvements located outside the boundaries of the district, and all property, rights, or interest incidental or appurtenant thereto, and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith; but any improvement or service, other than described in the organization petition, shall be first approved by either a petition signed by not less than fifty percent of the taxpaying electors in the district or by election;

- (g) To refund any general obligation indebtedness, revenue bonds, or special assessment bonds of the district without an election; otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds of the district;

- (h) To have the management, control, and supervision of all the business and affairs of the district and of the acquisition, construction, installation, operation, and maintenance of district improvements or the provision of services;

- (i) To have and exercise the power of eminent domain in the same manner provided by law for the condemnation of private property for public use, to take any property necessary to the exercise of the powers granted in this part 5;

- (j) To construct and install improvements across or along any public street, alley, or highway, and to construct works across any stream of water or watercourses. However, the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as completely or unnecessarily to impair the usefulness thereof. The use and occupation of streets, alleys, and highways, and the construction or installation of improvements by any district, shall be in accordance with the provisions of all applicable county resolutions and with such reasonable rules and regulations as may be prescribed by the governing body of the county.

- (k) To fix, and from time to time to increase or decrease, rates, tolls, or charges for any revenue-producing services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the state of Colorado for the foreclosure of mechanics' liens. With respect to revenue-producing services or facilities, the

board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls, or charges, or for delinquencies in the payment of taxes levied pursuant to this part 5, and shall prescribe and enforce rules and regulations for connecting with and disconnecting from such services and facilities.

(l) To adopt and amend bylaws, not in conflict with the constitution and laws of the state or with the resolution of the county affected, for carrying on the business, objects, and affairs of the board and of the district;

(m) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 5. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 5.

(n) In a district providing fire protection services:

(I) To create and maintain a firefighters' pension fund, under the provisions of parts 2 and 4 of article 30.5 of title 31, C.R.S., subject to the provisions of article 31 of said title, and a volunteer firefighter pension fund under part 11 of article 30 of title 31, C.R.S.; and

(II) To adopt and enforce fire codes, as the board deems necessary, but no such code shall apply within any municipality or the unincorporated portion of any county unless the governing body of the municipality or county, as the case may be, adopts a resolution stating that such code or specific portions thereof shall be applicable within the portion of the municipality or the county which is within the district's boundaries; except that nothing in this paragraph (n) shall be construed to affect any existing fire codes which have been adopted by the governing body of a municipality or county. Notwithstanding any other provision of this section, no district providing fire protection service shall prohibit the sale of permissible fireworks, as defined in section 12-28-101 (8), C.R.S., within its jurisdiction.

(o) To conduct an election in accordance with articles 1 to 13 of title 1, C.R.S., for any purpose the board deems necessary or required.

(2) A district has the power to construct, maintain, and operate safety measures that are necessary to allow the county to restrict the sounding of locomotive horns at highway-rail grade crossings in compliance with 49 U.S.C. sec. 20153, as amended, and the applicable rules of the federal railroad administration. The district shall construct, maintain, and operate the safety measures in accordance with the provisions of section 40-4-106, C.R.S., and the standards of safety prescribed by the public utilities commission pursuant to section 40-29-110, C.R.S.

Source: **L. 68:** p. 165, § 12. **C.R.S. 1963:** § 36-25-12. **L. 81:** (1)(f) amended, p. 1459, § 4, effective July 1. **L. 90:** (1)(n) added, p. 1459, § 2, effective March 22. **L. 95:** (1)(n)(I) amended, p. 1380, § 4, effective June 30. **L. 96:** (1)(n)(II) amended, p. 283, § 2, effective April 11; (1)(n)(I) amended, p. 941, § 4, effective May 23. **L. 99:** (1)(e), (1)(f), (1)(g), and (1)(h) amended and (1)(o) added, p. 510, § 7, effective April 30. **L. 2006:** (2) added, p. 347, § 1, effective August 7.

Cross references: (1) For the power of eminent domain, see article 1 of title 38; for foreclosure of mechanics' liens, see article 22 of title 38.

(2) For the legislative declaration contained in the 1995 act amending this section, see section 1 of chapter 254, Session Laws of Colorado 1995.

30-20-512.5. Local improvement districts - authority to establish. In order to defray all or any portion of the costs of the improvements or services provided by the district, the board may establish local improvement districts within the boundaries of the district. Such local improvement districts may be established whenever the board determines that property in the district will be especially benefitted by such improvements or services. The method of creating local improvement districts, making the improvements or providing the services, and assessing the costs thereof shall be as provided in part 6 of this article. However, the electors eligible to vote on any question under this section shall either be electors of the district or electors within the proposed local improvement district, as determined by the board. In addition, the board shall perform the duties of the governing body as set forth in part 6 of this article, and the secretary of the district shall perform the

duties of the county clerk and recorder as set forth in part 6 of this article. The improvements that the local improvement district may construct and the services that the local improvement district may provide shall be the improvements and the services that the district may provide under this part 5.

Source: L. 99: Entire section added, p. 513, § 10, effective April 30.

30-20-513. Determination of special benefits - factors considered. (1) The term "benefit", for the purposes of assessing a particular property within a public improvement district, particularly with respect to storm sewer drainage and to drainage improvements to carry off surface waters, includes, but is not limited to, the following:

- (a) Any increase in the market value of the property;
- (b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;
- (c) Any adaptability of property to a superior or more profitable use;
- (d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;
- (e) Any reduction in the maintenance costs of particular property or accruing to public property in the improvement district if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;
- (f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets, roads, and highways;
- (g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

Source: L. 75: Entire section added, p. 996, § 1, effective July 1.

Editor's note: This section was originally numbered as § 30-20-512.5 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-514. Power to levy taxes. In addition to the other means of providing revenue for such districts, the board has the power to levy and collect ad valorem taxes on and against all taxable property within the district. Such power shall not prevent the issuance of obligations payable solely from the income of revenue-producing facilities.

Source: L. 68: p. 167, § 13. **C.R.S. 1963:** § 36-25-13.

Editor's note: This section was originally numbered as § 30-20-513 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-515. Determining and fixing rate of levy. The board shall determine annually the amount of money necessary to be raised by a levy on the taxable property in the district, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of valuation for assessment of taxable property within the district, together with other revenues, shall raise the amount required by the district during the ensuing fiscal year for paying expenses of organization and the costs of acquiring, constructing, installing, operating, and maintaining the improvements or works of the district or providing the services of the district and promptly to pay in full when due all interest on and principal of general obligation bonds or indebtedness and other obligations of the district. In the event of accruing defaults or deficiencies, additional levies may be made as provided in section 30-20-516. At the time of certifying other tax levies,

the board shall certify to the board of county commissioners of each county in which the district or a portion thereof lies the rate of levy so determined with directions that, at the time and in the manner required by law for levying of taxes for county purposes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district at the rate so fixed and determined, in addition to such other taxes as may be levied by such board of county commissioners.

Source: L. 68: p. 167, § 14. C.R.S. 1963: § 36-25-14. L. 99: Entire section amended, p. 511, § 8, effective April 30.

Editor's note: This section was originally numbered as § 30-20-514 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-516. Levies to cover deficiencies. The board, in fixing and determining the rate of levy, shall take into account the maturing indebtedness for the current and ensuing year on the contracts, bonds, interest on bonds, deficiencies, and defaults of prior years of the district, and shall make provision for the payment thereof. In case the money produced from such levy, together with other revenues of the district, is not sufficient to punctually meet the payments on the contracts, bonds, and interest on bonds of the district, and to pay defaults and deficiencies of the district, then the board, from year to year, shall make such additional levies of taxes as may be necessary for meeting such payments, and notwithstanding any limitations, such levies shall be made and continued until the indebtedness of the district is fully paid.

Source: L. 68: p. 167, § 15. C.R.S. 1963: § 36-25-15.

Editor's note: This section was originally numbered as § 30-20-515 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-517. County officers to levy and collect taxes - liens. It is the duty of the governing body to levy the taxes certified to it, as provided in this part 5. It is the duty of all officials charged with the duty of collecting taxes to collect and enforce such taxes at the time, in the form and manner, and with like interest and penalties as other taxes are collected and, when collected, to pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this part 5, together with the penalties for default in payment thereof, and all costs of collecting same, shall constitute a lien, until paid, on and against the property taxed, as in the case of other general taxes.

Source: L. 68: p. 167, § 16. C.R.S. 1963: § 36-25-16.

30-20-518. Property sold for taxes. The taxes provided for in this part 5 shall be a part of the general taxes and shall be paid accordingly. Sales of properties for delinquencies shall be in the same manner as is provided in the statutes of the state of Colorado for the sale of property for nonpayment of taxes.

Source: L. 68: p. 167, § 17. C.R.S. 1963: § 36-25-17.

Editor's note: This section was originally numbered as § 30-20-517 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For procedures on sale of property for nonpayment of taxes, see part 11 of article 25 of title 31 and article 11 of title 39.

30-20-519. Reserve fund. Whenever any indebtedness has been incurred by a district, it is lawful for the board to levy taxes and collect revenue for the purpose of creating a

reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district, for operating charges and depreciation, and to provide extensions and betterments of the authorized improvements of the district.

Source: L. 68: p. 168, § 18. C.R.S. 1963: § 36-25-18.

Editor's note: This section was originally numbered as § 30-20-518 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-520. Inclusion or exclusion - petition - notice - hearing - order. (1) The boundaries of any district organized under the provisions of this part 5 may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made. The owners of property proposed to be included or excluded may file with the board a petition, in writing, praying that such property be included in or excluded from the district. The petition shall describe the property owned by the petitioners and shall be verified. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the inclusion or exclusion proceedings. The secretary of the board shall cause notice of filing of such petition to be given and published, which notice shall state the filing of such petition, names of petitioners, and descriptions of property sought to be included or excluded, and the prayer of said petitioners.

(2) Such notice shall state that all persons having objections to the petition may appear in the office of the board at the time set in said notice, and show cause why the petition should not be granted. The board, at the time and place set in the notice, or at such times to which the hearing may be adjourned, shall proceed to hear the petition and all objections thereto. The failure of any person interested to show cause shall be deemed an assent on his part to the inclusion or exclusion of such property as prayed for in the petition. If the petition is granted, the board shall adopt a resolution to that effect and file a certified copy of same with the county clerk and recorder of the county in which the property is located. Thereupon said property shall be included or excluded from the district.

Source: L. 68: p. 168, § 19. C.R.S. 1963: § 36-25-19.

Editor's note: This section was originally numbered as § 30-20-519 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-521. Liability of property. All property included within or excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion.

Source: L. 68: p. 168, § 20. C.R.S. 1963: § 36-25-20.

Editor's note: This section was originally numbered as § 30-20-520 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-522. Board can issue bonds - form - legislative declaration. (1) To carry out the purposes of this part 5, the board is hereby authorized to issue bonds of the district. Such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable at such times as determined by the board, and shall be due and payable in installments at such times as determined by the board and extending not more than twenty years from date of issuance. The form and terms of said bonds, including provisions for their sale, payment, and redemption, shall be determined by the board. To the extent required by section 20 of article X of the Colorado constitution, such bonds shall not be issued unless first approved at an

election held for that purpose in accordance with articles 1 to 13 of title 1, C.R.S. If the board so determines, such bonds may be redeemable prior to maturity, with or without payment of a premium, but no premium shall exceed three percent of the principal thereof. The bonds shall be executed in the name of and on behalf of the district and signed by the presiding officer of the board with the seal of the district affixed thereto and attested by the secretary of the board. Such bonds shall be in such denominations as the board shall determine. Interest coupons, if any, shall bear the original or facsimile signature of the presiding officer of the board. Under no circumstances shall any of said bonds be considered or held to be an indebtedness, obligation, or liability of the counties or municipalities in which the district or any portion thereof is located, and bonds issued pursuant to the provisions of this part 5 shall contain a statement to that effect.

(2) The general assembly finds and declares that:

(a) In performing its duties under section 20 of article X and section 6 of article XI of the Colorado constitution, the general assembly must balance the interests of controlling public debt, preserving local control, and reasonably restraining most of the growth of government;

(b) In balancing these constitutional interests through the exercise of its legislative authority, the general assembly has enacted limitations on the ability of county public improvement districts to incur indebtedness;

(c) A statutory restriction has been imposed on the amount of bonded indebtedness that county public improvement districts can incur with voter approval;

(d) From time to time, changes to such limitations imposed on county public improvement districts are necessary in order to keep these constitutional interests properly balanced in light of changing circumstances;

(e) Section 20 (1) of article X of the Colorado constitution prohibits the weakening of "other limits on district revenue, spending, and debt" without future voter approval;

(f) No change in county public improvement district debt occurs by virtue of statutory changes that increase a limit when the debt would not actually increase without such district voter approval;

(g) Any actual weakening of county public improvement district debt limitation occurs only when such district voter approval is obtained under an increased limit; and

(h) By requiring voters to give approval at the county public improvement district level for any weakening of a county public improvement district limit on debt, the voter approval requirement of section 20 (1) of article X of the Colorado constitution is satisfied in a manner achieving a reasonable result through legislative harmonization of constitutional provisions.

Source: L. 68: p. 168, § 21. C.R.S. 1963: § 36-25-21. L. 70: p. 143, § 14. L. 99: Entire section amended, p. 512, § 9, effective April 30.

Editor's note: This section was originally numbered as § 30-20-521 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-523. Submission of debt question - form. (Repealed)

Source: L. 68: p. 169, § 22. C.R.S. 1963: § 36-25-22. L. 70: p. 143, § 15. L. 71: p. 337, § 7. L. 99: Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was originally numbered as § 30-20-522 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-524. Notice of election. (Repealed)

Source: L. 68: p. 169, § 23. C.R.S. 1963: § 36-25-23. L. 99: Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was originally numbered as § 30-20-523 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-525. Conduct of election - canvass. (Repealed)

Source: L. 68: p. 169, § 24. C.R.S. 1963: § 36-25-24. L. 99: Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was originally numbered as § 30-20-524 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-526. Effect - subsequent elections. (Repealed)

Source: L. 68: p. 169, § 25. C.R.S. 1963: § 36-25-25. L. 70: p. 144, § 16. L. 71: p. 337, § 3. L. 99: Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was originally numbered as § 30-20-525 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-527. Procedure. Any district organized pursuant to this part 5 may be dissolved after notice given and a hearing held in the manner prescribed by sections 30-20-507 and 30-20-508. After hearing any protests against, or objections to, dissolution, if the board determines that it is in the best interests of all concerned to dissolve the district, it shall so provide by resolution, a certified copy of which shall be filed in the office of the county clerk and recorder in the county in which the district is located. Upon such filing, the dissolution shall be complete. However, no district shall be dissolved until it has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities, or until funds are on deposit and available therefor.

Source: L. 68: p. 170, § 26. C.R.S. 1963: § 36-25-26.

Editor's note: This section was originally numbered as § 30-20-526 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-528. Correction of faulty notices. In any case where a notice is provided for in this part 5, if the governing body finds for any reason that due notice was not given, the governing body shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the governing body in that case shall order due notice given, and shall continue the proceeding until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 68: p. 170, § 27. C.R.S. 1963: § 36-25-27.

Editor's note: This section was originally numbered as § 30-20-527 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-529. Early hearings. All actions in which there may arise a question of the validity of the organization of a district, or a question of the validity of any proceeding under this part 5, shall be advanced as a matter of immediate public interest and concern, and shall be heard at the earliest practicable moment.

Source: L. 68: p. 170, § 28. C.R.S. 1963: § 36-25-28.

Editor's note: This section was originally numbered as § 30-20-528 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-530. County jurisdiction unimpaired. Nothing in this part 5 shall affect or impair the control and jurisdiction which a county has over all property within its boundaries. All powers granted by this part 5 shall be subject to such control and jurisdiction.

Source: L. 68: p. 170, § 29. C.R.S. 1963: § 36-25-29.

Editor's note: This section was originally numbered as § 30-20-529 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-531. Method not exclusive. No part of this part 5 shall repeal or affect any other law or any part thereof, it being intended that this part 5 shall provide a separate method of accomplishing its objects, and not an exclusive one.

Source: L. 68: p. 170, § 30. C.R.S. 1963: § 36-25-30.

Editor's note: This section was originally numbered as § 30-20-530 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-532. Confirmation of board actions and powers. (1) In its discretion, the board may file a petition at any time in the district court in any county in which the district or a portion thereof is located for a judicial examination and determination of any power conferred, any securities issued by the district or authorized to be issued by the district, any taxes, assessments, or service charges levied or otherwise made by the district or contracted to be levied by the district or otherwise made by the district, or of any other act, proceeding, or contract of the district whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement, proposed securities of the district to defray in whole or in part the cost of the project, the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto, or any combination thereof.

(2) A petition filed under subsection (1) of this section shall set forth the facts upon which the validity of such power, securities, taxes, assessments, charges, act, proceeding, or contract is founded. The presiding officer of the district shall verify the petition before it is filed with the district court by signing said petition.

(3) Any action filed under this section shall be in the nature of a proceeding in rem. The district court shall have jurisdiction over all parties interested in the proceeding upon the publication and posting of a notice in accordance with this part 5.

(4) The clerk of the district court in which a petition is filed shall provide notice of such filing. The notice shall include: A brief outline of the contents of the petition; the time, date, and location of the hearing; and the location where a complete copy of any documents at issue in the petition may be examined. The clerk shall serve the notice by:

(a) Publishing the notice at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the counties and municipalities in which the district is located; and

(b) Posting the notice in the office of the district at least thirty days prior to the date of the hearing on the petition.

(5) Any owner of property within the boundaries of the district or any other person interested in the petition filed by the board may appear at the hearing by either filing a motion to dismiss or an answer to the petition at least five days prior to the hearing date or within such time as the court may allow. The petition shall be taken as confessed by all persons who fail to appear.

(6) The petition and notice shall be sufficient to give the district court jurisdiction, and, upon hearing, the district court shall examine and determine all matters affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(7) Unless otherwise specified in this part 5, the Colorado rules of civil procedure shall govern any actions filed under this section in matters of pleading and practice.

(8) Costs may be divided or apportioned among any contesting parties in the discretion of the district court.

(9) Review of the judgment of the district court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days.

(10) The district court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

(11) All cases in which there may arise a question of validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 99: Entire section added, p. 513, §10, effective April 30.

30-20-533. Exemption from taxation. The income or other revenues of the district, any property owned by the district, any bonds issued by the district, and the transfer of and any income from any bonds issued by the district shall be exempt from all taxation and assessments by the state. In the resolution authorizing the bonds, the district may waive the exemption from federal income taxation for any interest on the bonds.

Source: L. 99: Entire section added, p. 513, § 10, effective April 30.

30-20-534. Limitation of actions. Any legal or equitable action brought with respect to any acts or proceedings of the district, the creation of a district, the authorization of any bonds, or any other action taken under this part 5 shall commence within thirty days after the performance of such action or else shall be thereafter perpetually barred.

Source: L. 99: Entire section added, p. 513, § 10, effective April 30. **L. 2002:** Entire section amended, p. 268, § 5, effective August 7.

PART 6

LOCAL IMPROVEMENT DISTRICTS - COUNTIES

Law reviews: For article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (January 2001).

30-20-601. Power to make local improvements. Except as otherwise provided in this part 6, any county in this state may construct any of the local improvements mentioned in this part 6 and fund such improvements by assessing the cost thereof, wholly or in part, upon the property especially benefited by such improvements or, for the funding of improvements authorized by section 30-20-603 (1) (a), (1) (a.5), and (1) (c), by imposing a sales tax throughout the district or by utilizing a combination of such assessments and tax. The improvements shall be authorized by resolution duly adopted and shall be constructed under the direction of the county engineer or other officer having similar duties or under the direction of the board in accordance with plans and specifications adopted by the board.

Source: L. 73: p. 483, § 1. **C.R.S. 1963:** § 36-30-1. **L. 87:** Entire section amended, p. 1210, § 1, effective May 7. **L. 99:** Entire section amended, p. 515, § 11, effective April 30. **L. 2000:** Entire section amended, p. 1989, § 1, effective August 2.

ANNOTATION

Applied in *Wheeler v. Baker*, 636 P.2d 1326 (Colo. App. 1981).

30-20-601.5. Legislative declaration - inclusion of energy efficiency and renewable energy production projects in local improvement districts. (1) The general assembly finds, determines, and declares that:

(a) The production and efficient use of energy will continue to play a central role in the future of this state and the nation as a whole; and

(b) The development, production, and efficient use of renewable energy will advance the security, economic well-being, and public and environmental health of this state, as well as contributing to the energy independence of our nation.

(2) The general assembly further finds, determines, and declares that the inclusion of energy efficiency and renewable energy production projects for residential and commercial use in local improvement districts, and powers conferred under this part 6, as well as the expenditures of public moneys made pursuant to this article, will serve a valid public purpose and that the enactment of this part 6 is expressly declared to be in the public interest.

Source: L. 2008: Entire section added, p. 1294, § 8, effective May 27.

30-20-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) “Assessment unit” means an area within a district which is separately defined for determining assessments payable pursuant to this part 6.

(1.5) “Board” means:

(a) The board of county commissioners of a county or city and county; or

(b) Repealed.

(1.7) and (1.8) Repealed.

(2) “District” means the geographical division of the county or counties within which any local improvements are made or proposed, when so declared by resolution of the board. Except for a district in the unincorporated area of a county in which a sales tax is levied pursuant to section 30-20-604.5, there may be noncontiguous parts or sections of a county included in one district, but no district shall include territory that is included in an undissolved district that was formed for the same type of improvement. Notwithstanding any other provision of this part 6 and except in the case of a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado, no district in which a sales tax is levied pursuant to section 30-20-604.5 shall be formed that includes territory within a municipality, and any such district shall be as compact as possible. Except as provided in section 30-20-603 (11.5) (b) (I), no district that crosses county boundaries may be formed by intergovernmental agreement or otherwise.

(2.5) “Drainage facility” means any land and improvements thereon, if any, used for the conveyance of water runoff.

(2.7) (a) “Elector of the district” means a person who, at the designated time or event, is registered to vote in the general election in this state and:

(I) Who has been a resident of the district or the area to be included in the district for not less than thirty days; or

(II) Who or whose spouse owns taxable real or personal property within the district or the area to be included in the district whether or not said person resides within the district.

(b) Where the owner of taxable real or personal property specified in subparagraph (II) of paragraph (a) of this subsection (2.7) is not a natural person, an “elector of the district” shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the county clerk and recorder. Only one such person may be designated by an owner.

(2.8) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption in residential or commercial buildings and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a residential or commercial building unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(g) Energy recovery systems;

(h) Daylighting systems; and

(i) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the board.

(2.9) "Informational products and materials" means any marketing or advertising device used to promote the general development of business within a district, but does not include any marketing or advertising device used to promote a single store or company.

(3) "Owner" means the person holding record fee title to real property; except that a person obligated to pay general taxes under a contract to purchase real property shall be considered the owner thereof for the purposes of this part 6, and in such case any other person holding record fee title to such property shall not be considered the owner thereof.

(4) "Property" means all land, whether platted or unplatted, regardless of improvements thereon and regardless of lot or land lines. Lots may be designated in accordance with any recorded map or plat thereof and unplatted lands by any definite description.

(4.3) "Qualified community location" means:

(a) If the affected local electric utility is not an investor-owned utility, an off-site location of a renewable energy improvement that:

(I) Is wholly owned, through either an undivided or a fractional interest, by the owner or owners of the residential or commercial building or buildings that are directly benefited by the renewable energy improvement;

(II) Provides energy as a direct credit on the owner's utility bill; and

(III) Is an encumbrance on the property specifically benefited.

(b) If the affected local electric utility is an investor-owned utility, a community solar garden, as that term is defined in section 40-2-127 (2), C.R.S. If House Bill 10-1342 does not take effect, there shall be no qualified community locations in the service territories of investor-owned utilities.

(4.5) "Registered elector" means an elector, as defined in section 1-1-104 (12), C.R.S., who has complied with the registration provisions of the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., and who resides within or is eligible to vote in the county.

(4.7) (a) "Renewable energy improvement" means a fixture, product, system, device, or interacting group of devices that produces energy from renewable resources, including photovoltaic systems, solar thermal systems, small wind systems, biomass systems, hydro-electric systems, or geothermal systems, as may be included in the approval of the district by the board, and that either:

(I) Is installed behind the meter of a residential or commercial building; or

(II) Directly benefits a residential or commercial building through a qualified community location.

(b) No renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. Nothing in this part 6 limits the right of a public utility, subject

to article 3 or 3.5 of title 40, C.R.S., or section 40-9.5-106, C.R.S., to assess fees for the use of its facilities, or modifies or expands the net metering limitations established in sections 40-2-124 (7) and 40-9.5-118, C.R.S. Primary jurisdiction to hear any disputes concerning whether a renewable energy improvement interferes with such a right shall lie:

(I) In the case of a regulated utility, with the public utilities commission; and

(II) In the case of a municipally owned utility, with the governing body of such municipality.

(c) "Renewable energy improvement" includes an improvement to the efficiency of a traditional energy fixture.

(5) "Street" means any road or other public thoroughfare.

(6) "Unincorporated area" means any territory within a county which is not within the boundaries of any municipality.

Source: L. 73: p. 483, § 1. C.R.S. 1963: § 36-30-2. L. 83: (1.5) added, p. 1235, § 2, effective June 3. L. 86: (1), (1.5), and (2) R&RE and (2.5) added, p. 1058, §§ 25, 26, effective April 17. L. 87: (2) amended, p. 1210, § 2, effective May 7. L. 99: (2.7) and (4.5) added, p. 515, § 12, effective April 30. L. 2000: (1.5) and (2) amended and (1.7) and (1.8) added, p. 1989, § 2, effective August 2. L. 2002: (2.9) added, p. 335, § 1, effective April 19; (2.7) amended, p. 268, § 6, effective August 7. L. 2008: (2.8) and (4.7) added, p. 1295, § 9, effective May 27. L. 2010: (2) and (4.7) amended and (4.3) added, (SB 10-100), ch. 207, p. 899, § 1, effective May 5. L. 2012: (4.7)(c) added, (HB 12-1315), ch. 224, p. 975, § 37, effective July 1.

Editor's note: (1) Subsection (1.5)(b)(II) provided for the repeal of subsection (1.5)(b), effective December 31, 2002. (See L. 2000, p. 1989.) Subsection (1.7)(b) provided for the repeal of subsection (1.7), effective December 31, 2002. (See L. 2000, p. 1989.) Subsection (1.8)(b) provided for the repeal of subsection (1.8), effective December 31, 2002. (See L. 2000, p. 1989.)

(2) House Bill 10-1342, referenced in subsection (4.3)(b), was signed by the Governor and took effect June 5, 2010.

Cross references: For definitions applicable to this part 6, see § 30-26-301 (2)(d).

30-20-603. Improvements and funding authorized - how instituted - conditions.

(1) (a) A district may be formed in accordance with the requirements of this part 6 for the purpose of constructing, installing, acquiring, or funding, in whole or in part, any public improvement, so long as the county that forms the district is authorized to provide such improvement or provide for such funding under the county's home rule charter, if any, or the laws of this state. Public improvements or the funding thereof shall not include any facility identified in section 30-20-101 (8) or (9). No such district shall provide the same improvement as an existing special district within the territory of such existing special district unless the existing special district consents. The improvements authorized by this part 6 may consist, without limitation, of constructing, grading, paving, pouring, curbing, guttering, lining, or otherwise improving the whole or any part of any street or providing street lighting, drainage facilities, or service improvements, in the unincorporated area of a county or wholly or partly within the boundaries of any municipality within the county if such municipality consents by ordinance to such improvements. If improvements within a municipality are so included in a county improvement district by municipal consent, the county shall have full authority to construct or acquire such improvements, to assess property within such municipality benefited by such improvements, and to enforce and collect such assessments, in the manner provided in this part 6. The improvements authorized by this part 6 may include, without limitation, the construction of sidewalks adjacent to any such streets or maintenance roads adjacent to any such drainage facilities. Prior to the establishment of any improvement district for the purpose of providing street lighting, arrangements, by contract or otherwise, must be established under which the owners of property included within such district shall be responsible for the maintenance and operation of such street lighting improvement. The costs of maintenance and operation of such street lighting improvements shall not be paid from the county general fund. Drainage facilities shall not be provided in any area which is within an existing drainage

district organized or created pursuant to law without the approval of such district. The term "service" as used in this paragraph (a) includes the services provided by a public utility as defined in section 40-1-103, C.R.S., as well as advanced service as defined in section 29-27-102 (1), C.R.S., cable television service as defined in section 29-27-102 (2), C.R.S., telecommunications service as defined in section 40-15-102 (29), C.R.S., geothermal heat suppliers as defined in section 40-40-103, C.R.S., and information service as defined in 47 U.S.C. sec. 153 (20), or any successor section.

(a.5) In a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado and in which a sales tax is levied pursuant to section 30-20-604.5, the improvements may also consist of the provision of transportation services, vehicles, equipment, parking, and improvements in the district. Transportation services may be provided by the district in an area within the regional transportation district as described in section 32-9-106.1, C.R.S., if the regional transportation district consents to the provision of such services.

(b) Additionally, the improvements authorized by this part 6 may consist of constructing, installing, or otherwise improving the whole or any part of any system for the transmission or distribution of water or for the collection or transmission of sewage, or both such systems.

(c) If any improvement or transportation services authorized by this subsection (1) are funded by sales tax, the tax may also be used for the operation and maintenance of such improvement or services and for the production and distribution of informational products and materials.

(d) The improvements authorized by this part 6 may include the construction, maintenance, and operation of safety measures that are necessary to allow the county to restrict the sounding of locomotive horns at highway-rail grade crossings in compliance with 49 U.S.C. sec. 20153, as amended, and the applicable rules of the federal railroad administration. The district shall construct, maintain, and operate the safety measures in accordance with the provisions of section 40-4-106, C.R.S., and the standards of safety prescribed by the public utilities commission pursuant to section 40-29-110, C.R.S.

(e) The improvements authorized by this part 6 may include, where specified or generally provided for in the resolution of the board approving the district, any renewable energy improvement or energy efficiency improvement to any residential or commercial property within the district.

(f) Any district formed pursuant to this part 6 and the county that forms the district shall implement the funding authorized by this part 6 for service improvements as defined in paragraph (a) of this subsection (1) in a nondiscriminatory and technologically and competitively neutral manner.

(g) Any public utility or telecommunications service improvement funded by a district established pursuant to this part 6 shall be constructed only by or in agreement with a public utility or telecommunications service provider duly authorized by the public utilities commission, as applicable, to provide service, facilities, plants, or systems in the area in which the public utility or telecommunications service improvement is to be constructed and shall be owned, operated, and maintained by such public utility or telecommunications service provider. All other service improvements as defined in paragraph (a) of this subsection (1) funded pursuant to this part 6 shall be constructed by or in agreement with the service provider and owned and operated by the service provider. No district formed pursuant to this part 6, nor the county that forms the district, shall use the authority set forth herein to provide, directly or indirectly, any services as defined in paragraph (a) of this subsection (1). No district formed pursuant to this part 6, nor the county that forms the district, shall have any right, title, or interest in any service improvement as defined in paragraph (a) of this subsection (1) funded by a district established pursuant to this part 6.

(h) Nothing in this part 6 shall extend, diminish, or otherwise alter the jurisdiction of the public utilities commission created in section 40-2-101, C.R.S.

(2) (a) The board may declare by resolution any local improvement district authorized by this part 6 and may by resolution order the improvements authorized by subsection (3) of this section; except that, if written protests are submitted prior to the hearing referred to

in subsection (6) of this section by the owners of property within the proposed district or assessment unit, which property, based upon the proposed method of assessment, would bear more than one-half of the total proposed assessments within the district or the assessment unit, the board shall not proceed with such local improvement district or assessment unit based on the preliminary order so protested. Such protests shall not prevent the board from adopting a subsequent preliminary order for such improvements, subject to notice, hearing, and protest as provided in this part 6.

(b) If the district is initiated by resolution of the board of county commissioners, the commissioners shall, in addition to the notice provided for in subsection (6) of this section, make reasonable attempts to deliver or mail to each address within the district a brief written synopsis of the proposed improvements no less than ten days before the hearing. This shall not be interpreted to mean that insufficient notice has been given if any property owner claims not to have received the notice, provided that the commissioners have made a bona fide effort to comply.

(3) (a) Except as to improvements initiated by the board as authorized by subsection (2) of this section, no improvement shall be ordered under this part 6 unless a petition for the same is first presented, subscribed by the owners of property to be assessed for more than one-half of the entire costs estimated by the board to be assessed, and, except as specified in this section, nothing in this part 6 shall restrict the right of such owners from securing any particular kind or variety of improvements petitioned for. In any case where a proposed improvement district includes two or more assessment units, the owners of property to be assessed for more than one-half of the entire costs estimated by the board to be assessed in each assessment unit shall petition as specified in this part 6. In any case where a proposed improvement district formed prior to December 31, 2002, plans to provide transportation services and improvements pursuant to paragraph (a.5) of subsection (1) of this section and to levy a sales tax pursuant to section 30-20-604.5 to fund such services and improvements, the owners of the taxable real and personal property within the proposed improvement district having a valuation for assessment of not less than fifty percent of the valuation for assessment of all real or personal property within the district shall sign the petition presented to the board.

(b) If the owners of property to be assessed for more than one-half of the entire costs estimated by the board to be assessed shall petition for any particular kind of improvement and for any particular materials to be used in the same, the improvement must be ordered in accordance with the petition, and the materials so designated shall be used, except as otherwise provided in this section.

(c) If the material petitioned for by the owners of property to be assessed for more than one-half of the entire costs estimated by the board to be assessed is one that does not encourage competition, it shall be the right of the petitioners to state in the petition the maximum price per square yard, or linear foot, or per unit at which the improvement is desired, and no contract shall be let for any such improvement at a price exceeding the maximum price fixed in said petition, excluding the cost of engineering, collection, inspection, incidentals, and interest.

(4) The board shall encourage competition, by advertising for and receiving bids for such construction, and, so far as possible within the limits of the petition, shall describe all materials by standard or quality in the specifications.

(5) Before contracting for or ordering any work to be constructed whether initiated by the board or by petition, a preliminary order shall be made by the board, adopting preliminary plans and specifications for the same, definitely describing the materials to be used, or stating that one of several specified materials shall be chosen, determining the number of installments and time in which the cost of the improvement shall be payable, if any, and the property, if any, to be assessed for the same, as provided in this part 6, and requiring an estimate of the cost to be made by the county engineer or any similar officer or employee, together with a map of the district in which the improvement is to be made, and a schedule showing the approximate amounts, if any, to be assessed upon the several lots or parcels of property within the district. The cost estimates and approximate amounts to be assessed shall be formulated in good faith on the basis of the best information available to the board but shall not be binding.

(6) The county clerk and recorder shall give notice, by advertisement once in a newspaper of general circulation in such county, to the owners of any property to be assessed of:

- (a) The kind of improvements proposed;
- (b) The number of installments;
- (c) The time in which the cost will be payable;
- (d) Repealed.
- (e) The extent of the district to be improved;
- (f) The probable cost per front foot or other unit basis which, in the judgment of the board, reflects the benefits which accrue to the properties to be assessed, as shown by the estimates of the engineer;

(g) The time, not less than thirty days after the publication, when a resolution authorizing the improvements will be considered;

(h) That said map and estimate and schedule showing the approximate amounts to be assessed and all resolutions and proceedings are on file and may be seen and examined by any person interested at the office of the county clerk and recorder or other designated place at any time within said period of thirty days; and

(i) That all complaints and objections that may be made in writing concerning the proposed improvement by the owners of any real estate to be assessed will be heard and determined by the board before final action thereon.

(7) The finding by resolution of the board that said improvements were duly ordered after notice duly given and after hearing duly held and that such proposal was properly initiated by the said board or that a petition was presented and that the petition was subscribed by the required number of owners shall be conclusive of the facts so stated in every court or other tribunal.

(8) Any resolution or order in the premises may be modified, confirmed, or rescinded at any time prior to the passage of the resolution authorizing the improvements.

(9) The specifications for paving may include sidewalks, curbs, gutters, and grading, and sufficient culverts, sewers, or drains necessary to carry off the surface waters across or along the line of the street improved, and such other incidentals to paving as, in the judgment of the board, may be required. The specifications may also provide that bidders shall agree to enter into contract to do the work and maintain the same in good repair for a period of five years; and the contract may be entered into in accordance therewith.

(10) If, before any such improvements are made, any piece of real estate to be assessed already has an improvement conforming to the general plan or satisfactory to the board, an allowance therefor may be made to the owner, and such allowance may be deducted from the owner's assessment and from the contract price.

(11) Any other provision of this part 6 notwithstanding, the board may initiate an improvement district for the purpose of acquiring existing improvements of a character authorized by this part 6, in which case the provisions of section 30-20-601 concerning construction under the direction of county officers and the provisions of subsections (4) and (5) of this section concerning competitive bidding and preliminary plans and specifications shall not apply.

(11.5) (a) Any other provision of this part 6 notwithstanding, the board may initiate an improvement district for the purpose of encouraging, accommodating, and financing improvements of a character authorized by paragraph (e) of subsection (1) of this section. Any such district shall include only property for which the owner has executed a contract or agreement consenting to the inclusion of such property within the district, and such consent may occur subsequent to the adoption of the resolution of the board forming the district. The contract or agreement shall note the existence of any first priority mortgage or deed of trust on the property, the identity of the record holder thereof, and the penalty for default provided in section 30-20-615 clearly stating that default, like the penalties that exist for default on any mortgage or any other special assessment, may result in the loss of the applicant's home. Within thirty days of a person's submission of an application to the district, the board shall provide written notice to the record holder of any first priority mortgage or deed of trust on the real property that the person is participating in the district. The inclusion of such property within the district subsequent to the adoption of the

resolution of the board forming the district may be made by the adoption of a supplemental or amending resolution of the board. For districts formed for the purpose of encouraging, accommodating, and financing renewable energy improvements or energy efficiency improvements, subsections (4), (5), and (6) of this section concerning competitive bidding, preliminary plans and specifications, and notice, section 30-20-601 concerning construction under the direction of county officers, section 30-20-622 concerning contracts for construction, and section 30-20-623 concerning contract provisions do not apply. For such districts, the owner of property within a district may arrange improvements that qualify pursuant to the resolution of the board authorizing improvements for the district and may obtain financing for said improvements from the district through the process set forth in the resolution forming the district.

(b) (I) Districts formed for the purposes authorized in paragraph (e) of subsection (1) of this section may cross county boundaries and include properties in multiple counties, whether such counties are contiguous or noncontiguous, if the boards of county commissioners of the affected counties have entered into an intergovernmental agreement or memorandum of understanding regarding the sharing of incremental costs attributable to the district's crossing of county boundaries, with such costs becoming part of the total assessment allocated to each participating landowner.

(II) For any district that may include properties in other counties, the board shall notify the boards of county commissioners and the county treasurers of such counties, at least ten days in advance of the public meeting at which it will be discussed, of the potential inclusion of such properties. The originating board shall consider comments sent by such boards of county commissioners or county treasurers concerning the potential addition of properties from their counties if the comments have been received by the date of the public meeting.

(III) If a municipality that has territory in multiple counties, one of which has created a district for the purposes authorized in paragraph (e) of subsection (1) of this section, desires to consent to the inclusion within such district of any of the properties within its entire incorporated boundary, the municipality shall expressly state in its ordinance granting consent that any property located in the municipality, irrespective of the county in which such property is located, may be included in the district.

(12) The board is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of the cost thereof, the waiver or limitation of legal rights, or any other matter concerning the district.

(13) At or about the time of the adoption by the board of any resolution creating a district, a copy of such resolution shall be provided to the county assessor, the county treasurer, and the division of local government in the department of local affairs. The board shall make a good faith attempt to comply with this subsection (13), but failure to comply shall not affect or impair the organization of any district, the construction or acquisition of improvements therein, the levying and collection of assessments, or any other matter pursuant to the provisions of this part 6.

Source: L. 73: p. 484, § 1. C.R.S. 1963: § 36-30-3. L. 79: (1) amended, p. 1150, § 1, effective April 25. L. 83: (1) amended, p. 1235, § 1, effective March 22; (1) amended, p. 1245, § 3, effective July 1. L. 85: (1)(a), (2)(a), (5), and (6)(f) amended, (6)(d) repealed, and (11) added, pp. 1071, 1077, §§ 1, 14, effective May 24. L. 86: (2)(a), (3), (5), (6)(f), (6)(i), (7), and (9) to (11) amended and (12) added, p. 1052, § 17, effective July 1. L. 87: (5) and IP(6) amended, p. 1211, § 3, effective May 7. L. 90: (13) added, p. 1471, § 1, effective October 1. L. 99: (1)(c) added, p. 516, § 13, effective April 30. L. 2000: (1)(c) and (3)(a) amended and (1)(a.5) added, p. 1990, § 3, effective August 2. L. 2002: (1)(c) amended, p. 335, § 2, effective April 19; (1)(a) amended, p. 269, § 7, effective August 7. L. 2006: (1)(d) added, p. 347, § 2, effective August 7. L. 2007: (1)(a.5) amended, p. 833, § 2, effective May 14. L. 2008: (1)(e) and (11.5) added, p. 1296, §§ 10, 11, effective May 27. L. 2009: (1)(a) amended and (1)(f), (1)(g), and (1)(h) added, (HB 09-1217), ch. 251, p. 1125, § 1, effective August 5. L. 2010: (11.5) amended, (SB 10-100), ch. 207, p. 900, § 2, effective May 5.

Editor's note: Amendments to subsection (1) by House Bill 83-1163 and House Bill 83-1033 were harmonized.

30-20-604. Cost assessed in accordance with benefits. (1) Except for those improvements fully funded by the sales tax pursuant to section 30-20-604.5, the cost of improvements constructed or acquired pursuant to this part 6, or such part thereof as may be assessed against the property specially benefited, including the intersections of streets, may be assessed on property, without regard to lot or land lines, on a frontage, zone, or other equitable basis, in accordance with benefits, as the same may be determined by the board.

(2) When the board determines that the improvement of any street or alley, including the intersections of streets and alleys, or any other improvement authorized by this part 6 results in special benefits to the county and the owners of property within the district, that portion of the cost of the improvement which results in a special benefit to the county may be assessed against the county and be payable in installments, as provided in this part 6. The determination by the board as to the property to be assessed and the amount of special benefits shall be conclusive of the facts stated therein.

(3) No cost of improvements to streets or alleys shall be assessed to any property where reasonable access to the street or alley is denied the owner of the property.

(4) Any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 30-20-603 (11.5) shall assess the costs of the improvements to each property whose owner has entered into a contract or agreement for the improvements. The contracts and agreements entered into with the owner of property, as authorized by the board, shall be conclusive regarding the special benefit to the property and the amount that may be assessed against the property.

Source: L. 73: p. 486, § 1. C.R.S. 1963: § 36-30-4. L. 86: Entire section amended, p. 1055, § 18, effective July 1. L. 87: (1) amended, p. 1211, § 4, effective May 7. L. 2008: (4) added, p. 1296, § 12, effective May 27.

30-20-604.5. District sales tax. (1) The board of any county or of any city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado and that subsequently becomes a city and county for the purpose of funding all or a portion of the cost of any improvements constructed or transportation services provided pursuant to section 30-20-603 (1) (a), (1) (a.5), and (1) (c), may levy a sales tax throughout the district upon every transaction or other incident with respect to which a sales tax is authorized pursuant to section 29-2-105, C.R.S.; except that such tax may be levied only upon those transactions specified in section 39-26-104 (1) (a), (1) (b), (1) (e), and (1) (f), C.R.S. The board may, in its discretion, levy or continue to levy a sales tax on the sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.

(2) (a) The tax shall be collected, administered, and enforced, to the extent feasible, pursuant to section 29-2-106, C.R.S. The department of revenue shall retain an amount not to exceed the net incremental cost of such collection, administration, and enforcement and shall transmit such amount to the state treasurer, who shall credit the same to the districtwide sales tax fund, which fund is hereby created; except that in no event shall:

(I) Any district formed prior to or on July 1, 1993, pay in any given fiscal year commencing on or after July 1, 1994, more than an amount equal to the amount paid by the district in the 1993-94 fiscal year, as adjusted in accordance with changes in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area;

(II) Any district formed after July 1, 1993, pay in any given fiscal year commencing after the first full fiscal year of operation more than an amount equal to the amount paid by the district in the first full fiscal year of operation, as adjusted in accordance with changes in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area.

(a.5) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and

responsible for collecting and remitting any district sales tax imposed on any sale made to the qualified purchaser pursuant to the provisions of this section. A vendor or retailer who has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax imposed on any sale made to the qualified purchaser pursuant to this section in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(b) The general assembly shall appropriate annually from the districtwide sales tax fund to the department of revenue the amount necessary for the department's collection, administration, and enforcement of the districtwide sales tax. Any moneys remaining in said fund attributable to districtwide sales taxes collected in the prior fiscal year shall be transmitted to the county which established the district for which a districtwide sales tax has been levied; except that, prior to the transmission to the county of such moneys, any moneys appropriated from the general fund to the department of revenue for collection, administration, and enforcement of a districtwide sales tax shall be repaid.

(3) The tax authorized by this section shall not exceed one percent.

(4) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), a proposal for a districtwide sales tax shall be referred to the registered electors of the county who reside within the boundaries of the district, either by resolution of the board or by petition initiated and signed by five percent of the registered electors who reside within the boundaries of the district.

(II) In a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado, a proposal for a districtwide sales tax shall be referred to the electors of the district, either by resolution of the board or by petition initiated and signed by five percent of the electors of the district.

(b) Such proposal shall contain a description of the proposed tax, including its purposes, and shall state the amount of tax to be imposed.

(c) (I) Any election held under this section shall conform to the requirements of section 20 of article X of the Colorado constitution.

(II) (A) Except as provided in sub-subparagraph (B) of this subparagraph (II), upon its being presented with a petition requesting a proposal for such sales tax, the board, upon certification of the signatures on the petition, shall submit such proposal to the registered electors residing within the district.

(B) In a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado, the board, after being presented with a petition requesting a proposal for such sales tax and upon certification of the signatures on the petition, shall submit such proposal to the electors of the district.

(d) (Deleted by amendment, L. 99, p. 516, § 14, effective April 30, 1999.)

(e) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), if approved by a majority of the registered electors voting thereon, the sales tax shall become effective as provided in section 29-2-106 (2), C.R.S.

(B) In a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado, if the proposal is approved by a majority of the electors of the district voting thereon, the sales tax shall become effective as provided in section 29-2-106 (2), C.R.S.

(II) (Deleted by amendment, L. 99, p. 516, § 14, effective April 30, 1999.)

(5) (a) Except as provided in paragraph (b) of this subsection (5), all revenue collected from such sales tax, except the amounts retained under subsection (2) of this section, shall be credited to a special fund designated as the sales tax street improvement fund, such designation to include the name or description of the district. The fund shall be used only

to pay the costs of the district improvements authorized by section 30-20-603 (1) (a) and (1) (c), the costs of debt service on bonds issued pursuant to section 30-20-619 (4), if any, or both of such costs.

(b) In a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado, all revenue collected from such sales tax, except the amounts retained under subsection (2) of this section, shall be credited to a special fund designated as the sales tax street improvement fund, such designation to include the name or description of the district. The fund shall be used only to pay the costs of the district improvements and transportation services authorized by section 30-20-603 (1) (a.5) and (1) (c), the costs of debt service on bonds issued pursuant to section 30-20-619 (4), if any, the costs of operations, maintenance, and replacement, and the costs of organization of the district.

(6) (a) When the total cost of the improvements constructed pursuant to section 30-20-603 (1) (a), including the cost of all debt service thereon, if any, has been paid, the board shall cease to levy and collect the sales tax originally imposed pursuant to this section and shall repeal the ordinance authorizing such tax.

(b) Notwithstanding paragraph (a) of this subsection (6), if an improvement includes the use of sales tax for the improvement's operation or maintenance, the board shall continue to levy and collect the sales tax as specified in the resolution authorizing such tax.

(7) (a) Notwithstanding the provisions of section 30-20-602 (2), if any territory within a district is annexed by or incorporated into a municipality and revenue bonds have been issued pursuant to section 30-20-619 (4) prior to the date of such annexation or incorporation, the levy of the sales tax authorized by this section shall continue in such annexed or incorporated territory until the later of:

(I) The date upon which no bonds remain outstanding, whether issued before, on, or after the date of annexation or incorporation, so long as such bonds are refunding bonds or such bonds are issued for improvements which were authorized as of the date of annexation or incorporation; or

(II) The date of completion of all improvements which were authorized for such district as of the date of annexation or incorporation.

(b) The provisions of this subsection (7), as amended, shall apply to any territory within a district which has been annexed by or incorporated into a municipality, regardless of the date of annexation or incorporation.

(8) Notwithstanding subsection (7) of this section, that portion of the sales tax authorized by this section that is used for the operation or maintenance of improvements constructed pursuant to section 30-20-603 (1) shall not apply to any territory within a district that has been annexed by or incorporated into a municipality.

(9) The board may appoint an independent board of directors to perform the functions of the board under this part 6 in a district providing transportation services and improvements in accordance with the terms of the resolution or ordinance establishing the district.

(10) Notwithstanding any other provision of law, the provisions of this part 6 relating to the assessment of local improvement costs upon the property in a district that benefits from such improvements shall not apply to any district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado and that levies a sales tax pursuant to this section to fund local improvements authorized by section 30-20-603 (1) (a.5) and (1) (c).

Source: L. 87: Entire section added, p. 1211, § 5, effective May 7. L. 92: (7) amended, p. 962, § 1, effective May 20. L. 94: (2) amended, p. 318, § 3, effective March 29. L. 99: (1), (4), (5), and (6) amended and (8) added, p. 516, § 14, effective April 30; (1) amended, p. 983, § 9, effective May 28; (2)(a.5) added, p. 14, § 6, effective January 1, 2000. L. 2000: (1), (4)(a), (4)(c)(II), (4)(e)(I), and (5) amended and (9) and (10) added, p. 1991, § 4, effective August 2. L. 2004: (1) amended, p. 1039, § 5, effective July 1. L. 2007: (3) amended, p. 1460, § 2, effective August 3. L. 2008: (3) amended, p. 992, § 11, effective August 5. L. 2010: (1) amended, (HB 10-1243), ch. 385, p. 1802, § 1, effective August 11.

Editor's note: Amendments to subsection (1) by House Bill 99-1159 and House Bill 99-1271 were harmonized.

ANNOTATION

Law reviews. For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

30-20-605. Property of irregular form - assessment. Whenever any lot or parcel of land is V-shaped or of any irregular form, such allowance may be made by resolution in any assessment as may be equitable and just, or any allowance may be refused, and, in case of any unusual area or proportion of intersections, the county may pay not exceeding one-half of the cost of any such intersection, and in such case the remainder only shall be assessed against the property improved.

Source: L. 73: p. 486, § 1. C.R.S. 1963: § 36-30-5.

30-20-606. Determination of special benefits - factors considered. (1) The term "benefit", for the purposes of assessing a particular property within an improvement district, particularly with respect to drainage improvements to carry off surface waters, includes, but is not limited to, the following:

- (a) Any increase in the market value of the property;
- (b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;
- (c) Any adaptability of property to a superior or more profitable use;
- (d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;
- (e) Any reduction in the maintenance costs of particular property or accruing to public property in the improvement district if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;
- (f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets, roads, and highways;
- (g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

(2) As used in connection with any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 30-20-603 (11.5), the term "benefit" shall include, but not be limited to, any acknowledged value set forth in the contracts and agreements entered into by the owner of the assessed property.

Source: L. 75: Entire section added, p. 997, § 2, effective July 1. L. 2008: (2) added, p. 1297, § 13, effective May 27.

Editor's note: This section was originally numbered as § 30-20-605.5 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-607. Statement of expenses - apportionment. Upon completion of any local improvement or upon completion from time to time of any part thereof and upon acceptance thereof by the board or whenever the total cost of any improvement or of any such part thereof can be reasonably ascertained either prior to, during, or subsequent to the construction of the improvements, the board shall cause to be prepared a statement showing the

whole cost of the improvement, including costs of inspection and collection, capitalized interest on any bonds issued for such period as the board may deem necessary, capitalized bond reserves, and all other incidental costs, the portion thereof, if any, to be paid by assessments, the portion thereof, if any, to be paid through the sales tax imposed pursuant to section 30-20-604.5, the portion thereof, if any, to be paid by the county, and the portion thereof to be assessed upon each lot or tract of land to be assessed for the same, which statement shall be filed in the office of the county clerk and recorder. If the board should deem the basis of assessment to be inequitable in any case, a just and equitable assessment shall be made upon the basis of benefits accruing to any property assessed by reason of the improvements made.

Source: L. 73: p. 486, § 1. C.R.S. 1963: § 36-30-6. L. 85: Entire section amended, p. 1073, § 2, effective May 24. L. 86: Entire section amended, p. 1058, § 27, effective July 1. L. 87: Entire section amended, p. 1213, § 6, effective May 7.

Editor's note: This section was originally numbered as § 30-20-606 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-608. Notice of apportionment. (1) Upon receipt of the statement filed pursuant to section 30-20-607, the county clerk and recorder shall notify, by advertisement once in some newspaper of general circulation in said county, the owners of any property to be assessed that said improvements have been, or are about to be, completed and accepted, therein specifying:

- (a) The whole cost of the improvement;
 - (b) The portion, if any, to be paid by such county and the portion, if any, to be paid from a districtwide sales tax;
 - (c) The share, if any, apportioned to each lot or tract of land;
 - (d) That any complaints or objections which may be made in writing by the owners to the board of county commissioners, and filed in the office of the clerk within twenty days from the publication of such notice, will be heard and determined by the said board before the passage of any resolution assessing the cost of said improvements; and
 - (e) The date when and place where such complaints or objections will be heard.
- (2) Any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 30-20-603 (11.5) shall not be required to provide a notice of apportionment by publication; rather, such notice, if any, may be provided in the time and manner set forth in the contract or agreement entered into for each property included in the district.

Source: L. 73: p. 486, § 1. C.R.S. 1963: § 36-30-7. L. 87: IP(1), (1)(b), and (1)(c) amended, p. 1213, § 7, effective May 7. L. 2008: (2) added, p. 1297, § 14, effective May 27.

Editor's note: This section was originally numbered as § 30-20-607 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-609. Hearing on objections. Except for a district formed for the purposes authorized in section 30-20-603 (11.5), at the time specified in the notice required pursuant to section 30-20-508 (1) or at some adjourned time, the board shall hear and determine all such complaints and objections and may make such modifications and changes as may seem equitable and just or may confirm the first apportionment. The board shall, by resolution, assess the cost of the improvements, and the passage of the resolution shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that the assessments have been lawfully levied.

Source: L. 73: p. 487, § 1. C.R.S. 1963: § 36-30-8. L. 86: Entire section amended, p. 1058, § 28, effective July 1. L. 2010: Entire section amended, (SB 10-100), ch. 207, p. 902, § 3, effective May 5.

Editor's note: This section was originally numbered as § 30-20-608 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-610. Assessment constitutes a lien - filing with county clerk and recorder - corrections. (1) All assessments made in pursuance of this part 6, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same shall constitute, from the effective date of the assessing resolution, a perpetual lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens excepting general tax liens. As to any subdivisions of any land assessed in pursuance of this part 6, the assessment lien may be apportioned by the board in such manner, if any, as may be provided in the assessing resolution.

(2) The county clerk and recorder shall file with his office copies of the assessing resolution after its final adoption by the board for recording on the land records of each lot or tract of land assessed within the county, as provided in article 30, article 35, or article 36 of title 38, C.R.S. In addition, the county clerk and recorder shall file copies of such assessing resolution after its final adoption by the board with the county assessor and the county treasurer. The county assessor is authorized to create separate schedules for each lot or tract of land assessed within the county pursuant to such resolution.

(3) No delays, mistakes, errors, or irregularities in any act or proceeding authorized or required by this part 6 shall prejudice or invalidate any final assessment; but the same may be remedied by subsequent filings, amending acts, or proceedings, as the case may require. When so remedied, the same shall take effect as of the date of the original filing, act, or proceeding. If in any court of competent jurisdiction any final assessment made in pursuance of this part 6 is set aside or if for any other reason the board determines it to be necessary to alter any final assessment made pursuant to this part 6, the board, upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this part 6.

(4) To provide for unanticipated increases in the costs of improvements, the amount of any assessment imposed before the completion of the related improvements may be increased to a total amount not in excess of the special benefit conferred upon the affected property if, not more than ninety days following the completion of such improvements, the board gives notice of its intent to consider the amendment of such assessment, stating the time and place that a public hearing shall be held thereon, and holds such public hearing, in the same manner as provided for hearings held pursuant to sections 30-20-608 and 30-20-609. At the conclusion of such public hearing, the board may determine whether to amend one or more assessments within a district. Any such amendment shall take effect as of the date of the original assessment.

(5) If, as the result of any subdivision, resubdivision, vacation of right-of-way, or other action taken subsequent to the adoption of the assessment resolution, any new lot or parcel is created within a district, the board may, without a public hearing and with the consent of the owner of the new lot or parcel, modify the assessment resolution to reapportion all or any part of the total amount assessed in the district to such new lot or parcel.

Source: L. 73: p. 487, § 1. C.R.S. 1963: § 36-30-9. L. 85: Entire section amended, p. 1073, § 3, effective May 24. L. 86: Entire section amended, p. 1056, § 20, effective July 1. L. 88: (2) amended, p. 1432, § 17, effective June 11. L. 90: (2) and (3) amended, p. 1471, § 2, effective October 1. L. 2008: (4) and (5) added, p. 1297, § 15, effective May 27.

Editor's note: This section was originally numbered as § 30-20-609 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

30-20-611. Assessment roll. The county clerk and recorder, or such other officer or agent of the county as may be directed by the board in the preliminary order, shall prepare a local assessment roll in book form showing, in suitable columns, each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest if, in pursuance of this part 6, the same is payable in installments, and the date when each installment will become due, with suitable columns for use, in case of payment of the whole amount or of any installment or penalty, and he shall deliver the same, duly certified, under the county seal, to the county treasurer for collection.

Source: L. 73: p. 487, § 1. C.R.S. 1963: § 36-30-10. L. 85: Entire section amended, p. 1073, § 4, effective May 24. L. 86: Entire section amended, p. 1059, § 29, effective July 1.

Editor's note: This section was originally numbered as § 30-20-610 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-612. When assessments payable - installments. All special assessments for local improvements shall be due and payable within thirty days after the effective date of the assessing resolution without demand, but all such assessments may be paid, at the election of the owner, in installments with interest as provided in section 30-20-614. All special assessments for local improvements authorized in section 30-20-603 (11.5) may be due and payable at such alternate time or times as set forth in the assessing resolution.

Source: L. 73: p. 487, § 1. C.R.S. 1963: § 36-30-11. L. 75: (2) repealed, p. 1000, § 1, effective June 16. L. 2008: Entire section amended, p. 1298, § 16, effective May 27.

Editor's note: This section was originally numbered as § 30-20-611 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-613. Effect of payment in installments. Failure to pay the whole assessment within said period of thirty days shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to said improvements. Such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the county to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof; except that, with respect to local improvements authorized in section 30-20-603 (11.5), the owner for each property included in the district shall retain all rights otherwise existing by contract or by law against parties other than the county with respect to the financed energy efficiency improvement or renewable energy improvement.

Source: L. 73: p. 488, § 1. C.R.S. 1963: § 36-30-12. L. 2008: Entire section amended, p. 1298, § 17, effective May 27.

Editor's note: This section was originally numbered as § 30-20-612 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-614. How installments paid - interest. In case of such election to pay in installments, the assessments shall be payable in two or more installments of principal, the first of which installments shall be payable as prescribed by the board in not more than five years and the last in not more than twenty years, with interest in all cases on the unpaid principal. The number and amounts of payment of installments, the period of payment, and the rate and times of payment of interest shall be determined by the board and set forth in the assessing resolution. The times of payment of installments shall be the same as the times of payment for installments of property taxes as specified in section 39-10-104.5 (2),

C.R.S.; except that all special assessments for local improvements authorized in section 30-20-603 (11.5) may be payable at such alternate times as provided by the board in the assessing resolution and the board may enter into agreements with third parties to assist the treasurer with the administration and collection of such installments.

Source: L. 73: p. 488, § 1. C.R.S. 1963: § 36-30-13. L. 85: Entire section amended, p. 1074, § 5, effective May 24. L. 86: Entire section amended, p. 1059, § 30, effective July 1. L. 90: Entire section amended, p. 1472, § 3, effective October 1. L. 92: Entire section amended, p. 2184, § 63, effective June 2. L. 2008: Entire section amended, p. 1298, § 18, effective May 27.

Editor's note: This section was originally numbered as § 30-20-613 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-615. Penalty for default - payment of balance. Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the day of sale; but, at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at the penalty rate set by the assessing resolution, and all costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal; except that any owner who pays the whole of the unpaid balance pursuant to this section may be assessed a prepayment premium not to exceed three percent of the unpaid principal, the amount of which premium shall be specified in the resolution imposing the assessment.

Source: L. 73: p. 488, § 1. C.R.S. 1963: § 36-30-14. L. 85: Entire section amended, p. 1074, § 6, effective May 24. L. 86: Entire section amended, p. 1056, § 21, effective July 1. L. 2002: Entire section amended, p. 269, § 8, effective August 7.

Editor's note: This section was originally numbered as § 30-20-614 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Applied in Resolution Trust Corp. v. Shipley, 809 P.2d 1073 (Colo. App. 1990).

30-20-616. Payment in full - assessment roll returned - payment of share. (1) Except for a district formed for the purposes authorized in section 30-20-603 (11.5), as to which the assessments shall be paid pursuant to the contracts and agreements entered into by the owner of the assessed property, payment may be made to the county treasurer at any time within thirty days after the effective date of the assessing resolution. At the expiration of said thirty-day period, the county treasurer shall return the local assessment roll to the county clerk and recorder, therein showing all payments made thereon, with the date of each payment. The county clerk and recorder shall certify the roll under the seal of the county and deliver it to the county treasurer, with the clerk's warrant for the collection of the same. The county treasurer shall provide a receipt for the roll, and all such rolls shall be numbered for convenient reference.

(2) The owner of any divided or undivided interest in the property assessed may pay his

share of any assessment, upon producing evidence of the extent of his interest, satisfactory to the treasurer having the roll in charge; but the assessment lien shall remain on the entire property assessed until the entire assessment is paid, except as otherwise provided pursuant to section 30-20-610.

Source: **L. 73:** p. 488, § 1. **C.R.S. 1963:** § 36-30-15. **L. 77:** (1) amended, p. 1450, § 1, effective July 1. **L. 85:** (2) amended, p. 1074, § 7, effective May 24. **L. 2010:** (1) amended, (SB 10-100), ch. 207, p. 902, § 4, effective May 5.

Editor's note: This section was originally numbered as § 30-20-615 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-617. Sale of property for nonpayment - county may purchase property on default. (1) In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell all property concerning which such default is suffered for the payment of the whole of the unpaid assessments thereon. Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate in default of payment of the general property tax.

(2) At any sale by the county treasurer of any property for the purpose of paying any special assessment for local improvements made under the provisions of this part 6 in the district, the county treasurer, having written authority from the board, may purchase any such property without paying for the same in cash and shall receive certificates of purchase therefor in the name of the county. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessments in pursuance of which the sale was made. The certificates may thereafter be sold by the county treasurer at their face value, with all interest and penalties accrued, and assigned by him to the purchaser in the name of the county. The proceeds of such sale shall be credited to the fund created by resolution for the payment of such assessments respectively. In the event that all bonded indebtedness incurred in payment for said local improvements has been discharged in full, said certificates may be sold by the board for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as is provided in subsection (4) of this section. The proceeds shall be credited to the general fund of said county. Such assignments shall be without recourse, and the sale and assignments shall operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property tax.

(3) Any county as such purchaser has the right to apply for tax deeds on such certificates of purchase at any time after three years from the date of issuance of said certificates, and such deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of the general property tax.

(4) Cumulatively with all other remedies, any county which is the owner of property by virtue of a tax deed, or is the owner of property otherwise acquired, in satisfaction or discharge of the liens represented by such certificates of sale, may sell such property for the best price obtainable at public sale, at auction, or by sealed bids. Such sales shall be after public notice by the county treasurer or the county clerk and recorder to all persons having or claiming any interest in the property to be sold or in the proceeds of such sale by publication of such notice three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. Such notice shall describe the property and state the time, place, and manner of receiving bids; except that the time fixed for the sale shall not be less than ten days after the last publication. The county may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the county a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest is denied, such person, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the county from completing the sale. If no such action is commenced, all protests or objections to the sale shall be waived, and the county shall then convey the property to the successful bidder by quitclaim deed.

(5) In addition to all other remedies, any county which is a holder of certificates of purchase may bring a civil action for foreclosure thereof in accordance with article 38 of title 38, C.R.S., joining as defendants all persons holding record title, persons occupying or in possession of the property, persons having or claiming any interest in the property or in the proceeds of foreclosure sale, all governmental taxing units having taxes or other claims against said property, and all unknown persons having or claiming any interest in said property. Any number of certificates may be foreclosed in the same proceeding. In such proceeding the county, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property, including actions to quiet title.

(6) The proceeds of any such sale of property shall be credited to the appropriate special assessment fund. The county shall deduct therefrom the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

(7) When any county has sold or conveyed at a fair market value certificates of purchase or property which it has acquired in satisfaction or discharge of special assessment liens, such sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in such property or the proceeds of such sale.

(8) It is hereby declared that the purpose of this section is to restore delinquent property to the tax rolls and to realize the greatest possible amount from such property for the benefit of all persons and taxing bodies having liens thereon.

Source: L. 73: p. 489, § 1. C.R.S. 1963: § 36-30-16. L. 81: Entire section amended, p. 1613, § 11, effective July 1. L. 83: Entire section amended, p. 1247, § 1, effective June 19. L. 86: (2) amended, p. 1059, § 31, effective July 1. L. 93: (5) amended, p. 81, § 2, effective March 26.

Editor's note: This section was originally numbered as § 30-20-616 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For foreclosure proceedings by municipal corporations or taxing districts, see part 11 of article 25 of title 31; for sale of real estate in default of payment of the general property tax, see article 11 of title 39.

30-20-618. Power of board to contract debt - question submitted to voters. The board shall have power to contract an indebtedness on behalf of the county, and upon the credit thereof, by borrowing money or issuing the negotiable interest-bearing bonds of the county for the purpose of providing a fund to pay such part of the cost of improvements authorized by this part 6 as may be determined by the board, subject, however, to constitutional limitations. No such debt shall be created for such purposes unless the question of incurring the same, including the question of the maximum net effective interest rate, shall be submitted at a special election, which election shall be called and conducted, the votes canvassed, and the result declared in the same manner as other county elections on questions of incurring bonded indebtedness.

Source: L. 73: p. 489, § 1. C.R.S. 1963: § 36-30-17. L. 86: Entire section amended, p. 1060, § 32, effective July 1.

Editor's note: This section was originally numbered as § 30-20-617 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-619. Issuing bonds - property specially benefited. (1) For the purpose of paying all or such portion of the cost of any improvement constructed or acquired under the provisions of this part 6 as may be assessed against the property specially benefited and not paid by the sales tax authorized by section 30-20-604.5 or by the county, special assessment bonds of the county may be issued, of such date, in such form, and on such terms, including, without limitation, provisions for their sale, payment, and redemption, as may be prescribed by the board, bearing the name of the street or district improved and payable in a sufficient period of years after such date to cover the period of payment provided, and in convenient

denominations. All such bonds shall be issued upon estimates approved by the board, and the county treasurer shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the chair of the board, countersigned by the county treasurer, with the county seal affixed, and attested by the county clerk and recorder; except that the county treasurer need not countersign a bond issued by a district formed for the purposes authorized in section 30-20-603 (11.5). Such bonds shall be payable out of the moneys collected on account of the assessments made for said improvements, from reserve accounts, if any, established to secure the payment of such bonds, and from any other legally available moneys. All moneys collected from such assessments for any improvement shall be applied to the payment of the bonds issued, until payment in full is made of all the bonds, both principal and interest, or to fund or replenish reserve accounts, if any, established to secure the payment of such bonds. The bonds may be sold, under such terms and conditions as are established by the board, in such amounts as will be sufficient to pay for the cost of the improvements.

(2) Whenever three-fourths of the bonds issued pursuant to subsection (1) of this section for an improvement constructed under this part 6 have been paid and cancelled and for any reason any remaining assessments are not paid in time to pay the remaining bonds for the district and the interest due thereon, the county may pay, from legally available moneys, the bonds when due and the interest due thereon and may reimburse itself by collecting the unpaid assessments due the district.

(3) When all bonds of an improvement district have been paid, any moneys remaining to the credit of such district may be transferred to a special surplus and deficiency fund, and whenever there is a deficiency in any improvement district bond fund to meet the payment of outstanding bonds for other improvement districts and interest due thereon, or to redeem such outstanding bonds in accordance with any estimated redemption schedule used in connection with the sale of such bonds, the deficiency may be paid from the moneys available therefor in the surplus and deficiency fund.

(4) For the purpose of paying all or such portion of the costs of any improvement constructed pursuant to section 30-20-603 (1) (a) and (1) (c) to which the revenues from any sales tax imposed pursuant to section 30-20-604.5 have been pledged, revenue bonds may be issued, which shall be payable solely from such sales tax. Such bonds shall be issued on the terms set forth in section 29-2-112, C.R.S.

(5) In connection with the issuance of bonds payable solely from special assessments as provided in subsection (1) of this section, the board may provide by resolution for the submission of the question of issuing such bonds to the electors eligible to vote on the question. In that case, the board may provide by resolution that all registered electors of the county shall be eligible to vote on the question or that only electors of the district shall be eligible to vote on the question.

(6) In connection with the issuance of bonds payable from special assessments which are additionally secured as provided in subsection (2), (3), or (4) of this section, the board may provide by resolution for the submission of the question of issuing the bonds to all registered electors of the county.

(7) Notwithstanding any other provision of this part 6, bonds issued in accordance with the requirements of this section may be payable from the assessments levied in one or more improvement districts.

(8) Notwithstanding any other provision of this part 6, any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 30-20-603 (11.5) may be authorized to:

(a) Issue one or more series of bonds, and bonds of any such district may be payable from the assessments levied pursuant to one or more assessment resolutions; and

(b) Jointly finance the improvements of multiple such districts located in one or more counties by intergovernmental agreement of the organizing counties or through other legally available means. Such intergovernmental agreement may include provisions for, among other things, the transfer of revenues collected pursuant to this part 6, including assessment payments, penalty payments pursuant to section 30-20-615, and property sale proceeds pursuant to section 30-20-617, from the county treasurer of the county in which a property is located to the county treasurer for the county issuing bonds pursuant to this section.

Source: **L. 73:** p. 489, § 1. **C.R.S. 1963:** § 36-30-18. **L. 83:** Entire section amended, p. 1245, § 2, effective March 22. **L. 85:** (1) amended and (3) added, p. 1075, § 8, effective May 24. **L. 86:** (1) amended, p. 1060, § 33, effective July 1. **L. 87:** (1) and (2) amended and (4) added, p. 1214, § 8, effective May 7. **L. 94:** (5) and (6) added, p. 1190, § 85, effective July 1. **L. 99:** (4) and (5) amended, p. 518, § 15, effective April 30. **L. 2002:** (1) amended and (7) added, p. 270, § 9, effective August 7. **L. 2008:** (1) and (2) amended and (8) added, p. 1298, § 19, effective May 27. **L. 2010:** (1) and (8) amended, (SB 10-100), ch. 207, p. 902, § 5, effective May 5.

Editor's note: This section was originally numbered as § 30-20-618 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-619.5. Issuing refunding bonds. (1) The board may issue one or more series of bonds to refund all or any portion of the outstanding bonds issued by one or more improvement districts pursuant to section 30-20-619. Any such bonds shall be issued in accordance with the provisions of article 56 of title 11, C.R.S. In such case, for purposes of complying with the requirements of article 56 of title 11, C.R.S., any bonds issued to refund all or any portion of the outstanding bonds of one or more improvement districts shall be deemed to be revenue bonds, the refunded bonds shall be deemed to be revenue obligations, and the assessments shall be deemed to be revenue.

(2) Any bonds issued pursuant to this section may refund all or any portion of the outstanding bonds of one or more improvement districts and may be secured by a combination of assessments levied on all or a specifically identified portion of the assessed property located within such districts.

(3) Two or more series of bonds may be issued to refund the outstanding bonds of one or more districts, and each series may be secured by assessments levied on different portions of the assessed property located within the districts that have outstanding bonds.

(4) Except as otherwise provided in subsection (5) or (6) of this section, in connection with the issuance of refunding bonds pursuant to this section, the board may amend the resolution imposing the assessment to modify all or any portion of the following terms describing the assessment as specified in the resolution:

- (a) The rate of interest the board charges on unpaid installments;
- (b) Any penalty for prepayment of an assessment;
- (c) The principal balance due and owing on the assessment;
- (d) The dates upon which unpaid assessments are due;
- (e) The number of years over which unpaid assessments are due; or
- (f) Any other term specified in the resolution as necessary to make the resolution conform to the requirements of this section.

(5) Before the board may amend the resolution imposing the assessment to increase the amount of principal and interest due and owing under the assessment, the number of years over which unpaid assessments are due, or the amount of any unpaid assessments, the board shall:

(a) Obtain consent in writing to the amendment to the resolution from the owner of each tract of land that would be affected by the amendment; or

(b) (I) Set a place and time, not less than twenty days nor more than forty days after the date of such setting, for a hearing on the proposed amendment.

(II) Thereupon, the clerk of the board shall cause notice by publication to be made of the pendency of the proposed amendment, a summary of the terms of such amendment as described in subsection (4) of this section, and of the time and place of the hearing on the proposed amendment.

(III) All complaints and objections made in writing concerning the proposed amendment by the owners of any property in the district shall be heard and determined by the board before final action is taken. If the owners of the tracts upon which more than one-half of the affected assessments, measured by the unpaid assessment balance, submit written protests to the amendment to the board on or before the date specified in the notice, the board shall not adopt the proposed amendment. Any proposed amendment may be modified,

confirmed, or rescinded prior to passage of the resolution authorized under subsection (4) of this section.

(6) Notwithstanding any other provision of law, in order either to issue refunding bonds or to amend a resolution of the board imposing an assessment pursuant to this section, the board shall make written findings that:

(a) The obligation of the county shall not be materially or adversely impaired with respect to any outstanding bond secured by the assessments; and

(b) The principal balance of any assessment shall not increase to an amount such that the aggregate amount that is assessed against any one particular tract of land exceeds the maximum benefit to the tract that is estimated to result from the project that is financed by the assessment and refunding of the outstanding bonds.

Source: L. 2002: Entire section added, p. 270, § 10, effective August 7.

30-20-620. Bonds negotiable - interest. All bonds issued pursuant to section 30-20-619 (1) and (2) shall be negotiable in form and shall bear such interest as may be fixed by the board, not exceeding a maximum net effective interest rate specified by the board, prior to the use of said bonds in payment for improvements or the sale thereof.

Source: L. 73: p. 489, § 1. C.R.S. 1963: § 36-30-19. L. 85: Entire section amended, p. 1075, § 9, effective May 24. L. 86: Entire section amended, p. 1060, § 34, effective July 1. L. 87: Entire section amended, p. 1214, § 9, effective May 7.

Editor's note: This section was originally numbered as § 30-20-619 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-621. Manner of redemption. (Repealed)

Source: L. 73: p. 489, § 1. C.R.S. 1963: § 36-30-20. L. 85: Entire section amended, p. 1075, § 10, effective July 1. L. 86: Entire section amended, p. 1057, § 23, effective May 24. L. 2002: Entire section repealed, p. 278, § 22, effective August 7.

Editor's note: This section was originally numbered as § 30-20-620 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-622. Contracts for construction - bond - default. (1) Except as provided in this section, all local improvements made under the provisions of this part 6 shall be constructed by independent contract, and all contracts shall be let by the board. All such contracts shall be let to the lowest reliable and responsible bidder, after public advertisement once in a newspaper of general circulation in such county; except that after such advertisement, if it be determined by the board that the bids are too high or that the proposed improvement can be made by the county for less than the bid of the lowest reliable and responsible bidder, such county is empowered to provide for doing the work by hiring labor by the day or otherwise and to arrange for purchasing necessary material, all under the supervision of the board.

(2) Except when the county does the work, no contract shall be made without a surety bond for its faithful performance, with sufficient sureties, to be approved by the board. No surety shall be accepted or approved by the board other than a corporate surety company, unless he is the owner of real estate in this state, free and clear of all encumbrances, in double the amount of his liability on all bonds upon which he may then be surety. Upon default in the performance of any contract, the board may advertise and relet the remainder of the work in like manner, without further resolution, and deduct the cost from the original contract price or, with the approval of the board, advance any excess out of the funds of the county and recover the same by suit on the original bond. In all advertisements the right shall be reserved to reject any or all bids, and, upon rejecting all bids, if deemed advisable by the board, other bids may be advertised for.

(3) Notwithstanding the provisions of subsection (1) of this section and the provisions of section 24-92-104 (3), C.R.S., all construction contracts for any improvements funded in whole or in part by the district sales tax authorized by section 30-20-604.5 or by revenue bonds issued pursuant to section 30-20-619 (4) shall be awarded by competitive sealed bidding pursuant to the procedures set forth in article 92 of title 24, C.R.S.

Source: L. 73: p. 490, § 1. C.R.S. 1963: § 36-30-21. L. 85: (1) amended, p. 1076, § 11, effective May 24. L. 86: Entire section amended, p. 1061, § 35, effective July 1. L. 87: (3) added, p. 1215, § 10, effective May 7.

Editor's note: This section was originally numbered as § 30-20-621 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-623. Provisions to be inserted. Every contract shall provide that it is subject to the provisions of the laws under which the county exists and of the resolution authorizing the improvement; that the aggregate payment thereon shall not exceed the amount appropriated; that, upon ten days' written notice to the contractor, the work under such contract, without cost or claim against the county, may be suspended for substantial cause; and that, upon complaint of any owner of land to be assessed for the improvement that the improvement is not being constructed in accordance with the contract, the board may consider the complaint and make such order in the premises as shall be just, and such order shall be final.

Source: L. 73: p. 490, § 1. C.R.S. 1963: § 36-30-22. L. 85: Entire section amended, p. 1076, § 12, effective May 24. L. 86: Entire section amended, p. 1061, § 36, effective July 1.

Editor's note: This section was originally numbered as § 30-20-622 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-624. Utility connections may be ordered before paving - costs - default. Before paving in any district in pursuance of this part 6, the board may order the owners of property therein to connect their several premises with the gas, water, or sewer mains or with any other utility in the street in front of their several premises. Upon default of any owner for thirty days after such order to make such connections, the city or town may contract for and make the connections at such distance, under such regulations, and in accordance with such specifications as may be prescribed by the board. The whole cost of each connection shall be assessed against the property with which the connection is made, and the cost shall be paid upon the completion of the work and in one sum. The cost shall be assessed, shall become a lien, and shall be collected in the same manner as is provided in this part 6 for the assessment and collection of the cost of other special improvements. Upon default in the payment of any such assessment, the property shall be sold in like manner and with like effect.

Source: L. 73: p. 490, § 1. C.R.S. 1963: § 36-30-23. L. 86: Entire section amended, p. 1061, § 37, effective July 1.

Editor's note: This section was originally numbered as § 30-20-623 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-625. No action maintainable - exception - grounds - limitations. (1) No legal or equitable action shall be brought or maintained to enjoin the collection of assessments levied under this part 6 except upon the grounds:

(a) That notice of a hearing upon the amount of the assessment was not given as required in this part 6, and any person presenting objections to the board at or before the hearing on assessment shall be deemed to have waived this ground;

(b) That the hearing upon the amount of the assessment as provided in this part 6 was not held;

(c) That the improvement ordered was not one authorized by this part 6.

(2) No action shall be brought under paragraph (c) of subsection (1) of this section unless the objections on which such action is based have been presented to the board in writing prior to the hearing on the proposed improvements as provided in section 30-20-603 (6) (i). Any action brought with respect to the ordering of any improvements, the creation of any district, the authorization or issuance of any bonds, the levying of any assessments, or any other action taken under this part 6 shall be commenced within thirty days after the effective date of the resolution ordering the improvements, creating the district, authorizing or issuing bonds, or levying assessments or the performance of any other action complained of or else shall be thereafter perpetually barred.

Source: L. 73: p. 491, § 1. C.R.S. 1963: § 36-30-24. L. 85: (2) amended, p. 1076, § 13, effective May 24. L. 86: (1)(a) and (2) amended, p. 1062, § 38, effective July 1.

Editor's note: This section was originally numbered as § 30-20-624 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-626. Requirements of publication of notice. Notwithstanding any provisions of part 1 of article 70 of title 24, C.R.S., compliance with the requirements of publication of notice specified in this part 6 shall be deemed in full compliance for all purposes of this part 6.

Source: L. 73: p. 491, § 1. C.R.S. 1963: § 36-30-25.

Editor's note: This section was originally numbered as § 30-20-625 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

30-20-627. Local improvements completed - dissolution. When the local improvements specified in the preliminary order referred to in section 30-20-603 (5) and specified in the resolution authorizing the improvements have been completed and any debt incurred or bonds issued have been paid, the board shall take all steps necessary to dissolve the district and, upon completion of such steps, shall declare, by resolution, that the district is dissolved; except that this requirement does not apply to a district formed for the purposes authorized in section 30-20-603 (11.5). Upon dissolution, any moneys remaining to the credit of such district that have not been transferred to a special surplus and deficiency fund as permitted in section 30-20-619 (3) may be used for any county purpose as determined by the board, including, without limitation, the reimbursement to the county of any county moneys spent to provide any portion of the costs of the local improvements completed within the dissolved district.

Source: L. 87: Entire section added, p. 1215, § 11, effective May 7. L. 2002: Entire section amended, p. 272, § 11, effective August 7. L. 2010: Entire section amended, (SB 10-100), ch. 207, p. 903, § 6, effective May 5.

30-20-628. County treasurer - policies and procedures. The county treasurer may adopt policies and procedures which the county treasurer deems necessary and reasonable for the administration and collection of assessments imposed and payable pursuant to the provisions of this part 6 and which are consistent with the provisions of said part 6.

Source: L. 90: Entire section added, p. 1472, § 4, effective October 1.

PART 7

RECREATION DISTRICTS - COUNTY

30-20-701. Legislative declaration. It is declared that the creation of recreation districts, having the purposes and powers provided in this part 7, will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of said districts.

Source: L. 47: p. 698, § 1. CSA: C. 136, § 5. CRS 53: § 114-2-1. C.R.S. 1963: § 114-2-1.

ANNOTATION

Law reviews. For article, "Legal Classification of Special Districts Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

30-20-702. County may establish districts. (1) Whenever a county has acquired property for recreational purposes, as authorized in sections 29-7-101 to 29-7-104, C.R.S., such county may establish a recreation district. This district shall be composed of the unincorporated area benefited by the establishment of the proposed recreational facility, the boundaries to be designated by the board of county commissioners. If a county planning commission has been created in the county under the authority of part 1 of article 28 of this title, it is the duty of such planning commission, upon request from the board of county commissioners, to formulate a tentative plan for the formation of such recreation district. The plan shall include recommendations as to the area to be benefited and boundaries and powers of the district. Upon completion of the plan, the county planning commission shall certify such plan to the board of county commissioners.

(2) Before the creation of a recreation district, a hearing thereon shall be held by the board of county commissioners to ascertain the sentiment of residents of the area toward the establishment of such a district. Notice of the hearing, stating the time, place, date, and purpose of the hearing, and including a description of the proposed boundaries, shall be published once weekly for three consecutive weeks in a newspaper published and of general circulation in the county.

(3) After the hearing, the board of county commissioners, at any regularly scheduled meeting, may change, amend, reject, or adopt the plan formulated and certified by the county planning commission and by resolution create a recreation district.

Source: L. 47: p. 698, § 2. CSA: C. 136, § 6. CRS 53: § 114-2-2. C.R.S. 1963: § 114-2-2.

30-20-702.5. Acquisition of land by Larimer county authorized. (1) The general assembly finds and declares that it is in the best interests of the state for Larimer county to acquire certain properties in the floodplain areas of the Big Thompson canyon and the north fork thereof. In making such acquisitions, Larimer county shall be subject to the findings of the Colorado water conservation board with respect to the location of said floodplain areas. The county shall establish a recreation district pursuant to the provisions of this article for the purpose of making the acquisitions authorized and for the further purposes of the future management, control, and financing of all park and recreational areas developed following such acquisitions. In acquiring lands as authorized, the county and the recreation district shall seek primarily lands near inhabited areas which are unlikely to be the subject of direct acquisition by the federal forest service or other federal agency.

(2) The division of parks and wildlife, as a part of its duties under section 33-10-108, C.R.S., shall undertake the duties of coordinating federal, state, and local efforts and

contributions, in the development of the land acquired pursuant to this section, in order that the people of the state shall receive benefits from the park and recreational facilities thus acquired.

Source: L. 77: Entire section added, p. 1451, § 1, effective June 19. L. 85: (2) amended, p. 1363, § 29, effective June 28.

30-20-703. Powers of county commissioners. (1) Acting on behalf of such district, the board of county commissioners may:

(a) Levy a tax on all real and personal property situated within the district not to exceed one mill, the proceeds of which shall be used within the district for operation, maintenance, capital improvements, acquisition of additional property, and employment of a staff to supervise a program of activities, and receive gifts of money or property for construction and operation of recreational facilities and programs; but if the recreational district comprises the entire county, the board of county commissioners is authorized to appropriate from the general fund for this purpose and no special levy is authorized;

(b) Establish a board of five residents of the district who own real estate within the district and who have paid a tax thereon for at least one year preceding their selection, to administer the facility, and to supervise the conduct of the recreational programs. Each member of the board, upon approval by a majority of the taxpaying electors residing in the district voting on the question at a general election, may receive as compensation for his services a sum not in excess of six hundred dollars per annum, payable not to exceed twenty-five dollars per meeting attended. Terms of such board members shall be so arranged that the term of one member expires each year. The manner of selection and the powers shall be determined by the board of county commissioners in its order creating the recreation district.

(c) Provide for the employment of personnel to operate and manage the facilities and recreation programs, and cooperate with other public and private agencies in the operation and management of the facilities and program;

(d) Provide for the creation of a reserve fund adequate to meet the obligations of the district, for maintenance and operating charges and depreciation, and to provide replacements of and betterments to the improvements of the district.

Source: L. 47: p. 699, § 3. CSA: C. 136, § 7. L. 53: p. 220, § 2. CRS 53: § 114-2-3. C.R.S. 1963: § 114-2-3. L. 67: p. 714, § 4.

Cross references: For procedure to increase tax levy beyond statutory limits, see § 29-1-302.

30-20-704. Budget. The operations of the recreation district shall be conducted in accordance with the provisions of the local government budget law. The proposed budget shall be submitted to the board of county commissioners by the district board on or before the same date that is set for other departments of county government. In no event shall the provisions of this section be construed to prevent the creation of a reserve fund as provided in section 30-20-703.

Source: L. 47: p. 699, § 4. CSA: C. 136, § 8. CRS 53: § 114-2-4. C.R.S. 1963: § 114-2-4.

30-20-705. Purpose. No part of this part 7 shall repeal or affect any other act or any part thereof, it being intended that this part 7 shall provide a separate method of accomplishing its objects, and not an exclusive one.

Source: L. 47: p. 700, § 5. CSA: C. 136, § 9. CRS 53: § 114-2-5. C.R.S. 1963: § 114-2-5.

PART 8

CEMETERY DISTRICTS

Editor's note: Prior to the enactment of this part 8 in 1981, the substantive provisions of this part 8 were located in part 1 of article 5 of title 32. For a detailed comparison of this part 8, see the comparative tables located in the back of the index.

Cross references: For definitions applicable to this part 8, see § 30-26-301 (2)(d).

30-20-801. Creation of cemetery districts. The board of county commissioners of any county shall create cemetery districts within its county upon petition of the property owners within said districts, in accordance with the provisions of this part 8.

Source: L. 81: Entire part added, p. 1613, § 12, effective June 19.

30-20-802. Petition for creation of district. Upon presentation to the board of county commissioners of a petition setting forth the name of the proposed cemetery district, a description of the boundaries of said district, the names of three taxpaying electors resident within such district to be appointed as the first board of directors of said proposed district, and a request for the organization thereof, signed by a majority of the taxpaying electors resident therein, it is the duty of the board of county commissioners of such county to examine the petition and, if it finds that the petition is regular and in due form as provided, and if the board of county commissioners finds that said petition has been signed by a majority of the taxpaying electors, to enter a resolution in its proceedings establishing said cemetery district and to file a certified copy of such resolution with the county clerk and recorder.

Source: L. 81: Entire part added, p. 1613, § 12, effective June 19.

30-20-803. Board of directors. Immediately after the creation of such cemetery district, the board of county commissioners shall appoint a board of directors for said cemetery district, consisting of the three members recommended in the petition filed with the board of county commissioners. One of such members shall hold his office for two years, one for four years, and one for six years. Thereafter the term of office shall be six years. Vacancies in the board of directors shall be filled by the board of county commissioners. All special and regular meetings of the board of directors shall be held at locations which are within the boundaries of the cemetery district or which are within the boundaries of any county in which the cemetery district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting.

Source: L. 81: Entire part added, p. 1613, § 12, effective June 19. **L. 90:** Entire section amended, p. 1496, § 3, effective July 1.

30-20-804. District officers. The officers of such cemetery district shall be the president and a secretary who shall be elected annually by the board of directors from its own members.

Source: L. 81: Entire part added, p. 1613, § 12, effective June 19.

30-20-805. Powers of district. (1) From and after the filing of the resolution establishing such district with the county clerk and recorder, the cemetery district shall be a body corporate and shall have the following powers:

- (a) To acquire, hold, and convey real and personal property for cemetery purposes within said district;
- (b) To sue and be sued in its corporate name;
- (c) To receive, acquire, and hold donations or bequests of real or personal property;
- (d) To sell burial plots in the cemetery property acquired by said district;
- (e) To draw warrants upon the county treasurer for cemetery purposes;
- (f) To determine annually the amount of tax not to exceed four mills, to be levied upon the taxable property of said district, to acquire, care for, and maintain such cemetery for the ensuing year, and to certify the same to the board of county commissioners. Any amount of tax levy not previously established by resolution nor previously approved by the electors must be authorized by a vote of the electors of that cemetery district.

Source: **L. 81:** Entire part added, p. 1614, § 12, effective June 19. **L. 95:** (1)(f) amended, p. 61, § 1, effective March 23.

30-20-806. Taxation. The board of county commissioners is authorized to levy a tax not to exceed four mills so certified to it by said cemetery district against all taxable property within said cemetery district which tax shall be collected by the county treasurer. If the district embraces the entire county, the board of county commissioners is authorized to appropriate from the general fund money for this purpose and no special tax shall be made.

Source: **L. 81:** Entire part added, p. 1614, § 12, effective June 19. **L. 95:** Entire section amended, p. 61, § 2, effective March 23.

30-20-807. Cemetery district fund. All moneys belonging to or collected on behalf of said cemetery district may be deposited with the county treasurer of the county in which said district is located in a fund known as cemetery district fund. Expenditures therefrom shall be made by the county treasurer upon warrants drawn thereon by the president and secretary of said cemetery district.

Source: **L. 81:** Entire part added, p. 1614, § 12, effective June 19. **L. 2008:** Entire section amended, p. 107, § 1, effective August 5.

30-20-808. Abandoned graves - right to reclaim. (1) If there is a lot, grave space, niche, or crypt in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, a cemetery district may initiate the process of reclaiming title to the lot, grave space, niche, or crypt in accordance with this section.

(2) A cemetery district seeking to reclaim a lot, grave space, niche, or crypt shall:

(a) Send written notice of the cemetery district's intent to reclaim title to the lot, grave space, niche, or crypt to the owner's last-known address by first-class mail; and

(b) Publish a notice of the cemetery district's intent to reclaim title to the lot, grave space, niche, or crypt in a newspaper of general circulation in the area in which the cemetery is located once per week for four weeks.

(3) The notice required by subsection (2) of this section shall clearly indicate that the cemetery district intends to terminate the owner's rights and title to the lot, grave space, niche, or crypt and include a recitation of the owner's right to notify the cemetery district of the owner's intent to retain ownership of the lot, grave space, niche, or crypt.

(4) If the cemetery district does not receive from the owner of the lot, grave space, niche, or crypt a letter of intent to retain ownership of the lot, grave space, niche, or crypt within sixty days after the last publication of the notice required by paragraph (b) of subsection (2) of this section, all rights and title to the lot, grave space, niche, or crypt shall transfer to the cemetery district. The cemetery district may then sell, transfer, or otherwise dispose of the lot, grave space, niche, or crypt without risk of liability to the prior owner of the lot, grave space, niche, or crypt.

(5) A cemetery district that reclaims title to a lot, grave space, niche, or crypt in accordance with this section shall retain in its records for no less than one year a copy of the notice sent pursuant to paragraph (a) of subsection (2) of this section and a copy of the notice published pursuant to paragraph (b) of subsection (2) of this section.

(6) If a person submits to a cemetery district a legitimate claim to a lot, grave space, niche, or crypt that the cemetery district has reclaimed pursuant to this section, the cemetery district shall transfer to the person at no charge a lot, grave space, niche, or crypt that, to the extent possible, is equivalent to the reclaimed lot, grave space, niche, or crypt.

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, a cemetery district shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. A cemetery district may grant interment rights to a lot, grave space, niche, or crypt in a cemetery.

Source: L. 2006: Entire section added, p. 443, § 3, effective August 7.

Editor's note: Section 5 of chapter 128, Session Laws of Colorado 2006, provides that the act enacting this section applies to cemetery lots, grave spaces, niches, and crypts purchased before, on, or after August 7, 2006.

PART 9

SOLID WASTE-TO-ENERGY INCINERATION SYSTEMS

Cross references: For the calculation by the public utilities commission of avoided cost information prior to construction of a solid waste-to-energy incineration system, see § 40-3-112; for authorization for municipalities to develop solid waste-to-energy systems, see part 10 of article 15 of title 31.

Law reviews: For article, "The Legal Structure and Financing of Waste-to-Energy Projects - Part 1", see 14 Colo. Law. 574 (1985).

30-20-901. Legislative declaration. The general assembly hereby finds and declares that methods for the efficient and economical production of usable energy should be achieved whenever possible and that the use of flammable waste material for the conversion of heat into steam, electrical power, or any other form of energy could provide energy in an efficient and economical manner. For such purposes, the provisions of this part 9 are enacted to authorize counties to develop this type of energy for their own use and the use of the public.

Source: L. 83: Entire part added, p. 1241, § 2, effective May 31.

30-20-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Solid waste-to-energy incineration system" means the use of flammable waste material as a primary or supplemental fuel for the conversion of heat into steam, electrical power, or any other form of energy.

Source: L. 83: Entire part added, p. 1242, § 2, effective May 31.

30-20-903. County authority relating to solid waste-to-energy incineration systems. (1) The board of county commissioners of any county has the power to:

(a) Acquire, hold, use, transfer, and convey any real or personal property for the purpose of developing and operating a solid waste-to-energy incineration system;

(b) Engage in any activities relating to the siting, development, and operation of a solid waste-to-energy incineration system and to the production and sale of energy from such system;

(c) Issue revenue bonds authorized by action of the board of county commissioners, without the approval of the qualified electors of the county, for purposes of financing the siting and development of a solid waste-to-energy incineration system and the production

and marketing of energy from such system. Such revenue bonds shall be issued in the manner provided in part 4 of article 35 of title 31, C.R.S., for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the county, in its discretion, shall determine. Such revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the county within the meaning of any provision or limitation of the state constitution or statutes, and shall not constitute nor give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers. Such revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(d) Enter into contracts, including intergovernmental contracts pursuant to section 29-1-203, relating to the acts authorized by this part 9;

(e) Establish such terms and conditions by contract, resolution, or any other method for the siting, development, and operation of a solid waste-to-energy incineration system and the production and sale of energy from such system;

(f) Set, maintain, and revise charges for the disposal of solid waste at a solid waste-to-energy incineration system facility and for the sale of energy from such system for the purpose of financing the property, facilities, and operation of the system;

(g) Exercise any other powers which are essential in performing the acts authorized by this part 9;

(h) Perform any nonlegislative acts authorized by this part 9 by means of an agent or by contract with any person, firm, or corporation.

Source: L. 83: Entire part added, p. 1242, § 2, effective May 31.

30-20-904. Department of public health and environment rules. The department of public health and environment may promulgate rules for the engineering design and operation of solid waste-to-energy incineration systems, and any such system shall comply with such rules before beginning operations.

Source: L. 83: Entire part added, p. 1243, § 2, effective May 31. **L. 94:** Entire section amended, p. 2800, § 560, effective July 1.

PART 10

SOLID WASTES DISPOSAL LIMITATIONS

Cross references: For the legislative declaration contained in the 2005 act enacting this part 10, see section 1 of chapter 285, Session Laws of Colorado 2005.

30-20-1001. Definitions. As used in this part 10, unless the context otherwise requires:

(1) “Consumer product” means any device that is primarily intended for personal or household use and is typically sold, distributed, or made available to the general population through retail or mail-order distribution. Such term does not include vehicles, motorcycles, wheelchairs, boats, or other forms of motive power. The term does include, but is not limited to, computers, games, telephones, radios, and similar electronic devices.

(2) “De minimis quantities of used oil” means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; except that the term shall not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases.

(3) “Land disposal” means placing, discarding, or otherwise disposing of residentially generated solid wastes:

(a) In any solid wastes disposal site and facility, transfer station, or treatment, storage, or disposal facility operated by the state, a local government, or a private entity;

(b) In sewers, drainage systems, septic tanks, surface or groundwaters, watercourses, or any body of water; or

(c) On the ground.

- (4) "Lead-acid battery" means a battery that:
 - (a) Consists of lead and sulfuric acid;
 - (b) Is used as a power source; and
 - (c) Is not intended as a power source for consumer products.
- (5) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce friction in motorized equipment. "Lubricating oil" includes rerefined oil.
- (6) (a) "Person" means an individual.
- (b) "Person" shall not include waste haulers as defined in subsection (16) of this section.
- (7) "Residentially generated" means used lead-acid batteries, used oil, and waste tires generated by a person.
- (8) "Retailer" means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity that engages in the sale of new lead-acid batteries, lubricating oil, or new tires directly to the end user.
- (9) "Solid waste" shall have the same meaning as set forth in section 30-20-101 (6).
- (10) "Solid wastes disposal" shall have the same meaning as set forth in section 30-20-101 (7).
- (11) "Solid wastes disposal site and facility" shall have the same meaning as set forth in section 30-20-101 (8).
- (12) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.
- (13) "Transfer station" shall have the same meaning as set forth in section 30-20-101 (9).
- (14) "Used lead-acid battery" means any lead-acid battery that is no longer functional or no longer used for its primary purpose.
- (15) "Used oil" means any residentially generated motor oil, refined from crude oil or a synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities.
- (16) "Waste hauler" means any individual or any employee or agent of a partnership, private, county, or municipal corporation, firm, board of a metropolitan district, or other association of persons that haul waste under contract, agreement, or as otherwise provided by law, to solid wastes disposal sites and facilities.
- (17) "Waste tire" has the meaning established in section 25-17-202 (1), C.R.S.
- (18) "Waste tire monofill" means any duly licensed and permitted solid wastes disposal site and facility or section of solid wastes disposal site and facility at which only waste tires are accepted.
- (19) "Wholesaler" means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity that sells new lead-acid batteries, lubricating oil, or new tires for resale.

Source: L. 2005: Entire part added, p. 1251, § 2, effective August 8. L. 2010: (17) amended, (HB 10-1018), ch. 421, p. 2180, § 13, effective June 10.

30-20-1002. Lead-acid batteries - disposal limitations. (1) On and after July 1, 2007, land disposal of residentially generated used lead-acid batteries shall be prohibited.

- (2) A person shall dispose of used lead-acid batteries by delivering the batteries to:
 - (a) A retailer or wholesaler engaged in lead-acid battery collection or recycling;
 - (b) A secondary lead smelter; or
 - (c) A collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.
- (3) A retailer shall dispose of used lead-acid batteries by delivering the batteries to:
 - (a) The agent of a wholesaler or a secondary lead smelter;
 - (b) A battery manufacturer for delivery to a secondary lead smelter; or
 - (c) A collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(4) (a) Waste haulers shall notify customers that the land disposal of lead-acid batteries is prohibited.

(b) The notice required by paragraph (a) of this subsection (4) shall explain that lead-acid batteries shall be disposed of by delivery to a retailer or wholesaler engaged in lead-acid battery collection or recycling, a secondary lead smelter, or a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

Source: L. 2005: Entire part added, p. 1253, § 2, effective August 8.

30-20-1003. Lead-acid batteries - collection for recycling. (1) A retailer selling replacement lead-acid batteries in the state may:

(a) Accept from customers, at the point of transfer, used lead-acid batteries of the same general type and in a quantity at least equal to the number of new batteries purchased, if offered by customers; and

(b) Collect a deposit of at least ten dollars on the sale of an automotive-type replacement lead-acid battery that is not accompanied by the return of a used lead-acid battery of the same general type. All deposits shall inure to the benefit of the retailer unless the person paying the deposit pursuant to this subsection (1) returns a used automotive lead-acid battery to the retailer within thirty days of the date of sale, in which case the deposit shall be returned to the customer.

Source: L. 2005: Entire part added, p. 1254, § 2, effective August 8.

30-20-1004. Lead-acid battery wholesalers. Any wholesaler selling replacement lead-acid batteries may accept from customers at the point of transfer used lead-acid batteries of the same general type and in a quantity at least equal to the number of new batteries purchased, if offered by customers.

Source: L. 2005: Entire part added, p. 1254, § 2, effective August 8.

30-20-1005. Used oil disposal limitations. (1) On and after July 1, 2007, land disposal of residentially generated used oil shall be prohibited.

(2) Notwithstanding subsection (1) of this section, a person may dispose of an item or substance that contains de minimis quantities of used oil in a solid wastes disposal site and facility under subsection (1) of this section if:

(a) To the extent reasonably possible, all oil has been removed from the item or substance; and

(b) No free-flowing oil remains in the item or substance.

(3) A person shall dispose of used oil by delivery to:

(a) A retailer or wholesaler engaged in used oil collection or recycling; or

(b) A collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(4) A retailer shall dispose of used oil by delivery to the agent of a wholesaler or to a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(5) Every quart of improperly disposed oil shall constitute a separate violation.

(6) (a) Waste haulers shall notify customers that the land disposal of used oil is prohibited.

(b) The notice required in paragraph (a) of this subsection (6) shall explain that used oil shall be disposed of by delivery to a retailer or wholesaler engaged in used oil collection or recycling or a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

Source: L. 2005: Entire part added, p. 1254, § 2, effective August 8.

30-20-1006. Limitations on the disposal of tires. (1) On and after July 1, 2007, land disposal of residentially generated waste tires shall be prohibited.

(2) (a) A person shall dispose of waste tires by delivery to a retailer or wholesaler engaging in waste tire collection or recycling, to a waste tire monofill, or to a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(b) A person, including a retailer, wholesaler, and a collection or recycling facility, shall arrange for the commercial hauling of waste tires only with a hauler who is currently registered pursuant to section 25-17-204, C.R.S.

(3) A retailer shall dispose of waste tires by delivery to the agent of a wholesaler, to a waste tire monofill, or to a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(4) A wholesaler shall dispose of waste tires by delivery to a waste tire monofill or to a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(5) A collection facility shall dispose of waste tires by delivery to a waste tire monofill or to a recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

(6) Each waste tire improperly disposed of shall constitute a separate violation.

(7) (a) Waste haulers shall notify customers that the land disposal of waste tires is prohibited.

(b) The notice required by paragraph (a) of this subsection (7) shall explain that waste tires shall be disposed of by delivery to a retailer or wholesaler engaged in waste tire collection or recycling, to a waste tire monofill, or to a collection or recycling facility operating under the laws of this state or under rules promulgated by the United States environmental protection agency.

Source: L. 2005: Entire part added, p. 1255, § 2, effective August 8. **L. 2009:** (2) amended, (SB 09-289), ch. 314, p. 1700, § 4, effective August 5.

30-20-1007. Waste tires - collection for recycling. A retailer selling replacement tires in the state may not refuse to accept from customers, at the point of transfer, waste tires of the same general type and in a quantity at least equal to the number of new tires purchased.

Source: L. 2005: Entire part added, p. 1256, § 2, effective August 8. **L. 2009:** Entire section amended, (SB 09-289), ch. 314, p. 1700, § 5, effective August 5.

30-20-1008. Tire wholesalers. Any wholesaler selling tires may accept from customers at the point of transfer waste tires of the same general type and in a quantity at least equal to the number of new tires purchased, if offered by customers.

Source: L. 2005: Entire part added, p. 1256, § 2, effective August 8.

30-20-1009. Inspection - enforcement - nuisances - violations - civil penalty. (1) The inspection, enforcement, nuisance, violation, and civil penalty provisions in section 30-20-113 shall apply to this part 10.

(2) Notwithstanding subsection (1) of this section and section 30-20-1010, if a person is able to establish that due diligence has been conducted and no reasonable options for recycling the solid wastes are available, then the person may dispose of the solid wastes in a solid wastes disposal site and facility or transfer station.

(3) Notwithstanding subsection (1) of this section and sections 30-20-1010 and 30-20-113 (1) (c), any solid wastes disposal site and facility in substantial compliance with its waste characterization plan developed pursuant to section 30-20-110 (1) (g), and rules promulgated thereunder, shall be deemed to be in compliance with this part 10 so long as such waste characterization plan contains waste acceptance procedures to minimize the disposal of lead-acid batteries, used oil, and waste tires consistent with the requirements of

this part 10. Solid wastes disposal sites and facilities existing on August 8, 2005, shall submit an amended waste characterization plan incorporating such waste acceptance procedures to the department of public health and environment no later than January 1, 2006.

Source: L. 2005: Entire part added, p. 1256, § 2, effective August 8.

30-20-1010. Violation - penalty. Any person who violates any provision of this part 10 is guilty of a petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars. Nothing in this part 10 shall preclude or preempt a municipality from enforcement of its local ordinances. Each day of violation shall be deemed a separate offense under this section.

Source: L. 2005: Entire part added, p. 1256, § 2, effective August 8.

PART 11

PUBLIC IMPROVEMENTS - COUNTY CONTRACTS

30-20-1101. Short title. This part 11 shall be known and may be cited as the “Integrated Delivery Method for County Public Improvements Act”.

Source: L. 2007: Entire part added, p. 1810, § 2, effective August 3.

30-20-1102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.

(b) Competition exists not only in the costs of goods and services, but in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.

(c) Timely and effective completion of public projects can be achieved through a variety of methods when procuring goods and services for public projects.

(d) In enacting this part 11, the general assembly intends to establish for county governments and certain districts formed by county governments an optional alternative public project delivery method.

Source: L. 2007: Entire part added, p. 1810, § 2, effective August 3.

30-20-1103. Definitions. As used in this part 11, unless the context otherwise requires:

(1) “Agency” means any county, city and county, home rule county formed in accordance with the provisions of article 35 of this title, any county public improvement district formed in accordance with the provisions of part 5 of article 20 of this title, any other district that a county or a city and county may create pursuant to the authority provided in article 20 of this title that is a budgetary unit exercising construction contracting authority or discretion, and any special taxing district formed by a home rule county in accordance with the provisions of part 9 of article 35 of this title.

(2) “Contract” means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project.

(3) “Cost-reimbursement contract” means a contract under which a participating entity is reimbursed for costs that are allowable and allocable in accordance with the contract terms and provisions of this part 11.

(4) “Integrated project delivery” or “IPD” means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.

(5) "IPD contract" means a contract using an integrated project delivery method.

(6) "Participating entity" means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning, architectural, engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) "Public project" means any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare, or public education, to the extent the boundaries of an agency and a school district are coterminous, or for the conservation of natural resources, including the planning of any such lands, buildings, improvements, structures, works, machinery, equipment, or facilities. "Public project" shall also include existing lands, buildings, improvements, structures, works, and facilities, as well as improvements, renovations, or additions to any such lands, buildings, improvements, structures, works, or facilities, including without limitation any sewerage facility as defined in section 30-20-401 (4), any water facility as defined in section 30-20-401 (6), any joint system as defined in section 30-20-401 (3), and any operation or maintenance programs for the operation and upkeep of such projects.

(8) "Public purposes" includes, but is not limited to, the supplying of public water services and facilities, public sewerage services and facilities, and lands, buildings, improvements, equipment, and facilities for public education, to the extent the boundaries of the agency and school district are coterminous.

Source: L. 2007: Entire part added, p. 1810, § 2, effective August 3.

30-20-1104. Integrated project delivery contracts - authorization - effect of other laws. (1) Notwithstanding any other provision of law, any agency may award an IPD contract for a public project under the provisions of this part 11 upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this part 11 shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, rules, resolutions, or ordinances governing labor relations, professional licensing, public contracting, or other related laws, except to the extent that an exemption is granted under such legal authority or is created by necessary implication from such legal authority.

Source: L. 2007: Entire part added, p. 1812, § 2, effective August 3.

30-20-1105. Integrated project delivery contracting process - prequalification of participating entities - apprentice training. (1) An agency may prequalify participating entities for IPD contracts by public notice of its request for qualifications prior to the date set forth in the notice. A request for qualifications may contain the following elements and such additional information as may be requested by the agency:

(a) A general description of the proposed public project;

(b) Relevant budget considerations;

(c) Requirements of the participating entity, including:

(I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of the submission of qualifications;

(II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;

(III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and

(IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential.

(d) The criteria for prequalification.

(2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.

(3) Where an apprentice training program certified by the office of apprenticeship located in the employment and training administration in the United States department of labor exists in the county, or a comparable program for the training of apprentices is available in the county:

(a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and

(b) Each participating entity shall demonstrate that each of its subcontractors, at any tier, selected to perform work under a contract with a value of two hundred fifty thousand dollars or more has access to either the certified program or a comparable alternative.

Source: L. 2007: Entire part added, p. 1812, § 2, effective August 3.

30-20-1106. Requests for proposals - evaluation and award of integrated project delivery contracts. (1) An agency shall prepare and publish a request for proposals for each IPD contract that may contain the following elements and such other elements as may be requested by the agency:

(a) The procedures to be followed for submitting proposals;

(b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;

(c) The procedures for making awards;

(d) Required performance standards as defined by the participating entity;

(e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(f) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;

(g) The proposed scheduling for the project; and

(h) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 30-20-1105 (2) but whose proposals are not selected for award of the IPD contract.

(2) After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals in accordance with the requirements specified in subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(3) With respect to performance under each IPD contract, the agency and participating entity shall comply with all laws applicable to public projects.

(4) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract is not required to be licensed or registered to provide professional services as defined in section 24-30-1402 (6), C.R.S., if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

Source: L. 2007: Entire part added, p. 1813, § 2, effective August 3.

30-20-1107. Supplemental provisions. The governing body of an agency may establish supplemental provisions that are designed to implement the provisions of this part 11.

Source: L. 2007: Entire part added, p. 1814, § 2, effective August 3.

30-20-1108. Types of contracts. Subject to the requirements of this section, an agency making use of the provisions of this part 11 may award any type of contract that will promote the best interests of the agency; except that the use of a cost-plus-a-percentage-of-cost contract under this part 11 is prohibited. An agency may award a cost-reimbursement contract only when a determination is made in writing that such contract is either likely to be less costly to the agency than any other type of contract or that it is impracticable to obtain the required construction or other services authorized under this part 11 unless the cost-reimbursement contract is used. Operation and maintenance elements may be procured on a cost-reimbursement basis under or in connection with an IPD contract.

Source: L. 2007: Entire part added, p. 1814, § 2, effective August 3.

PART 12

RURAL CLEAN ENERGY PROJECT FINANCE PROGRAM

30-20-1201. Short title. This part 12 shall be known and may be cited as the "Rural Clean Energy Project Finance Program Act".

Source: L. 2008: Entire part added, p. 1315, § 3, effective May 27.

30-20-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Board" means the board of county commissioners of a county or a city and county.
(2) "Clean energy" means energy derived from biomass, as defined in section 40-2-124 (1) (a) (I), C.R.S., geothermal energy, solar energy, small hydroelectricity, and wind energy, as well as any hydrogen derived from any of the foregoing.

(3) "Cooperative electric association" shall have the same meaning as set forth in section 40-9.5-102, C.R.S.

(4) "Eligible applicant" means an individual property owner or a group of property owners that do not own the entirety of a cooperative electric association and that seek to construct, expand, or upgrade an eligible clean energy project located or to be located on the applicant's property.

(5) "Eligible clean energy project" means a project owned by an eligible applicant that produces or transmits clean energy for public benefit only, has a nameplate rating of no more than fifty megawatts and is not a part of a larger project with a nameplate rating of more than fifty megawatts, and is located within the certificated service area of a cooperative electric association. "Eligible clean energy project" includes transmission lines to the point of entry to the power grid of a cooperative electric association, a generation and transmission electric corporation or association, or any federal agency and any other equipment or facility, including, but not limited to, substation upgrades needed to deliver the clean energy produced by an eligible clean energy project to a market.

Source: L. 2008: Entire part added, p. 1315, § 3, effective May 27.

30-20-1203. Eligible clean energy project financing - county approval - private activity bond financing. (1) An eligible applicant may apply to the board of the county or city and county in which it proposes to construct, expand, or upgrade an eligible clean energy project for assistance in the financing of the project. Subject to the requirements and limitations specified in federal law, the "Colorado Private Activity Bond Ceiling Allocation Act", part 17 of article 32 of title 24, C.R.S., and subsection (2) of this section, if the board approves the application, it may provide financing assistance by issuing tax-exempt private activity bonds in a minimum amount of one million dollars on behalf of the eligible applicant.

(2) A board shall issue tax-exempt private activity bonds on behalf of an eligible applicant to finance an eligible clean energy project subject to the following requirements and limitations:

(a) The board shall enter into agreements with the eligible applicant under which:

(I) The board agrees to loan to the eligible applicant the net proceeds of the bonds issued so that the eligible applicant can finance all or a portion of the eligible clean energy project; and

(II) The eligible applicant agrees that it has the sole responsibility to pay, either directly or indirectly through the board or a bond trustee, all financial obligations owed to bondholders and that it shall provide and maintain any reserve deemed necessary by the board to ensure that the financial obligations are paid;

(b) The bonds issued shall specify that bondholders may not look to any county or city and county revenues for repayment of the bonds. The bonds shall further specify that the only sources of repayment for the bonds are revenues provided by the eligible applicant, property of the eligible applicant, or credit enhancement obtained by the eligible applicant that may be pledged to the payment of the bonds; and

(c) The repayment term for the bonds issued shall not exceed ten years.

(3) Because private activity bonds are payable only from the sources specified in paragraph (b) of subsection (2) of this section, such bonds shall not be deemed to create county or city and county indebtedness or a multiple-fiscal year obligation within the meaning of any provision of the state constitution or the laws of this state, and a board may issue such bonds without voter approval.

(4) The rates charged by an eligible applicant for the delivery of clean energy produced by an eligible clean energy project shall be set to allow recovery of all costs necessarily incurred to deliver the clean energy to a market, including, but not limited to, the costs of substation upgrades, transmission lines to the point of entry to the power grid of a cooperative electric association, and any wheeling charges imposed by a cooperative electric association.

Source: L. 2008: Entire part added, p. 1316, § 3, effective May 27.

PART 13

FEDERAL MINERAL LEASE DISTRICTS

30-20-1301. Short title. This part 13 shall be known and may be cited as the “Federal Mineral Lease District Act”.

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169, p. 580, § 1, effective May 9.

30-20-1302. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that it is committed to making sure that all available funding received from federal mineral leasing and distributed as specified in section 34-63-102 (5.4) (c), C.R.S., is used to alleviate social, economic, and public finance impacts resulting from the development of natural resources in this state, subject to the limitations provided for in the federal act.

(2) The general assembly further finds and declares that the purpose of this legislation is to maximize the long-term benefit of funding derived from federal mineral leasing by authorizing the creation of federal mineral lease districts as funding and service delivery mechanisms, which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state, with priority given to those communities designated as impacted by the development of natural resources covered in the federal act.

(3) The general assembly further finds and declares that federal mineral lease districts provide an effective mechanism to expedite the distribution of funding, without the use or

increase of ad valorem and other taxes, to those communities designated as impacted by the development of natural resources covered by the federal act.

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169, p. 580, § 1, effective May 9. **L. 2012:** Entire section amended, (SB 12-031), ch. 84, p. 275, § 1; effective April 6.

30-20-1303. Definitions. As used in this part 13, unless the context otherwise requires:

(1) “County” means a home rule or statutory county in this state and includes a city and county.

(1.5) “Distribute” means to grant, loan, commit, or otherwise expend available funding to achieve the purposes of the district consistent with this part 13.

(2) “District” means a federal mineral lease district created pursuant to this part 13.

(2.5) “Federal act” means section 35 of the federal “Mineral Lands Leasing Act” of February 25, 1920, as amended.

(3) “Funding” means the direct distribution of moneys from the local government mineral impact fund to counties as described in section 34-63-102 (5.4) (c), C.R.S.

(4) “Resolution” means a resolution initiated and adopted by a board of county commissioners of a county to create a federal mineral lease district as described in section 30-20-1304 (2).

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169 p. 581, § 1, effective May 9. **L. 2012:** (1.5) and (2.5) added, (SB 12-031), ch. 84, p. 276, § 2, effective April 6.

30-20-1304. Power to create federal mineral lease districts. (1) Except as otherwise provided in this part 13, any county may create a district, so long as the district is created through a resolution adopted as specified in subsection (2) of this section no later than June 30, 2011, and each June 1 of every year thereafter.

(2) A board of county commissioners shall create a district by duly adopting, by majority vote, a resolution to that effect, and the resolution shall set forth:

(a) The name of the county creating the district;

(b) The names of any municipalities to be included in the proposed district if such municipalities have enacted ordinances as specified in subsection (3) of this section;

(c) A description of the boundaries of the district, which may include any municipality within the county creating the district;

(d) The name of the district; and

(e) The number of directors of the district. There shall be no fewer than three directors for a district, and the total number of directors shall be an odd number.

(3) Repealed.

(4) No later than the first business day after the adoption of a resolution, the county clerk and recorder shall transmit a certified copy of the resolution to the executive director of the department of local affairs, who shall, upon receipt of the certified copy of the resolution, allocate all future funding directly to the district.

(5) A district organized pursuant to this part 13 may be dissolved by the district board after not less than fifteen days’ notice to the public is given and a hearing is held. The notice shall be published in at least one newspaper of general circulation in the county in which the district is located. After hearing any protests against or objections to dissolution, if a majority of the district board determines that it is in the best interests of all concerned to dissolve the district, the district board shall so provide by resolution, and verified copies of the resolution shall be filed within three business days with the office of the county clerk and recorder in the county in which the district is located and with the executive director of the department of local affairs. Upon such filings, the dissolution shall be complete, except that no district shall be dissolved until all funding is distributed consistent with this part 13 and has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities.

(6) Notwithstanding any other provision in subsection (5) of this section, any board of county commissioners of a county that initiated and passed a resolution to create a district

as described in section 30-20-1304 (2) as such section existed before April 6, 2012, may, within ninety days of April 6, 2012, initiate and pass a resolution to dissolve the district. For any district dissolved pursuant to this subsection (6), all undistributed funding shall be paid over to the county.

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169, p. 581, § 1, effective May 9. **L. 2012:** (2)(c), (4), and (5) amended, (3) repealed, and (6) added, (SB 12-031), ch. 84, p. 276, § 3, effective April 6.

30-20-1305. Approval of service plan. (Repealed)

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169, p. 582, § 1, effective May 9. **L. 2012:** Entire section repealed, (SB 12-031), ch. 84, p. 277, § 4, effective April 6.

30-20-1305.5. Powers of a district. (1) Each district formed pursuant to this part 13 is an independent public body politic and corporate. Each district is a public instrumentality, and its exercise of the powers specified in this part 13 are deemed and held to be the performance of an essential public function. A district is not an agency of county or state government and is not subject to administrative direction by any department, commission, board, or agency of a county or the state.

(2) In addition to any other powers granted to a district by this part 13, a district has the following powers:

- (a) To sue and be sued;
 - (b) To enter into contracts and agreements including those described in section 29-1-201, C.R.S.;
 - (c) To acquire real or personal property or an interest in real or personal property;
 - (d) To sell, convey, lease, exchange, transfer, or otherwise dispose of all or any part of the district's property or assets;
 - (e) To enter into grant or loan agreements;
 - (f) In order to carry out the purposes of this part 13, to borrow money as evidenced by revenue bonds, certificates, warrants, notes, and debentures in accordance with the provisions of this part 13;
 - (g) To adopt an official seal;
 - (h) To distribute funding to an area outside the district boundaries consistent with this part 13;
 - (i) To provide services consistent with the federal act and this part 13.
- (3) A district does not have the power to levy and collect taxes or to use the power of eminent domain.

(4) Each district formed under this part 13 is subject to the "Local Government Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S., and the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, C.R.S.

Source: L. 2012: Entire section added, (SB 12-031), ch. 84, p. 278, § 5, effective April 6.

30-20-1306. Board of directors - appointment or election - removal.

(1) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), immediately after the creation of a district, the board of county commissioners of the county shall, by majority vote, appoint a board of directors for the district. The number of directors on the board shall be as set forth in the resolution creating the district.

(II) If the board of county commissioners finds that the board of directors for the district should be elected rather than appointed, the board of county commissioners shall outline the method of such an election by duly adopting by majority vote a resolution to that effect. The election procedures shall comply with the election requirements set forth in articles 1 to 13 of title 1, C.R.S.

(b) Members of the board of directors may be county commissioners from the county that created the district, representatives of the governing body of municipalities included in the district, or other officials representing the interests of areas impacted by mineral lease activities.

(c) County commissioners serving on the board of directors, if any, shall not constitute a majority on the board of directors.

(d) The officers of the board of directors shall be the president and a secretary who shall be elected annually by the board of directors from its own members.

(e) (I) Members of the board of directors shall serve staggered terms so that not more than one director's term expires in any one year, and thereafter terms shall be for three years each, and each term shall commence on January 15.

(II) Notwithstanding subparagraph (I) of this paragraph (e), every board of county commissioners of a county that initiated and passed a resolution to create a district as described in section 30-20-1304 (2) as such section existed before April 6, 2012, shall, within ninety days of April 6, 2012, pass a resolution fixing the initial terms of all existing directors. The resolution shall designate at least one director whose initial term shall expire on January 15, 2013, at least one director whose initial term shall expire on January 15, 2014, and at least one director whose initial term shall expire on January 15, 2015. Successor directors shall serve three year terms.

(2) (a) Each director shall hold office until the expiration of the term to which such director is appointed or elected or until a successor has been duly appointed or elected.

(b) Vacancies on the board of directors shall be filled by a majority vote of the board of county commissioners.

(c) The board of county commissioners of the county may remove any director for official misconduct, incompetence, neglect of duty, or other good cause shown, so long as the removal occurs after the director in question is given notice and an opportunity to be heard before the board of county commissioners at a public hearing.

(3) All special and regular meetings of the board of directors for a district shall be held pursuant to part 4 of article 6 of title 24, C.R.S.

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169, p. 582, § 1, effective May 9. **L. 2012:** Entire section amended, (SB 12-031), ch. 84, p. 279, § 6, effective April 6.

30-20-1307. Board of directors - powers and duties. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), the board of directors of a district shall distribute all of the funding the district receives from the department of local affairs to areas that are socially or economically impacted, either directly or indirectly, by the development, processing, or energy conversion of fuels and minerals leased under the federal act.

(b) The board of directors may use up to ten percent of the annual funding for any administrative costs of the district.

(c) Notwithstanding any other provision of this part 13, the board of directors of a district may reserve all or a portion of the funding for use in subsequent years.

(2) The board of directors may review any reports or studies made and may seek any additional reports or studies it deems necessary regarding the distribution of funding in the district.

(3) The board of directors may cooperate or contract with any other district to provide any function or service lawfully authorized to each of the cooperating or contracting districts, including the sharing of costs, only if the cooperation or contracts are authorized by each district with the approval of each district's board of directors. Any contract providing for the sharing of costs may be entered into for any period, not to exceed the existence of the district and notwithstanding any provision of law limiting the length of any financial contracts or obligations of governments. Any such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting parties. Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

(4) The board of directors may exercise any of the powers set forth in section 30-20-1305.5.

Source: L. 2011: Entire part added, (HB 11-1218), ch. 169, p. 583, § 1, effective May 9. **L. 2012:** Entire section amended, (SB 12-031), ch. 84, p. 280, § 7, effective April 6.

ARTICLE 24

County Agricultural Research

30-24-101.	Legislative declaration.	30-24-103.	Appropriation.
30-24-102.	Authority of county commissioners.	30-24-104.	County agricultural fund.

30-24-101. Legislative declaration. Agricultural crop and livestock producers are constantly faced with the problem of new insects, diseases, depletion of soil fertility, lack of information as to market demands and preferences, and of other distributive practices. Some counties have need for more research work than others. Such counties, if placed in a position to provide for agricultural research work with laboratory facilities, management, and some labor, would be able to cooperate with the technical personnel of the state and federal research agencies and better meet these local demands for research work.

Source: L. 41: p. 88, § 1. **CSA:** C. 5, § 105. **CRS 53:** § 6-6-1. **C.R.S. 1963:** § 6-6-1.

30-24-102. Authority of county commissioners. (1) For the purposes set forth in this article, the boards of county commissioners of the several counties of the state are authorized to:

- (a) Purchase or rent land for use in county agricultural research work;
- (b) Purchase or rent laboratory facilities for use in county agricultural research work;
- (c) Purchase or rent laboratory equipment and supplies for use in county agricultural research work;
- (d) Employ such management and common labor as they consider necessary to provide for the proper efficiency of the county agricultural research work;
- (e) Make provision for a county agricultural research advisory committee, to serve without compensation, composed of members representing the different agricultural groups in the county and elected by such agricultural groups under such procedure and policy as the board of county commissioners may determine;
- (f) Enter into cooperative agreements with the boards of county commissioners of other counties to economically carry out the purposes of this article;
- (g) Enter into cooperative agreements with the board of governors of the Colorado state university system for the assistance of Colorado state university, including all of its agencies, in the developing and financing of the projects to be included in the operations of the county agricultural research work each year;
- (h) Enter into cooperative agreements through Colorado state university with the proper federal research agencies.

Source: L. 41: p. 88, § 2. **CSA:** C. 5, § 106. **CRS 53:** § 6-6-2. **C.R.S. 1963:** § 6-6-2. **L. 2002:** (1)(g) amended, p. 1247, § 22, effective August 7.

30-24-103. Appropriation. The boards of county commissioners of the several counties are authorized to appropriate from the county general fund such money as may be necessary to pay the obligations for county agricultural extension and research work as may be authorized.

Source: L. 41: p. 89, § 3. **CSA:** C. 5, § 107. **L. 51:** p. 296, § 7. **CRS 53:** § 6-6-3. **C.R.S. 1963:** § 6-6-3.

30-24-104. County agricultural fund. The boards of county commissioners of the several counties are authorized to establish a county agricultural fund. This fund may be created out of the county general fund, and repayment of this fund may be made through a county agricultural research tax levy.

Source: L. 41: p. 89, § 4. CSA: C. 5, § 108. CRS 53: § 6-6-4. C.R.S. 1963: § 6-6-4.

County Finance

ARTICLE 25

Administration

Cross references: (1) For the constitutional provision which establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

(2) For definitions applicable to this article, see § 30-26-301 (2)(d).

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PART 1

FISCAL PROCEDURES

30-25-101. Budgeting - appropriations - fiscal procedures. The provisions of part 1 of article 1 of title 29, C.R.S., shall govern budgeting, appropriations, and fiscal procedures of each county in this state.

Source: L. 1891: p. 111, § 1. R.S. 08: § 1215. C.L. § 8692. CSA: C. 45, § 39. CRS 53: § 36-2-1. C.R.S. 1963: § 36-2-1. L. 77: Entire section R&RE, p. 1441, § 2, effective June 9.

ANNOTATION

The intent of the former section was concisely stated in the title, as "An act to require the affairs of the counties of this state to be conducted from the revenues derived from taxation, and to prevent the expenses of any county from exceeding its revenues", and it must be accepted and enforced as it read, as the courts have no right to add to or take from its plain and positive provisions. *Bd. of Comm'rs v. Hampson*, 24 Colo. 127, 48 P. 1101 (1897).

And the evident purpose of that section was to compel the board in the last quarter of the fiscal year to consider and decide with great care the levy which should be made and the objects to which the moneys which might be realized from it should be put, in other words, the general assembly intended to compel the board of county commissioners to particularize the purposes to which the moneys should be applied, and by this means all subsequent diversion of the public funds to illegal uses because of personal, political, or other considerations, was substantially prevented. *Beshoar v. Bd. of Comm'rs*, 7 Colo. App. 444, 43 P. 912 (1896).

A record is not always required to render the proceedings of the board of county commissioners binding. *Mugrage v. People*, 26 Colo. App. 27, 141 P. 522 (1914).

And where question arises as to a board's action a liberal discretion should be exercised in receiving evidence of the attending circumstances, to aid in ascertaining the real purpose of what is set down. *Mugrage v. People*, 26 Colo. App. 27, 141 P. 522 (1914).

Duty directory. Under the former section, it was the duty of the board to make the levy so that the assessor could certify the tax list and

warrant to the treasurer on or before the first of January, but a failure of the commissioners, or the assessor, to do either within the time specified, in no manner affected the taxpayer and was directory. *Tallon v. Vindicator Consol. Gold Mining Co.*, 59 Colo. 316, 149 P. 108 (1915).

Treasurer not responsible for omissions of board. Where the only resolution of the board which could be termed an appropriation, directed levies upon the taxable property, as follows: "For State Purposes, 4 mills; for County Redemption Fund, 5 mills; for County General Revenue, 10 mills; for Road Fund, 4 mills; for General School Fund, 4 mills — the same to be extended on the tax roll by the county assessor, and by him certified to the county treasurer for collection.", it was held that warrants regularly issued for unquestioned obligations of the county, and paid by the treasurer were to be credited to him in his account, in spite of the absence of any formal appropriation resolution, such as required by the former section, and that the treasurer shall not be penalized for the omissions of the governing body of the county. *Mugrage v. People*, 26 Colo. App. 27, 141 P. 522 (1914).

The holder of a valid warrant issued by a city for current expenses of a fiscal year is entitled to be paid out of the revenues of that year, appropriated for that purpose, because this is a part of the contract by virtue of the former section, and to hold that his rights thus fixed would be subject to the payment of warrants issued in previous years would impair the obligation of his contract. *Ostling v. People ex rel. Bantley*, 57 Colo. 22, 140 P. 173 (1914).

Applied in *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

30-25-102. County expenditures limited. (Repealed)

Source: L. 1891: p. 111, § 2. R.S. 08: § 1216. C.L. § 8693. CSA: C. 45, § 40. CRS 53: § 36-2-2. C.R.S. 1963: § 36-2-2. L. 77: Entire section repealed, p. 1441, § 3, effective June 9.

30-25-103. No liability against county beyond appropriation. No contract shall be made by the board of county commissioners of any county, and no liability against the county shall be created by any officer of the county, whether the object of the expenditure has been ordered by the board of county commissioners or not, unless an appropriation shall have been previously made concerning such expense. Each member of the board of county commissioners and other officers of the county who undertake to create any liability against the county, except such as they are by statute required to do, shall be personally liable and, together with the sureties upon their official bonds, shall be held for such indebtedness.

Source: L. 1891: p. 112, § 3. R.S. 08: § 1217. C.L. § 8694. CSA: C. 45, § 41. CRS 53: § 36-2-3. C.R.S. 1963: § 36-2-3.

ANNOTATION

Rental payments. Where there was no appropriation providing for the rental of a building for county use for 25 years (the full term of the lease), and it was contended that for the reason the lease is void, this contention cannot be upheld, because the rent is to be paid monthly, and it is a current expense and is to be provided for, the same as the other current expenses, by annual levy and appropriation. *Leadville Illuminating Gas Co. v. City of Leadville*, 9 Colo. App.

400, 49 P. 268 (1897); *City of Denver v. Hubbard*, 17 Colo. App. 346, 68 P. 993 (1902); *Heberer v. Bd. of Comm'rs*, 88 Colo. 159, 293 P. 349 (1930).

Representations sheriff made to his deputies and clerks regarding cash compensation for overtime were made without approval of the board and, thus, are not binding on the county or the board. *Johnson v. Bd. of County Comm'rs*, 676 P.2d 1263 (Colo. App. 1984).

30-25-104. Judgment against a county, how paid - tax levy. (1) When a judgment is given and rendered against a county of this state in the name of its board of county commissioners or against any county officer in an action prosecuted by or against him in his official capacity or name of office, when the judgment is for money and is a lawful county charge, no execution shall issue thereon, but the same may be paid by the levy of a tax upon the taxable property of said county. When the tax is collected by the county treasurer, it shall be paid over, as fast as collected by him, to the judgment creditor, or his assigns, upon the execution and delivery of proper vouchers therefor; but nothing in this section shall operate to prevent the board of county commissioners from paying any such judgment by a warrant drawn by them upon the ordinary county fund in the county treasury. The power conferred to pay such judgment by a special levy of such tax shall be held to be in addition to the taxing power given and granted to such board to levy taxes for other county purposes. The board of county commissioners shall levy under this law such taxes as shall be sufficient to discharge such judgment in the next fiscal year; but in no event shall such annual levy exceed a total of ten mills for one or more judgments exclusive of mill levies for other county purposes. The board of county commissioners shall continue to levy such taxes, not to exceed a total of ten mills annually, exclusive of mill levies for other county purposes, but in no event less than ten mills if such judgment will not be discharged by a lesser levy until such judgment is discharged.

(2) Any and all taxes levied to pay the last payment upon or to pay any such judgment shall be valid, whether the sum sought to be raised thereby exceeds the sum due on such judgment, principal and interest or not; but such excess of the sum required shall not exceed a sum equal to ten percent of such required sum, and no sale of real estate made to make such taxes shall be invalid by reason of such excess, if the same is within the above specified limit. All levies to pay judgments shall be made as near as possible to raise a sum equal to that due on the judgment, for which payment the tax is levied; but, nevertheless, any excess levied, if such does not exceed the said ten percent of the sum due and desired to be paid, shall not invalidate any tax levy upon or tax sale of real or personal estate made to raise, make, or collect the said sum due and excess.

Source: G.L. § 435. G.S. § 527. L. 1887: p. 240, § 1. R.S. 08: § 1183. C.L. § 8664. CSA: C. 45, § 7. CRS 53: § 36-2-4. C.R.S. 1963: § 36-2-4. L. 71: p. 1212, § 5.

ANNOTATION

I. General Consideration.

II. Mandamus to Compel Payment.

I. GENERAL CONSIDERATION.

Board obligated to act. Before a county treasurer is authorized to pay a judgment against the county in either of the ways mentioned in this section the board of county commissioners shall take some action in the matter. *Stoddard v. Benton*, 6 Colo. 508 (1883).

It is for the board to determine how far the county will defend against the claim which has been prosecuted to judgment against it. *Stoddard v. Benton*, 6 Colo. 508 (1883).

And the county commissioners can not be deprived of their option to pay the judgment against the county by a warrant drawn on the county fund or of their discretion as to levying a special tax, by a mandamus compelling them to levy a tax to pay the judgment. *Bd. of Comm'rs v. King*, 67 F. 202 (8th Cir. 1895); *Stryker v. Bd.*

of Comm'rs, 77 F. 567 (8th Cir. 1896); King v. Bd. of Comm'rs, 77 F. 583 (8th Cir. 1896).

The effect of this section is not to leave it discretionary with the board of commissioners to say whether or not a judgment against a county should ever be paid, but should be construed as leaving it to the discretion of the board to pay a judgment either by levying the tax or by warrant drawn on the ordinary county fund, when the judgment can be paid by warrant, but if it cannot be paid by warrant on the ordinary fund the special tax must be levied. *People ex rel. Reynolds v. Bd. of Comm'rs*, 11 Colo. App. 124, 52 P. 748 (1898).

Thus discretion as to the levy of the tax is vested in the board of county commissioners, because they are charged with the administration of the affairs of the county, and familiar with its financial resources and its needs and the condition of its taxpayers. *Bd. of Comm'rs v. King*, 67 F. 202 (8th Cir. 1895).

The authority to issue a warrant at once instead of levying a tax contemplated the presence in the treasury of money applicable to the payment of the judgment, and unless there was money in the treasury to meet the warrant its issuance was unauthorized and the board of commissioners had no alternative except to levy the tax, and the warrants thus issued and received by plaintiff constituted no payment of the judgment. *People ex rel. Reynolds v. Bd. of Comm'rs*, 11 Colo. App. 124, 52 P. 748 (1898).

In all statutes of this description, the word "may" is interpreted to mean "must", and the permission is regarded equivalent to a mandate wherever the public interests or the rights of third persons are concerned, the discretion only exists where there are no third parties, either the public or persons, to be injuriously affected by its exercise. *People ex rel. Rollins v. Bd. of Comm'rs*, 7 Colo. App. 229, 42 P. 1032 (1895).

II. MANDAMUS TO COMPEL PAYMENT.

Unless forbidden by statute, mandamus lies to compel the levy of taxes to pay judgments against a county. *Bd. of Comm'rs v. Schradsky*, 43 Colo. 84, 95 P. 312 (1908).

And when there is no fund in the treasury applicable to the payment of a judgment against a county, the judgment creditor is, upon the refusal of the board of county commissioners to levy a tax for the payment of the judgment, entitled to peremptory mandamus to compel them to levy one for that purpose. *People ex rel. Rollins v. Bd. of Comm'rs*, 7 Colo. App. 229, 42 P. 1032 (1895).

So also in case the commissioners delay, or refuse to make provision for payment of a judgment against a county, a writ of mandamus

will lie to compel them to act. *Stoddard v. Benton*, 6 Colo. 508 (1883).

It is also the proper proceeding to compel an officer to pay warrants drawn on a special fund who refuses to pay, but to make the remedy available, proof must be made that the officer has funds in his hands available for the purpose. *Hockaday v. Bd. of County Comm'rs*, 1 Colo. App. 362, 29 P. 287 (1892).

And a petition for a mandamus is to be construed in the same way and subject to the general rules applied in the construction of an ordinary complaint, but the certainty to a certain intent in every particular is no longer a prerequisite. Substantial accuracy is all that is necessary. *People ex rel. Rollins v. Bd. of Comm'rs*, 7 Colo. App. 229, 42 P. 1032 (1895).

Also since the merger of a debt into a judgment changes its form, but not its identity when the judgment is presented to a court for affirmative action, and is sought to be collected by a process not contained within itself, the court will look behind the judgment in order to ascertain from the nature of the original claim what method may be adopted for its enforcement. *Bd. of Comm'rs v. People ex rel. New Hampshire Sav. Bank*, 16 Colo. App. 215, 64 P. 675 (1901).

Conclusiveness of judgment. In an action for mandamus to compel the board of county commissioners to levy a tax to pay a judgment against a county the judgment is conclusive of all questions which were or might have been litigated in the suit. *People ex rel. Reynolds v. Bd. of Comm'rs*, 11 Colo. App. 124, 52 P. 748 (1898).

No collateral attack. In mandamus proceeding against a board of county commissioners, the judgment must be accepted as a verity, it cannot be collaterally attacked, and it must be assumed to represent an honest debt, regularly contracted, fairly and honestly put into collectible form. *People ex rel. Rollins v. Bd. of Comm'rs*, 7 Colo. App. 229, 42 P. 1032 (1895).

Insufficient cause of action stated. In an action of mandamus to compel a board of county commissioners to levy a tax to pay a judgment against the county where the petition shows that the judgment was rendered upon county warrants, the relator must make the same showing that he would have to make if the action had been brought upon the warrants, and unless the petition shows that the board has failed to levy the tax it was required by law to levy to pay such warrants, it fails to state a cause of action, and it is not sufficient to allege that the board has failed and refused to levy a tax to pay the judgment. *Bd. of Comm'rs v. People ex rel. New Hampshire Sav. Bank*, 16 Colo. App. 215, 64 P. 675 (1901).

When no issue has been made as to the capacity of the county to contract the indebtedness, it seems to be doubtful whether a judg-

ment against a county on a void obligation can be enforced in any form. *Wilder v. Bd. of County Comm'rs*, 41 F. 512 (D. Colo. 1890).

30-25-105. County general fund. A fund to be known as the county general fund is hereby created and established in each of the counties of the state of Colorado. The county general fund shall consist of all county revenue except that specifically allocated by law for other purposes.

Source: L. 51: p. 294, § 1. CSA: C. 45, § 7(1). CRS 53: § 36-2-5. C.R.S. 1963: § 36-2-5.

30-25-106. Fund - purposes. (1) The board of county commissioners is authorized to appropriate money from the county general fund for all ordinary county expenses, including the administrative expenditures of elective and appointive offices, library, agricultural extension service, fire protection, fairs, advertising, airports, health, rodent control, water conservation, weed control, pest control, predatory animal control, and all other general county purposes authorized by law, except expenditures for public welfare, roads and bridges, debt service, public hospitals, public works, contingencies, and purposes voted by the electors.

(2) The board of county commissioners is authorized to appropriate money from the general fund derived from federal payment in lieu of taxes to public school districts containing lands from which the payment is derived.

Source: L. 51: p. 294, § 2. CSA: C. 45, § 7(2). CRS 53: § 36-2-6. C.R.S. 1963: § 36-2-6. L. 79: Entire section amended, p. 1152, § 1, effective June 7.

ANNOTATION

Funding for roads and bridges shall be from a special levy for roads and bridges, together with moneys from state or federal governments for expenditures on roads and bridges, and other moneys which may become available for roads and bridges, except money from the general fund. *City of Greeley v. Bd. of County Comm'rs*, 644 P.2d 76 (Colo. App. 1981).

The conflict between this section and § 29-1-111.5, if any, must be resolved in favor of the specific prohibition on roads and bridges found in this section. *City of Greeley v. Bd. of County Comm'rs*, 644 P.2d 76 (Colo. App. 1981).

Subsection (1) specifically prohibits the transfer of county general fund money for expenditures for roads and bridges. *City of Colo. Springs v. Bd. of County Comm'rs*, 648 P.2d 671 (Colo. App. 1982).

This section makes any money contained in the county general fund unavailable for road and bridge use. *City of Aurora v. Bd. of County Comm'rs*, 902 P.2d 375 (Colo. App. 1994), aff'd, 919 P.2d 198 (Colo. 1996).

30-25-107. Contingent fund. The board of county commissioners is authorized to establish a contingent fund to provide for expenditures caused by an act of God, or the public enemy, or some contingency that could not have been reasonably foreseen at the time of adoption of the budget, to redeem outstanding warrants lawfully issued, and shall fix rates of levy annually for such fund.

Source: L. 51: p. 295, § 4. CSA: C. 45, § 7(3). CRS 53: § 36-2-7. C.R.S. 1963: § 36-2-7.

30-25-108. Board to examine county orders. The board of county commissioners, at its January and July sessions of each year, or oftener if necessary, shall carefully examine the county orders returned by the county treasurer by comparing each order with the record of orders in the clerk's office. It shall cause to be entered on said record, opposite to the entry of each order issued, the date when the same was canceled.

Source: G.L. § 467. G.S. § 550. R.S. 08: § 1237. C.L. § 8714. CSA: C. 45, § 61. CRS 53: § 36-2-8. C.R.S. 1963: § 36-2-8.

30-25-109. Allowance of accounts. No account shall be allowed by the board of county commissioners unless the same is made out in separate items, and the nature of each item stated, and where no specified fees are allowed by law the time actually and necessarily devoted to the performance of any service charged in such account shall be specified. Nothing in this section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered nor from requiring any other or further evidence of the truth and propriety thereof as it may think proper.

Source: G.L. § 462. G.S. § 545. R.S. 08: § 1219. C.L. § 8696. CSA: C. 45, § 43. CRS 53: § 36-2-9. C.R.S. 1963: § 36-2-9. L. 71: p. 333, § 1.

ANNOTATION

This section and section 30-25-110 have no application to actions to recover money paid for taxes illegally assessed. Bd. of Comm'rs v. Kipp Sheep Co., 87 Colo. 288, 288 P.413 (1930); Boyer Bros. v. Bd. of Comm'rs, 87 Colo. 275, 288 P. 408 (1930).

Bill in compliance. A bill which stated an indebtedness claimed as "To transcribing that part of the records of the former county of Arapahoe affecting the present county of Adams as follows, General Real Estate Records,

311,419 folios at 10 cents \$31,141.90" was not held in compliance with this section. Uzzell v. Lunney, 46 Colo. 403, 104 P. 945 (1909).

Oath to required affidavit may be administered by a deputy county clerk. Roberts v. People, 9 Colo. 458, 13 P. 630 (1886).

This section did not allow compensation to a coroner who held no inquest. McGovern v. Bd. of Comm'rs, 54 Colo. 411, 131 P. 273 (1913).

30-25-110. Claims presented to board - when - how paid. (1) Any claim or demand held by any person against a county shall be presented for audit and allowance to the board of county commissioners of the proper county, in due form of law, before an action in any court shall be maintainable thereon, and all claims, when allowed, shall be paid by a county warrant or order, drawn by said board on the county treasury, upon the proper fund in the treasury, for the amount of such claim. It is the duty of the board of county commissioners to ensure that all warrants and orders issued on or after April 2, 1998, are drawn upon the proper fund in the treasury and that there are sufficient moneys in said fund. Such warrant or order shall be signed by the chairperson of the board, permanent or temporary, and attested by the county clerk and recorder, and said warrant or order shall specify the amount and value of the claim or service for which it is issued and be numbered and dated in the order in which it is issued.

(2) The general county fund shall be known and designated on the books of the county treasury as the "county general fund", and the general road fund shall be known and carried on the books of said county treasury as the "county road and bridge fund". Such warrants and orders, payable on demand, shall be drawn and issued upon the county treasurer, or against any funds in his hands, only when at the time of drawing and issuing the same there shall be sufficient moneys in the appropriate fund in the treasury to pay such warrants and orders. Whenever there are no moneys in the county treasury of a county to the credit of the proper fund to meet and defray the necessary expenses of the county, it is lawful for the board of county commissioners of such county to provide that county warrants and orders of such county may be drawn and issued against and in anticipation of the collection of taxes already levied for the payment of such expenses to the extent of eighty percent of the total amount of the taxes levied. Warrants and orders so drawn and issued under the provisions of this section shall show upon their faces that they are payable solely from the fund upon which the same are drawn and the taxes levied to form the same when collected and not otherwise.

(3) County warrants and orders may be in such form as the board of county commissioners may provide and may be made payable to the order of the payee or to the bearer.

The board of county commissioners may direct the treasurer to pay by electronic transfer any written authorization issued by the board for electronic payment of claims against the county. For purposes of this section, "order" means all orders and authorizations issued by the board of county commissioners for the payment of claims against the county. "Order" includes any check issued by the board of county commissioners and any written authorization issued by the board of county commissioners directing the treasurer to make payment of claims against the county by electronic transfer.

(4) The person to whom such last-named warrants and orders are allowed and delivered shall be held to have accepted the same in full payment and satisfaction of the claim for which the same were issued; and the obligations of said warrants are limited as stated; and said warrants shall be paid only from the fund drawn upon and the taxes levied, appropriated, collected, or paid into the county treasury to create, constitute, and form said fund. The taxes provided by law therefor shall be credited to said fund until all warrants drawn shall be fully paid, satisfied, and discharged, both principal and interest. Said limited and last-named warrants and orders shall not operate as a debt of said county and shall not be held to add to or increase the debt or indebtedness of said county.

Source: G.L. § 463. G.S. § 546. L. 1887: p. 241, § 2. R.S. 08: § 1220. C.L. § 8697. CSA: C. 45, § 44. CRS 53: § 36-2-10. C.R.S. 1963: § 36-2-10. L. 71: p. 1213, § 5. L. 98: (1) and (3) amended, p. 151, § 5, effective April 2.

Cross references: For creation of the "county road and bridge fund", see § 43-2-202.

ANNOTATION

This section is constitutional. People ex rel. v. Austin, 11 Colo. 134, 17 P. 485 (1887).

Purpose of section is to give the county an opportunity to pay a claim before being required to defend against it in court. Tisdell v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

The procedures set forth in this section are mandatory. When one county seeks financial relief from another county for housing the second county's prisoner during criminal proceedings, legal action for civil relief may not be initiated until the procedures set forth in this section have been followed. Intervention in a criminal case to seek civil relief is not permitted absent truly exceptional circumstances. People v. Hood, 867 P.2d 203 (Colo. App. 1993).

Claim to audit prerequisite to suit to enforce. If the claim here sued upon is a legal liability of the county, plaintiff is not entitled to maintain an action in court to enforce it, unless he previously presented the demand to its board of commissioners for audit and allowance and the same had been disallowed. Bd. of Comm'rs v. Locke, 2 Colo. App. 508, 31 P. 351 (1892); Bd. of Comm'rs v. Bloom, 14 Colo. App. 187, 59 P. 417 (1899); Gregg v. Bd. of Comm'rs, 32 Colo. 357, 76 P. 376 (1904); City & County of Denver v. Bottom, 44 Colo. 308, 98 P. 13 (1908); Mitchell v. Bd. of Comm'rs, 112 Colo. 582, 152 P.2d 601 (1944); Calahan v. County of Jefferson, 163 Colo. 212, 429 P.2d 301 (1967).

This presentment statute does not apply to a court's order designating the source of payment for services to be rendered by a facility pursuant to a court's custodial orders, but the facility

must still comply with the presentment statute prior to seeking enforcement of liability for an actual claim. Heim v. District Court, 195 Colo. 107, 575 P.2d 850 (1978).

And in an action begun before a court of record this fact must be alleged in the complaint, and in an action begun before a justice of the peace and appealed from the county court to the supreme court upon an agreed statement of facts, the statement had to show that the claim was presented to the board before action was begun in order to sustain a judgment against the county. Beenev v. Irwin, 6 Colo. App. 66, 39 P. 900 (1895); Parks v. Hays, 11 Colo. App. 415, 53 P. 893 (1898); Bd. of Comm'rs v. Phye, 27 Colo. 107, 59 P. 55 (1899); City & County of Denver v. Bottom, 44 Colo. 308, 98 P. 13 (1908).

The statute of limitations is tolled between the time a claim is presented and the time it is acted upon by the county where there is no suggestion that contractor failed to prosecute its claims in good faith and with diligence. CAMAS Colo., Inc. v. Bd. of County Comm'rs, 36 P.3d 135 (Colo. App. 2001).

Objection in supreme court. An objection that a claim against a county was not presented to the board of county commissioners for audit and allowance before suit was brought thereon may be raised for the first time in the supreme court. Bd. of Comm'rs v. Phye, 27 Colo. 107, 59 P. 55 (1899).

It does not lie with plaintiff, after he sues the county, to say that his claim is not a charge upon the general county fund, and

therefore not one that the county board can provide for because if he thought the claim was a specific charge upon a special fund created by law and placed in the hands of the county treasurer for liquidating the same, he should not have sued the county, but proceeded directly, in an appropriate action, against the county treasurer. *Gregg v. Bd. of Comm'rs*, 32 Colo. 357, 76 P. 376 (1904).

An injury to land caused by the county unlawfully entering thereon and constructing a road, is a "claim or demand" within the meaning of this section, and must be presented to the board for audit and allowance before an action can be maintained thereon. *Henry v. Bd. of Comm'rs*, 41 Colo. 267, 92 P. 697 (1907).

This section does not apply to tort actions brought against a county government. *Forrest v.*

County Comm'rs, 629 P.2d 1105 (Colo. App. 1981).

No enforceable contract. In an action by a nurse against the board of county commissioners for compensation for his services, it was held that there was no implied contract by the board to pay plaintiff for his services and the county is not liable. *Bd. of Comm'rs v. Phye*, 27 Colo. 107, 59 P. 55 (1899).

This section has no application to actions to recover money paid for taxes illegally assessed. *Boyer Bros. v. Bd. of Comm'rs*, 87 Colo. 275, 288 P. 408 (1930); *Bd. of Comm'rs v. Kipp Sheep Co.*, 87 Colo. 288, 288 P. 413 (1930).

30-25-111. Proceedings published - failure - penalty. (1) It is the duty of the board of county commissioners of each county to publish in at least one legal newspaper in the county a report of each claim, except salary warrants, and expenditure by it allowed and paid and taxes rebated, disclosing the name of and the amount paid to each individual or firm, a description of the services or material furnished to the county, and, as to other items, the nature of the claim and disclosing the fund charged with each expenditure. Such report shall contain a statement of any contracts for the expenditure of money not paid immediately made by the board of county commissioners, disclosing the nature and purpose of the contract, the parties thereto, and the amounts involved therein. Such reports shall be published at least monthly within thirty days following the end of the period for which made. If no legal newspaper is located in the county, either such reports shall be published in a newspaper of an adjacent county which has general circulation in the county for which the report is made, or the board shall cause such statements to be posted in three conspicuous places in said county, one of which shall be the courthouse door. The county accounting office, if there is one, and otherwise the county clerk and recorder, if he is acting as the accounting agency for the county, shall provide to the board of county commissioners all information necessary for the publication. The published report shall state that it is published under the direction of the board of county commissioners. Nothing in this section shall be construed as requiring the board of county commissioners to publish or make public the names of or individual public welfare payments to, or in behalf of, indigent persons receiving assistance from public welfare programs financed, in whole or in part, by federal or state funds, or any combination thereof, when such publication is specifically forbidden by law.

(1.5) Salary information for all county employees and officials shall be published twice annually in the manner provided in subsection (1) of this section. The first publication shall be in August and shall include each employee's title and gross monthly salary for the prior June. The second publication shall be in February and shall list each employee by title, along with the total amount of gross salary paid to such employee during the prior calendar year. Each publication of salary information shall be accompanied by the countywide average percentage of salary that is paid in addition to regular wages as fringe benefits, including, but not limited to, insurance, medical care, retirement plans, housing, transportation, or other subsidized employee expenses.

(2) It is the duty of the board of county commissioners of each county to publish in some legal newspaper published in the county the semiannual financial statement furnished to the board of county commissioners by the county treasurer which shall include in separate columns the balance at the beginning of the period in each fund kept by the treasurer, the collections to each fund from current taxes, delinquent taxes, miscellaneous collection and transfers, withdrawals from each fund showing cash disbursements, transfers and treasurer's fees, and the balance at the end of the period in each fund. The statement shall be published within sixty days following June thirtieth and December thirty-first each

year. If no legal newspaper is located in the county, either such reports shall be published in a newspaper of an adjacent county which has general circulation in the county for which the report is made or the board of county commissioners shall cause such statements to be posted in three conspicuous places in said county, one of which shall be the courthouse door. The county clerk and recorder shall furnish a copy of such proceedings for such publication.

(3) Any willful violation of any provision of this section by any county commissioner or by any person acting as clerk or otherwise for the board of county commissioners in connection with such published reports and the statements contained therein is a misdemeanor, and any person convicted of any violation shall be punished by a fine not exceeding one hundred dollars.

(4) Failure to publish salary information as provided in subsection (1.5) of this section shall be punishable by a civil penalty of not less than five hundred nor more than one thousand five hundred dollars.

Source: L. 01: p. 147, §§ 1-4. R.S. 08: §§ 1221-1224. C.L. §§ 8698-8701. CSA: C. 45, §§ 45-48. CRS 53: § 36-2-11. L. 55: p. 251, § 1. C.R.S. 1963: § 36-2-11. L. 71: p. 334, § 1. L. 89: (1) amended and (1.5) and (4) added, p. 1285, § 1, effective April 12. L. 2007: (1.5) amended, p. 256, § 1, effective March 26.

Cross references: For the requisites of legal newspapers, see § 24-70-103.

30-25-112. Appeal on disallowance of claim. When any claim of any person against a county is disallowed, in whole or in part, by the board of county commissioners, such person may appeal from the decision of such board to the district court for the same county by causing a written notice of such appeal to be served on the clerk of such board within thirty days after the making of such decision and executing a bond to such county, with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal and the payment of all costs that are adjudged against the appellant.

Source: G.L. § 464. G.S. § 547. R.S. 08: § 1225. C.L. § 8702. CSA: C. 45, § 49. CRS 53: § 36-2-12. C.R.S. 1963: § 36-2-12.

ANNOTATION

Appeal only from final board action. This section gives a right of appeal to the district court from the action of the board of commissioners disallowing a claim but only when its action is final, and without the right of further consideration reserved, and the defeat of a motion to allow a bill, followed by its reference to the county attorney for investigation and report, is not such final action as this section contemplates in the provision granting the right of appeal. *Bd. of County Comm'rs v. McCormick*, 1 Colo. App. 319, 29 P. 25 (1892); *Bd. of County Comm'rs v. Madan*, 90 Colo. 10, 5 P.2d 866 (1931).

Board retains right of subsequent action on claim even absent reconsideration vote. Where a motion for the allowance of a claim against the county is rejected, it is not necessary that the board of commissioners formerly reconsider the vote in order to retain the right of subsequent action on the claim, being a governing body as well as a deliberative one, so long as its acts are within the scope of its powers, and

the intentions of its members can be fairly and plainly ascertained from their proceedings, they will be enforced. *Bd. of County Comm'rs v. McCormick*, 1 Colo. App. 319, 29 P. 25 (1892).

There is no provision for an appeal from the district court, and the court determined that neither appeal nor writ of error would lie from the judgment of the district court. *Pilgrim Consol. Mining Co. v. Bd. of Comm'rs*, 20 Colo. App. 311, 78 617 (1904); *Bd. of Comm'rs v. Pinnacle Gold Mining Co.*, 36 Colo. 492, 85 P. 1005 (1906).

This section and section 30-25-113 are confined to appeals from orders disallowing claims against a county. *Golden Canal Co. v. Bright*, 8 Colo. 144, 6 P. 142 (1884).

Hence under this section there was no appeal from the decision of the county commissioners fixing the rate to be charged for water by ditch owners. *Golden Canal Co. v. Bright*, 8 Colo. 144, 6 P. 142 (1884).

One whose claim against a county has been presented to and disallowed by the board of

county commissioners has the right to elect to appeal from the decision of the board, or bring an independent action. *Bd. of Comm'rs v. Brown*, 2 Colo. App. 473, 31 P. 525 (1892); *Bd. of Comm'rs v. Locke*, 2 Colo. App. 508, 31 P. 351 (1892).

Waiver of objection to overruling of motion to dismiss appeal. Where an appeal was taken to the district court from the board of county commissioners in a matter that might have been brought directly in the district court, and a motion was made to dismiss the appeal on

the ground that the appeal bond was not filed within the time prescribed and that no notice had been served upon the clerk, the objection to the overruling of the motion was waived by the county attorney afterwards appearing and participating in the trial. *Smith v. District Court*, 4 Colo. 235 (1878); *Todd v. De La Mott*, 9 Colo. 222, 11 P. 90 (1886); *Mackey v. Briggs*, 16 Colo. 143, 26 P. 131 (1891); *Coe v. Britton*, 5 Colo. App. 85, 37 P. 37 (1894); *Bd. of Comm'rs v. Stone*, 11 Colo. App. 476, 53 P. 616 (1898).

30-25-113. Proceedings upon appeal - pleadings. The clerk of the board, upon such appeal being taken, shall immediately give notice thereof to the chairman of the board of county commissioners, and shall make out a brief return of the proceedings in the case before the board with its decision thereon, and shall file the same, together with the bond and all papers in the case in his possession, with the clerk of the district court. The appeal shall be docketed and tried in a summary manner, and costs shall be awarded as in appeals from county courts to district courts. If the amount involved exceeds the sum of three hundred dollars, the applicant, within ten days after taking such appeal, shall file a complaint as in other cases in the district court, a copy of which shall also be served upon the clerk of the board, and answer shall be made thereto as in other cases. If the county clerk and recorder is an interested party in such claim, the giving of notice shall be made on the chairman of the board of county commissioners, and the bond provided for in section 30-25-112 shall be approved by the chairman of the board of county commissioners.

Source: G.L. § 465. G.S. § 548. L. 1891: p. 110, § 1. R.S. 08: § 1226. C.L. § 8703. CSA: C. 45, § 50. CRS 53: § 36-2-13. C.R.S. 1963: § 36-2-13. L. 64: p. 223, § 53.

ANNOTATION

Under this section, an appeal can be taken only from a definite and certain order disallowing a claim and an order upon a claim for \$300 allowing \$50 "in full payment of the claim" was not of this character. *Washington County v. Murray*, 45 Colo. 115, 100 P. 588 (1909).

An appeal to the district court from the order of the county commissioners disallowing a claim against the county is an ordinary action. *Washington County v. Murray*, 45 Colo. 115, 100 P. 588 (1909).

It also lies from the judgment of the district court to the supreme court under this section, in an appeal from the order of the county commissioners, disallowing a claim. *Washington County v. Murray*, 45 Colo. 115, 100 P. 588 (1909).

Appeal perfected. The appeal to the district court should be considered as properly perfected whether the notices be served on the clerk or the assessor, whether the bond be approved or the

record be sent up by the one or the other. *Phillips v. Bd. of Comm'rs*, 78 Colo. 387, 242 P. 70 (1925).

On appeal from the decision of an assessor to the district court, if the amount involved is over \$300, a complaint must be filed in court. *E. J. Longyear Co. v. Lake County*, 84 Colo. 441, 271 P. 183 (1928).

Jurisdiction. The court did not think that the filing in the district court of a complaint by the aggrieved taxpayer is a jurisdictional requirement in the sense contended for by the county, although it is necessary before the final hearing. *E. J. Longyear Co. v. Lake County*, 84 Colo. 441, 271 P. 183 (1928).

Where defendant contended that the amount involved in an appeal from the decision of a tax assessor exceeds \$300 and that as no complaint was filed in the district court within 10 days after taking the appeal, the district court was without jurisdiction, the contention was without merit. *Grand Junction Sugar Co. v. Fellows*, 74 Colo. 242, 220 P. 992 (1923).

30-25-114. Special taxes not levied - when. In all cases where a special district tax is levied against all property in the county, the board of county commissioners is authorized to make an appropriation from the general fund as provided in section 30-25-106, and no special tax shall be levied for such purpose.

Source: L. 53: p. 221, § 3. CRS 53: § 36-2-15. C.R.S. 1963: § 36-2-14.

PART 2

LIMITATION OF LEVY

30-25-201. Tax levy for county fund purposes. (Repealed)

Source: L. 13: p. 557, § 1. C.L. § 7204. CSA: C. 142, § 29. L. 51: p. 295, § 3. CRS 53: § 36-3-1. L. 61: p. 302, § 1. C.R.S. 1963: § 36-3-1. L. 69: p. 229, § 1. L. 70: p. 117, § 4. L. 72: p. 589, § 52. L. 81: Entire section repealed, p. 1400, § 15, effective June 19.

30-25-202. Capital expenditures fund - tax levy - purposes. (1) For the purpose of providing and accumulating moneys for capital expenditures, the board of county commissioners of each county is authorized to create, by resolution, a capital expenditures fund which shall be used solely for capital expenditures. Moneys from any source may be credited to such fund unless otherwise provided by law; except that no moneys dedicated to the payment of general obligation bonds shall be credited to such fund and except that no moneys restricted to county road and bridge funds pursuant to sections 43-2-202 and 43-2-203, C.R.S., and no moneys required to be expended from such funds pursuant to such sections shall be credited to or expended from a capital expenditures fund. Moneys credited to a capital expenditures fund shall not revert to or be transferred to any other fund.

(2) For the purposes of this section, "capital expenditure" means an expenditure made by a county for long-term additions or betterments, which expenditure, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. The term includes, but is not limited to, expenditures for the acquisition, development, construction, and renovation of capital facilities, capital projects, and capital equipment.

(3) In any year, in the course of the preparation and adoption of the county budget pursuant to part 1 of article 1 of title 29, C.R.S., the board of county commissioners may levy a property tax on all taxable real and personal property in the county for the purpose of raising revenue for capital expenditures. Moneys raised from such tax shall be credited to the capital expenditures fund. Nothing in this section shall be construed as preventing the use of any other moneys which are not contained in the capital expenditures fund from being used for capital expenditures. Nothing in this section shall be construed to violate or to exceed the revenue limitation of part 3 of article 1 of title 29, C.R.S.

(4) Any county which has any moneys in a public works fund on April 3, 1984, shall establish a capital expenditures fund, shall transfer all moneys in its public works fund to its capital expenditures fund, and shall make appropriations out of such capital expenditures fund to fund projects which otherwise would have been funded from such public works fund.

Source: L. 51: p. 295, § 5. CSA: C. 45, § 7(4). CRS 53: § 36-3-3. C.R.S. 1963: § 36-3-2. L. 69: p. 229, § 1. L. 70: p. 135, § 1. L. 73: p. 466, § 2. L. 84: Entire section R&RE, p. 821, § 1, effective April 5.

Cross references: For the issuance of bonds to secure the cost for public buildings, roads, bridges, etc., see part 3 of article 26 of this title.

ANNOTATION

Funds can be spent on vacant land as a necessary and implied incident of that general power as conferred in this section. Peroulis v.

Bd. of County Comm'rs, 665 P.2d 134 (Colo. App. 1982).

30-25-203. Validation of bonds. Any and all negotiable coupon bonds authorized by any county, city, town, or school district in the state of Colorado prior to March 29, 1917, which might be invalid by reason of the debt-limiting or tax-limiting provisions of section 29-1-301, C.R.S., are validated as fully and completely as if said section and the amendments thereof had never been made a part thereof.

Source: L. 17: p. 431, § 1. C.L. § 7215. CSA: C. 142, § 40. CRS 53: § 36-3-4. C.R.S. 1963: § 36-3-3.

30-25-204. Levy in excess unlawful. Any levy which may be certified to the county assessor in excess of the limitations placed by this part 2 shall be unlawful, and, in any such case, it shall be unlawful for the county assessor of any county within this state to enter upon the tax roll of the county any such excessive levy, and, in case of any such excess in any levy it is the duty of the county assessor to reduce such levy and extend upon the tax roll only such part thereof as will comply with the provisions of this part 2.

Source: L. 13: p. 561, § 13. C.L. § 7217. CSA: C. 142, § 42. CRS 53: § 36-3-6. C.R.S. 1963: § 36-3-4.

30-25-205. Levy not limited - when. This part 2 shall in no way limit the amount of any levy necessary to be made for the purpose of paying any bonded indebtedness and interest thereon lawfully incurred, or any judgment against any county, city, town, or school district, or the interest on such judgment, or for special assessments for local improvements, in any county, town, city, or city and county.

Source: L. 13: p. 561, § 14. L. 17: p. 430, § 2. C.L. § 7218. CSA: C. 142, § 43. CRS 53: § 36-3-7. C.R.S. 1963: § 36-3-5. L. 73: p. 491, § 2.

30-25-206. Violation - penalty. Any officer of any taxing district or any county assessor who violates any provision of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and shall also be liable to removal from office as provided by law.

Source: L. 13: p. 561, § 15. C.L. § 7219. CSA: C. 142, § 44. CRS 53: § 36-3-8. C.R.S. 1963: § 36-3-6.

PART 3

IMPACT ASSISTANCE GRANTS

30-25-301. Legislative declaration. The general assembly hereby recognizes that withdrawal of lands from county tax rolls for the purpose of wildlife conservation and public recreation may create financial impacts on counties in which such lands are located. The general assembly further recognizes that such withdrawal may necessitate financial support and assistance by the state. It is the intent of the general assembly in enacting this part 3 to provide the means by which the state may provide such necessary assistance through impact assistance grants.

Source: L. 79: Entire part added, p. 1153, § 1, effective June 22.

30-25-302. Eligibility - determination of impact - procedures - legislative declaration. (1) (a) Except as provided in section 33-60-104.5, C.R.S., for real property interests acquired with funds made available from the great outdoors Colorado trust fund, in any county in which the division of parks and wildlife owns property, the board of county commissioners of the county shall certify once a year during the regular tax assessment period, to the parks and wildlife commission, the current dollar amount representing the

negative financial impact that the ownership has on the county's finances and the finances of any political subdivision that lies within the county. In calculating the dollar amount, the board of county commissioners shall take into consideration the following factors:

(I) The estimated assessment of ad valorem taxes on such land if such land was zoned for agriculture and was privately owned;

(II) The cost incurred by the county for services required or provided on such land which would not be required or provided if the land was not owned by said divisions; and

(III) The costs incurred by other political subdivisions which provide services on or to such land.

(b) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1389, § 15, effective July 1, 2011.)

(2) The board of county commissioners of any county certifying the current dollar amount pursuant to subsection (1) of this section shall include with such certification an itemized statement of its reasons for determining the amount.

(3) The parks and wildlife commission shall review the dollar amounts certified pursuant to subsection (1) of this section and shall certify to the general assembly these dollar amounts. In making its determinations, the parks and wildlife commission shall consider the factors set forth in subsection (1) of this section and may consider any additional relevant factors. All certifications to the general assembly must include an explanation of the grounds upon which the determinations of the certified amounts are based. The parks and wildlife commission shall include an estimate of the amount to be certified for impact assistance grants in their budget requests for each fiscal year.

(4) (a) The general assembly may make an appropriation in the form of an impact assistance grant to any county qualifying for such grant upon certification by the parks and wildlife commission of the amount for the grant. Appropriations concerning lands purchased with wildlife cash or other wildlife moneys must be made from the wildlife cash fund. Appropriations concerning lands purchased with general fund or parks and outdoor recreation cash or other parks and outdoor recreation moneys must be made from the general fund or the parks and outdoor recreation cash fund.

(b) As soon as possible after receiving an impact assistance grant, the board of county commissioners shall pay to each school district, special district, or other political subdivision located within the county that portion of the impact assistance grant attributable to the amount certified by the county on behalf of the school district, special district, or political subdivision. Prior to making such payment, the total amount of the impact assistance grant shall be reduced by an amount equal to the costs incurred by the treasurer in administering the grants.

(c) Nothing in this section shall be construed to alter the requirement set forth in section 10 of article XXVII of the state constitution that, for property acquired by a state agency pursuant to article XXVII of the state constitution, payments in lieu of taxes shall be made with moneys made available from the great outdoors Colorado trust fund as provided in section 33-60-104.5, C.R.S.

(5) Repealed.

(6) The general assembly hereby finds and declares that the acquisition of large amounts of property by the division of parks and wildlife, through the great outdoors Colorado program or otherwise, can have serious financial consequences for the counties and political subdivisions in which the property is located. It is therefore the intent of the general assembly that any plans for acquisition of property by the division of parks and wildlife include provisions for the payment of impact assistance grants pursuant to this section or payments in lieu of taxes pursuant to section 33-60-104.5, C.R.S., whichever is applicable.

Source: L. 79: Entire part added, p. 1153, § 1, effective June 22. L. 94: (1)(a), (3), and (4) amended and (5) and (6) added, p. 2575, § 1, effective July 1. L. 96: IP(1)(a), (4)(c), and (6) amended, p. 745, § 2, effective May 22; (5)(a) repealed, p. 1221, § 18, effective August 7. L. 2011: IP(1)(a), (1)(b), (3), (4)(a), and (6) amended, (SB 11-208), ch. 293, p.

1389, § 15, effective July 1. **L. 2012:** IP(1)(a), (3), and (4)(a) amended, (HB 12-1317), ch. 248, p. 1205, § 11, effective June 4; (5)(b) repealed, (HB 12-1240), ch. 258, p. 1310, § 9, effective June 4.

Cross references: (1) For the legislative declaration contained in the 1996 act repealing subsection (5)(a), see section 1 of chapter 237, Session Laws of Colorado 1996.

(2) For the legislative declaration in the 2011 act amending the introductory portion to subsection (1)(a) and subsections (1)(b), (3), (4)(a), and (6), see section 1 of chapter 293, Session Laws of Colorado 2011.

ARTICLE 26

Bonds

Cross references: (1) For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of art. X, Colo. Const.

(2) For definitions applicable to this article, see § 30-26-301 (2)(d).

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PART 5

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30-26-513.	Construction of this part 5.

PART 1

BONDS - FUNDING - FLOATING INDEBTEDNESS

30-26-101. Exchange of warrants for bonds - notice. (1) It is the duty of the board of county commissioners of any county having a floating indebtedness exceeding five thousand dollars, upon the petition of fifty registered qualified electors of said county, to publish for the period of thirty days, in a newspaper published within said county, a notice requesting the holders of the warrants of such county to submit, in writing, to the board of county commissioners of said county, within sixty days from the date of the first publication of such notice, a statement of the amount of warrants of such county which they will exchange for the bonds of such county, to be issued under the provisions of this part 1, and the rate at which they will exchange such warrants for such bonds, taking such bonds at par. In case no newspaper is published within such county, such notice may be published in such newspaper published in the city of Denver as the board of county commissioners may select.

(2) It is the duty of such board of county commissioners, upon the petition of fifty of the registered qualified electors of such county, to publish, for the period of at least thirty days immediately preceding a general election, in some newspaper published within such county a notice that at said general election there will be submitted the question whether the board of county commissioners shall issue bonds of such county under the provisions of this part 1 in exchange, at a certain rate, for the warrants of such county issued prior to the date of the first publication of the notice, which rate shall be determined by the board of county commissioners, and it shall be stated in said notice. The question of whether such county indebtedness shall be funded under the provisions of this part 1 and the maximum net effective interest rate such funding bonds shall bear shall be submitted at the next ensuing general election or may be submitted at a special election which said board is empowered to call for that purpose, at any time after the expiration of sixty days from the date of the first publication of the notice, on the petition of fifty registered qualified electors. Said board shall publish, for the period of at least thirty days immediately preceding such special election, in some newspaper published within such county a notice that such question will be submitted at such election. In case no newspaper is published within such county, the board of county commissioners shall cause such notice to be posted in at least two conspicuous places in each of the election precincts of such county, at least thirty days prior to the said election, general or special. Such election shall be held and the results thereof determined in the same manner as provided for authorization of other bonded indebtedness in accordance with part 3 of this article.

(3) The county clerk and recorder of such county shall make out and cause to be delivered to the judges of election in each election precinct in the county, prior to the election, a certified list of the registered qualified electors in such county; and no person shall vote upon the question of the funding of the county indebtedness unless he has the necessary qualifications as provided by law.

(4) If the issuance of said bonds is approved at such election, the board of county commissioners may issue to any person or corporation holding any county warrant issued prior to the date of the first publication of the notice coupon bonds of such county in exchange therefor at a rate not exceeding that named in the notice published by the board of county commissioners. Should any of the bonds so voted be not exchanged for county warrants, as provided in this part 1, the board of county commissioners may sell the bonds so voted at, above, or below their par values and with the proceeds of such sale redeem or buy the warrants not so exchanged, subject to the provisions of this part 1, but the proceeds of such sale of bonds shall be applied to the purchase or redemption of such warrants and for no other purpose whatever.

(5) No bond shall be issued of less denomination than fifty dollars and, if issued for a greater amount, for some multiple of that sum. Such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, the interest to be paid semiannually at the office of the county treasurer or at the city of New York, at the option of the holders thereof, upon the

production of the proper coupons for the same, such bonds to be payable at the pleasure of the county after ten years from the date of their issuance, but absolutely due and payable twenty years after the date of issue. The whole amount of bonds issued under this part 1 shall not exceed the sum of the county indebtedness at the date of the first publication of the notice submitting the question of funding the county indebtedness; and the amount shall be determined by the board of county commissioners, and a certificate made of the same, and made a part of the records of the county; and any bond issued in excess of such sum shall be void. All bonds issued under the provisions of this part 1 shall be registered in the office of the state auditor, to whom a fee of ten cents shall be paid for recording each bond; except that the state auditor by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state auditor by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 1881: p. 85, § 1. G.S. § 676. L. 1885: p. 232, § 1. R.S. 08: § 1369. C.L. § 8847. CSA: C. 45, § 199. CRS 53: § 36-4-1. C.R.S. 1963: § 36-4-1. L. 70: p. 136, § 2. L. 98: (5) amended, p. 1338, § 56, effective June 1.

Cross references: For clarification of terms and requirements for notice by publication, see part 1 of article 70 of title 24; for how county indebtedness is created, the limits on such indebtedness and refunding, see § 6 of art. XI, Colo. Const.

ANNOTATION

The issuance of funding bonds, in exchange for valid warrants, is in no sense the creation of a debt; it is but the substitution of new evidence for a preexisting debt, it changes the form, but does not increase the indebtedness. *Bd. of Comm'rs v. Standley*, 24 Colo. 1, 49 P. 23 (1897).

Each bond constitutes a separate and independent cause of action against the county, and the presumption of its validity goes with it to the end, and must prevail unless it is overcome by a fair preponderance of competent evidence that the warrants for which that particular bond was exchanged evidence unauthorized obligations. *Bd. of Comm'rs v. Keene Five-Cents Sav. Bank*, 108 F. 505 (8th Cir. 1901); *Bd. of Comm'rs v. Standley*, 24 Colo. 1, 49 P. 23 (1897); *Bd. of Comm'rs v. Sutliff*, 97 F. 270 (8th Cir. 1899).

Validity of each bond tested by validity of each debt. When, in compliance with this section, the county issued a bond in exchange for outstanding valid warrants, its validity could in no way be affected by the fact that other bonds in the same series, issued in exchange for invalid warrants, were unauthorized and void, the validity of each bond, therefore, must be tested by the character of the indebtedness for which it is exchanged, because it is an independent contract, and when issued for preexisting indebtedness, it becomes a valid enforceable obligation against the county. *Bd. of Comm'rs v. Standley*, 24 Colo. 1, 49 P. 23 (1897).

Merely because some illegal consideration for some one or more of the bonds of a series

may have been given, is not sufficient to invalidate the entire series, and though some illegal consideration may have entered into all, or some, of the other bonds of the series than those involved, still unless that taint can be traced into the bonds in question, the county may not escape liability thereon. *Bd. of Comm'rs v. Linn*, 29 Colo. 446, 68 P. 839 (1902).

But bonds issued upon a contract creating indebtedness in excess of the constitutional limitation render the whole series void. *Bd. of Comm'rs v. Standley*, 24 Colo. 1, 49 P. 23 (1897).

Presumed validity. In an action upon coupons the county funding bonds issued under this section, where the defense set up in the answer was that the bonds were invalid because the county warrants for which the bonds were exchanged were issued in excess of the limit of indebtedness allowed by the constitution, when plaintiff produced in evidence his coupons and the bonds to which they were attached, regularly and in due form executed by the authorized officers of the county and with the county seal attached, the presumption was that they were valid, and the same presumption attached to the warrants similarly executed and tested which became merged in the bonds, introduced in evidence by the defendant. *Bd. of Comm'rs v. Linn*, 29 Colo. 446, 68 P. 839 (1902).

Mandamus. An action for a money judgment will not lie upon coupons from county refunding bonds, but mandamus is the exclusive remedy,

except in certain cases, such as a diversion of the fund, and if the tax has been levied and collected and is in the hands of the treasurer sufficient to pay the coupons the remedy is mandamus against the treasurer to compel payment, also, if the board of county commissioners fails to levy a tax to pay the coupons the remedy is mandamus against the board to compel the levy. Bd. of Comm'rs v. Sims, 31 Colo. 483, 74 P. 457 (1903).

Purchasers are charged with notice of the prescribed mode of payment, and this method of payment and enforcement of the same is exclusive except, as in case of county warrants, where for some exceptional reason, such as a diversion of the fund, a different procedure may be resorted to. Bd. of Comm'rs v. Sims, 31 Colo. 483, 74 P. 457 (1903).

Burden of proof. The burden was on defendant to show by a fair preponderance of the

evidence that the alleged indebtedness which was merged in the bonds was invalid because contracted at a time when the county could not lawfully incur further indebtedness. Bd. of Comm'rs v. Linn, 29 Colo. 446, 68 P. 839 (1902).

In an action upon county bonds, the fact that the county officers failed to preserve in the public records evidence that the indebtedness on which the bonds were founded was contracted after the constitutional limit had been reached does not absolve the county from the ordinary rules relating to the sufficiency of proof or cast upon plaintiff the burden of showing that the bonds were issued for a valid indebtedness. Bd. of Comm'rs v. Linn, 29 Colo. 446, 68 P. 839 (1902).

30-26-102. Election on bond issue - duties of judges. (1) All persons voting on the question of funding indebtedness shall vote by separate ballot, which shall be deposited in a box to be used for that purpose only and on which ballot shall be printed the words "for funding county debt" or "against funding county debt"; and if, upon canvassing the vote, which shall be canvassed in the same manner as the vote for county officers, it appears that a majority of all the votes cast upon the question so submitted is for funding the county debt, the board of county commissioners shall be authorized to carry out the provisions of this part 1, and the canvassing board shall certify the vote, and it shall be made a part of the county records.

(2) The judges of election shall make and certify to the county clerk and recorder a separate list of the names of the electors voting upon the question of the funding of the county indebtedness in the order in which the ballot of the elector so voting is received, and each ballot shall be numbered in the order in which it is received and the number recorded on the said list of voters opposite the name of the voter who presents the ballot.

Source: L. 1881: p. 88, § 5. G.S. § 680. R.S. 08: § 1390. C.L. § 8851. CSA: C. 45, § 203. CRS 53: § 36-4-5. C.R.S. 1963: § 36-4-5.

Cross references: For manner of canvassing votes for county officers, see part 1 of article 10 of title 1.

ANNOTATION

Mandamus. Where a county, by an election conducted in substantial conformity to this section, voted to issue bonds as a means of funding its indebtedness, it was held, that the plaintiff, a holder of county warrants constituting a part of such floating debt, was entitled, upon tendering

his warrants, and refusal on the part of the county commissioners to issue to him bonds to the amount of such warrants, to a mandamus to compel them to do so. Bd. of County Comm'rs v. People ex rel. Hurlbut, 10 Colo. 14, 14 P. 47 (1887).

30-26-103. Officers to proceed as authorized after election. As soon as possible after such election if the bonds shall be voted, the officers mentioned and authorized shall proceed to execute the provisions of this part 1.

Source: L. 1881: p. 89, § 6. G.S. § 681. R.S. 08: § 1391. C.L. § 8852. CSA: C. 45, § 204. CRS 53: § 36-4-6. C.R.S. 1963: § 36-4-6.

30-26-104. Bonds - how executed. All bonds which may be issued under the provisions of this part 1 shall be signed by the chairman of the board of county commissioners, countersigned by the county treasurer of the county, and attested by the clerk and recorder of said county, and shall bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose by the county treasurer in the order in which they are issued; each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance.

Source: L. 1881: p. 87, § 2. G.S. § 677. R.S. 08: § 1387. C.L. § 8848. CSA: C. 45, § 200. CRS 53: § 36-4-2. C.R.S. 1963: § 36-4-2.

30-26-105. Form of bonds - redemption fund. The board of county commissioners is authorized to prescribe the form of such bonds, and the coupons thereto, and to provide for the half-yearly interest accruing on such bonds actually issued and delivered; they shall levy annually a sufficient tax to fully discharge such interest; and, for the ultimate redemption of such bonds, they shall levy annually, after nine years from the date of such issuance, such tax upon all the taxable property in their county as shall create a yearly fund equal to ten percent of the whole amount of such bonds issued, which fund shall be called the redemption fund. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the county treasurer as a special fund to be used in payment of interest on and for the redemption of such bonds only; and such taxes shall be levied and collected as other taxes.

Source: L. 1881: p. 87, § 3. G.S. § 678. R.S. 08: § 1388. C.L. § 8849. CSA: C. 45, § 201. CRS 53: § 36-4-3. C.R.S. 1963: § 36-4-3.

30-26-106. Redemption - order of payment - notice. It is the duty of the county treasurer, when there are sufficient funds in his hands to the credit of the redemption fund to pay in full the principal and interest of any such bonds, immediately to call in and pay as many of such bonds and accrued interest thereon as the funds on hand will liquidate. Such bonds shall be paid in the order of their number; and, when any bonds or coupons issued under this part 1 are taken up, it is the duty of such treasurer to certify his action to the board of county commissioners, who shall cancel the same, so that they can be plainly identified, and cause a record to be made of the same. When it is desired to redeem any of such bonds, the county treasurer shall cause to be published for thirty days, in some newspaper at or nearest the county seat of the county and in a newspaper published in the city of Denver, a notice that certain county bonds, by numbers and amounts, will be paid upon presentation, and at the expiration of thirty days such bonds shall cease to bear interest.

Source: L. 1881: p. 88, § 4. G.S. § 679. R.S. 08: § 1389. C.L. § 8850. CSA: C. 45, § 202. CRS 53: § 36-4-4. C.R.S. 1963: § 36-4-4.

Cross references: For clarification of terms and requirements for notice by publication, see part 1 of article 70 of title 24.

PART 2

BONDS - FUNDING AND REFUNDING BY NEW COUNTY

Cross references: For the "Public Securities Refunding Act", see article 56 of title 11.

30-26-201. Fund or refund liabilities. Any county in this state, formed and established from the territory of another county, or other counties, may fund, or refund, any of the liabilities imposed on such new county by section 4 of article XIV of the state constitution and the law forming and establishing such county, in the same manner, and with the like force and effect, as if such liabilities were originally contracted, in the form in which they may exist, by such new county.

Source: L. 01: p. 148, § 1. **R.S. 08:** § 1384. **C.L.** § 8862. **CSA:** C. 45, § 214. **CRS 53:** § 36-5-1. **C.R.S. 1963:** § 36-5-1.

30-26-202. County shall assume payment of bonds. To render the amount, kind, and character of such liabilities definite and certain and fix their status under the funding and refunding laws of this state, the county imposed with the payment thereof, by the proper action of its board of county commissioners entered of record in the proceedings of the board, shall undertake and assume the payment thereof, designate and describe the same, and state their character and amount and the form in which they exist.

Source: L. 01: p. 149, § 2. **R.S. 08:** § 1385. **C.L.** § 8863. **CSA:** C. 45, § 215. **CRS 53:** § 36-5-2. **C.R.S. 1963:** § 36-5-2.

PART 3

BONDS - BUILDINGS, ROADS, OTHER

30-26-301. Creation of debt for buildings, roads - election - definitions. (1) When the board of county commissioners of any county deems it necessary to create an indebtedness for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, developing, maintaining, and operating mass transportation systems, acquiring or building or acquiring and building airports and landing strips including the necessary land therefor and approaches thereto, by an order entered of record specifying the amount required and the object for which such debt is created, they shall submit the question to a vote at a general or special election. The general or special election provided for under this part 3 may be combined with the election on a proposal for a countywide sales tax, use tax, or both, provided for in article 2 of title 29, C.R.S. The board shall cause to be posted a notice of such order, which states, among other things, the maximum net effective interest rate at which such bonds may be issued, in some conspicuous place in each voting precinct in the county, for at least thirty days preceding the election, and all persons voting on that question shall vote by separate ballot whereon are placed the words "for county indebtedness" or "against county indebtedness", such ballots to be deposited in a box provided by the board of county commissioners for that purpose.

(2) (a) No county shall contract any debt by loan in any form unless the proposition to create such debt shall first be submitted to and approved by the registered qualified electors of the county.

(b) If a majority of those electors of the county voting at such election vote in favor of the proposition to contract said debt, the board of county commissioners is authorized to contract said debt.

(c) The board of county commissioners of any county shall submit to the registered qualified electors of the county the question of contracting a bonded indebtedness for any one or more of the purposes authorized by law. As used in this part 3, unless the context otherwise requires, "registered qualified elector" means a person who is legally qualified to register to vote in this state and in the county wherein his vote is offered and who has complied with the registration provisions of the "Uniform Election Code of 1992".

(d) The order submitting the question of contracting an indebtedness shall contain a statement of the maximum net effective interest rate at which said indebtedness may be incurred. As used in articles 11, 15, and 17, parts 1, 3 to 6, and 8 of article 20, articles 25 and 26, and part 2 of article 28 of this title and article 18 of title 12, part 2 of article 6 of title 25, article 3 of title 29, and article 5 of title 41, C.R.S., unless the context otherwise requires:

(I) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(II) "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities, plus the

amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(e) (I) The board of county commissioners of any county, having received approval at an election to issue bonds and having determined that the limitations of the original election question are too restrictive to permit the advantageous sale of the bonds so authorized, may submit at another general or special election either the question of issuing the bonds, or any portion thereof, at a higher maximum net effective interest rate than the maximum interest rate or maximum net effective interest rate approved at the original election, or the question of issuing the bonds, or any portion thereof, to mature over a longer period of time than the maximum period of maturity approved at the original election, or both such questions.

(II) An election held pursuant to this paragraph (e) shall be held in substantially the same manner as an election to authorize bonds initially, except as may be required for the submission of the limited question or questions permitted under this paragraph (e).

(III) If the changes submitted are not approved at an election held pursuant to this paragraph (e), such result shall not impair the authority of the board at a later time to issue the bonds originally approved within the limitations established at the first election.

(3) If, upon canvassing the vote, which shall be canvassed in the same manner as the vote for county officers, it appears that a majority of all the votes cast are for county indebtedness, the board of county commissioners shall be authorized to contract the debt in the name of the county. The aggregate amount of indebtedness of any county shall not be in excess of three percent of the actual value, as determined by the assessor, of the taxable property in the county.

Source: G.L. § 448. G.S. § 671. R.S. 08: § 1364. C.L. § 8842. CSA: C. 45, § 194. L. 45: p. 296, § 3. CRS 53: § 36-6-1. C.R.S. 1963: § 36-6-1. L. 70: p. 137, §§ 3, 4. L. 71: pp. 336, 337, §§ 1, 7. L. 73: pp. 467, 469, §§ 3, 1. L. 79: (1), (2)(e)(I), and (3) amended, p. 1157, § 1, effective May 4. L. 80: (2)(c) amended, p. 414, § 20, effective January 1, 1981. L. 81: IP(2)(d) amended, p. 1614, § 13, effective June 19. L. 92: (2)(c) amended, p. 874, § 102, effective January 1, 1993. L. 2003: (3) amended, p. 655, § 1, effective March 20.

Cross references: For the manner of canvassing votes for county officers, see part 1 of article 10 of title 1; for the "Uniform Election Code of 1992", see articles 1 to 13 of title 1.

ANNOTATION

Constitutionality. Section 6 of art. XI, Colo. Const., providing that any county may contract a debt by loan by the issuance of bonds for the purpose of liquidating the indebtedness incurred prior to December 31, 1886, does not repeal by implication this section, or prevent counties from funding, under it, valid obligations incurred subsequent to said date, viz., December 31, 1886. Opinion of the Justices, 15 Colo. 421, 24 P. 877 (1890).

Duty to evaluate vote and amount of indebtedness. This section entrusted the power and imposed the duty upon the commissioners to examine, to see and to decide whether or not a favorable vote had been taken, and whether or not the amount of the indebtedness exceeded the limitation, whenever they considered the question of issuing the bonds, and they could not discharge their duty in the issuance of these bonds without a consideration and determina-

tion of these questions. Bd. of Comm'rs v. Sutliff, 97 F. 270 (8th Cir. 1899).

"Roads" defined. To restrict the term "roads" to the definition of that term under the conditions of the time, and which had acceptance in the year 1876, when the constitution was adopted, would be most unreasonable, the word has a much broader meaning and may be said to include "overland ways of every character" even though not then envisioned by the framers of the constitution, and the airports of this nation are links in the transportation system, hence runways and landing strips, being a necessary unit of that system, need no longer be regarded as unique or peculiar, hence, they are as logically within the term "roads" as are automobile highways, and the statute authorizing such a bond issue is not unconstitutional. Hale v. Sullivan, 146 Colo. 512, 362 P.2d 402 (1961).

30-26-302. Bond issue - limitation - interest - redemption. The board of county commissioners, when authorized as provided in section 30-26-301, may make and issue coupon bonds of the county not exceeding the amounts authorized by the electors, payable at the pleasure of the county but absolutely due and payable twenty years after such date, bearing interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable annually or semiannually; such interest and principal, when due, shall be payable at the office of the county treasurer of the county or at such other location as the board of county commissioners may designate. The board of county commissioners shall prescribe the form of said bonds and the coupons thereto; and, to provide for the principal and interest and redemption premiums accruing on the bonds, it shall provide for the levying of a tax which, together with such other revenue, assets, or funds as may be pledged, will be sufficient to pay the principal, interest and redemption premiums, if any, accruing on the bonds.

Source: G.L. § 449. G.S. § 672. L. 1889: p. 103, § 1. R.S. 08: § 1365. C.L. § 8843. CSA: C. 45, § 195. CRS 53: § 36-6-2. C.R.S. 1963: § 36-6-2. L. 70: p. 139, § 5. L. 79: Entire section amended, p. 1158, § 2, effective May 4.

30-26-303. Redemption - notice - interest - order of payment. When it appears to the board of county commissioners upon examination of the books and accounts of the county treasurer that there are sufficient funds in his hands to the credit of the redemption fund to pay in full the principal and accrued interest of any of such bonds, it is the duty of such board immediately to call in and pay as many of such bonds and accrued interest thereon as the funds ascertained to be on hand will liquidate, and said board shall thereupon cancel such redeemed bonds and all uncanceled interest coupons issued therewith. The bonds shall be called in and paid in the order of their issuance, as nearly as may be practicable, and when it is desired to redeem any of such bonds by said board it shall cause to be published for thirty days in some newspaper at or nearest the county seat of the county a notice that certain county bonds, specifying the number and amounts, will be paid upon presentation, and at the expiration of such thirty days such bonds shall cease to bear interest.

Source: G.L. § 450. G.S. § 673. R.S. 08: § 1366. C.L. § 8844. CSA: C. 45, § 196. CRS 53: § 36-6-3. C.R.S. 1963: § 36-6-3.

Cross references: For clarification of terms and requirements for notice by publication, see part 1 of article 70 of title 24.

30-26-304. Bonds - signed - attested - sealed - denomination - amount. The bonds shall be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder and bear the seal of the county upon each bond and shall be numbered and registered in a book kept for that purpose in the order in which they are issued. Each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance; but no bond shall be of a lesser denomination than fifty dollars, and, if issued for a greater amount, for some multiple of that sum; and the aggregate amount of such bonds issued shall not exceed the sum entered of record by the board of county commissioners, and any bond issued in excess of said sum shall be null and void.

Source: G.L. § 451. G.S. § 674. R.S. 08: § 1367. C.L. § 8845. CSA: C. 45, § 197. CRS 53: § 36-6-4. C.R.S. 1963: § 36-6-4.

30-26-305. Sale of bonds - rate - redemption - cancellation. The board of county commissioners has the right to sell any of such bonds, but no bond shall be sold unless for cash, and not then at a discount of more than fifteen percent of its par value. The money arising from the sale of such bonds shall be forthwith used for the objects for which the debt was created, and for no other purpose whatever. When any such bonds or any coupons are

redeemed, the board of county commissioners, in the presence of the clerk of said board or his deputy, shall cancel such bonds or coupons by writing the word "canceled" on the face of such bonds or coupons, and such board shall make a record of the proceedings, stating what bonds or coupons were canceled.

Source: G.L. § 452. G.S. § 675. R.S. 08: § 1368. C.L. § 8846. CSA: C. 45, § 198. CRS 53: § 36-6-5. C.R.S. 1963: § 36-6-5.

PART 4

BONDS - REFUNDING

Cross references: For the "Public Securities Refunding Act", see article 56 of title 11.

30-26-401. Refunding bonds authorized. The board of county commissioners of any county in this state may issue negotiable coupon bonds, to be denominated refunding bonds, for the purpose of refunding any of the bonded indebtedness of such county, whether due or not due, or which may become payable at the option of such county, or by consent of the bondholders, or by any lawful means, whether such bonded indebtedness existed on March 30, 1917, or was thereafter created, and there are not funds in the treasury of such county available for the payment or redemption of such bonds; but the amount of such refunding bonds to be issued under the provisions of this part 4 shall first be determined by such board of county commissioners, and a certificate of such determination shall be made and entered in the records of the county prior to the issuance of said refunding bonds.

Source: L. 17: p. 154, § 1. C.L. § 8865. CSA: C. 45, § 217. CRS 53: § 36-7-1. C.R.S. 1963: § 36-7-1.

30-26-402. Issuance - no election. Whenever such board of county commissioners deems it expedient to issue refunding bonds under the provisions of this part 4, such refunding bonds may be issued without the submission of the question of issuing such refunding bonds to a vote of the registered qualified electors of such county.

Source: L. 17: p. 154, § 2. C.L. § 8866. CSA: C. 45, § 218. CRS 53: § 36-7-2. C.R.S. 1963: § 36-7-2. L. 70: p. 139, § 6.

30-26-403. Resolution for issue - form of bonds - coupons - term. (1) If the board of county commissioners determines to issue refunding bonds, such board shall thereupon adopt a resolution which shall not be subject to the referendum provisions of any statute providing for the issue of said refunding bonds in accordance with the provisions of this part 4. Such resolution shall fix the date of said refunding bonds, shall designate the denomination thereof, the rate of interest, the maturity date, which shall not be more than twenty-five years from the date of said refunding bonds, and the place of payment, within or without the state of Colorado, of both principal and interest, and shall prescribe the form of said refunding bonds.

(2) Such refunding bonds shall be negotiable in form, shall recite the title of the act under which they are issued, shall be executed in the name of the county and signed by the chairman of the board of county commissioners and countersigned by the county treasurer, with the seal of the county affixed thereto and attested by the county clerk and recorder. The interest accruing on such refunding bonds shall be evidenced by semiannual interest coupons thereto attached, bearing the engraved facsimile signature of the county treasurer, and when so executed such coupons shall be the binding obligations of the county, according to their import.

(3) In the adoption of said resolution providing for the issue of such refunding bonds, the board of county commissioners shall make the principal of the debt payable in equal annual installments during the currency of the period, not exceeding twenty-five years,

within which the debt is to be discharged; but the date of maturity of the first installment of the debt shall be not more than five years from the date of said refunding bonds.

Source: L. 17: p. 155, § 3. C.L. § 8867. CSA: C. 45, § 219. CRS 53: § 36-7-3. C.R.S. 1963: § 36-7-3.

30-26-404. Disposition of bonds - outstanding canceled. All such refunding bonds may be exchanged, dollar for dollar, for the bonds to be refunded, or they may be sold at not less than their par value, as directed by the board of county commissioners, and the proceeds thereof shall be applied only to the purpose for which such refunding bonds were issued. Such refunding bonds shall not be issued until the outstanding bonds to be refunded have been called in and canceled in an amount equal to or in excess of the bonds so issued, and all accrued interest on any such bonds to be refunded shall be paid before such refunding bonds are issued.

Source: L. 17: p. 156, § 4. C.L. § 8868. CSA: C. 45, § 220. CRS 53: § 36-7-4. C.R.S. 1963: § 36-7-4.

30-26-405. Interest - how paid - redemption fund. The interest accruing on such refunding bonds issued pursuant to the provisions of this part 4 prior to the time when tax levies are available therefor shall be paid out of the general revenues of the county, and, for the purpose of reimbursing such general revenues and for the payment of subsequently accruing interest, the board of county commissioners issuing such refunding bonds or the proper tax-assessing and tax-collecting officers upon whom shall devolve the duty of levying and collecting county taxes shall levy annually a sufficient tax upon all the taxable property in the county fully to discharge such interest, and, for the ultimate redemption of such refunding bonds, they shall levy annually such a tax upon all the taxable property in such county as will create a fund sufficient to discharge each annual installment of such refunding bonds at the maturity thereof, which fund shall be called the redemption fund. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the county treasurer as a special fund to be used only in payment of the interest upon and for the redemption of such bonds, and such tax shall be levied and collected as other county taxes are levied and collected. The tax provisions for the ultimate redemption of such bonds shall be set forth in the resolution authorizing their issue and shall set forth the years in which such taxes shall be levied for the creation of said redemption fund.

Source: L. 17: p. 156, § 5. C.L. § 8869. CSA: C. 45, § 221. CRS 53: § 36-7-5. C.R.S. 1963: § 36-7-5.

30-26-406. No repeal or alteration of resolution. Any resolution authorizing an issue of refunding bonds under the provisions of this part 4 and providing for the levy of taxes for the payment of the interest upon and the principal of such refunding bonds shall not be altered or repealed until the indebtedness thereby authorized has been fully paid.

Source: L. 17: p. 157, § 6. C.L. § 8870. CSA: C. 45, § 222. CRS 53: § 36-7-6. C.R.S. 1963: § 36-7-6.

PART 5

COUNTY CAPITAL IMPROVEMENT TRUST FUNDS

30-26-501. Short title. This part 5 shall be known and may be cited as the "County Capital Improvement Trust Fund Financing Act".

Source: L. 82: Entire part added, p. 484, § 1, effective July 1.

30-26-502. Legislative declaration. (1) It is hereby declared to be the public policy of the state to facilitate, assist, and promote the efforts of counties within this state in the planning, construction, acquisition, improvement, equipping, maintenance, and operation of public projects.

(2) It is further the intent of the general assembly:

(a) To authorize counties in this state to finance the acquisition, construction, and improvement of public improvements, buildings, and facilities which such counties are authorized to acquire, construct, and improve;

(b) That this part 5 shall operate only as a grant of additional financing authority and shall not be construed to authorize counties to finance the acquisition, construction, or improvement of any public improvements, buildings, or facilities which such counties are not otherwise authorized to acquire, construct, or improve pursuant to applicable provisions of law;

(c) To vest such counties with all powers that may be necessary to enable them to accomplish such financing purposes, including the power to issue negotiable revenue bonds, notes, and other obligations payable as set forth in this part 5, which powers in all respects shall be exercised for the benefit of the inhabitants of this state and for the promotion of their health, safety, and welfare.

Source: L. 82: Entire part added, p. 484, § 1, effective July 1.

30-26-503. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Board" means the board of county commissioners or other governing body of any county.

(2) "Bonds" means any revenue bonds or other obligations issued by a county pursuant to this part 5 but does not include general obligation bonds.

(3) "County" means any county within this state.

(4) "County capital improvement trust fund" means any one or more of the county capital improvement trust funds established pursuant to this part 5.

(5) "Obligations" means notes, contracts, leases, and refunding obligations issued by a county pursuant to this part 5.

(6) "Person" means any individual, firm, partnership, association, or corporation or two or more or any combination of such entities.

(7) "Political subdivision" means counties, special districts, water conservation districts, irrigation districts, municipal corporations, school districts, and all other political subdivisions of the state.

(8) "Project" means any land, building, facility, or other improvement and all real or personal property, and any undivided or other interest in any of the foregoing, which is acquired, constructed, or improved or which is to be acquired, constructed, or improved by any county with the proceeds of any bonds issued by such county pursuant to this part 5 or with the principal of any county capital improvement trust fund expended by such county pursuant to this part 5, to the extent and only to the extent that such county is authorized to undertake any acquisition, construction, or improvement of such project under the laws of this state.

Source: L. 82: Entire part added, p. 485, § 1, effective July 1.

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

30-26-504. Authority for establishment of county capital improvement trust funds.

(1) Each county is hereby authorized to create a county capital improvement trust fund to be used for the purposes set forth in this part 5.

(2) Moneys on deposit in any county capital improvement trust fund, and the proceeds from the investment of such funds, shall be used solely and exclusively for the purposes authorized by this part 5 and shall be inviolate for any other purpose.

(3) Moneys on deposit in any county capital improvement trust fund shall be under the exclusive control of the board of the county for which such fund shall be established and shall be invested by the county treasurer of such county in accordance with the applicable provisions of laws concerning the investment of county funds. Earnings from the investment of moneys in any county capital improvement trust fund shall remain in such fund until applied in accordance with the provisions of this part 5. Any county may, to the extent otherwise authorized by law, appropriate funds of such county for deposit in such county capital improvement trust fund from any revenues, funds, or moneys of such county which are legally available for such purposes. Any moneys so appropriated by the board for deposit in any county capital improvement trust fund may be invested and reinvested as set forth in this part 5, and all such moneys on deposit in any county capital improvement trust fund shall be applied by the board only in accordance with the provisions of this part 5.

(4) The board of each county for which a county capital improvement trust fund is created may:

(a) Appropriate moneys on deposit in the county capital improvement trust fund of such county for any lawful county project, to the extent that such funds are not otherwise encumbered;

(b) Allocate and distribute among any political subdivision within such county all or any portion of the county capital improvement trust fund of such county for the purpose of assisting any capital improvement to be undertaken by any such political subdivision, to the extent that such funds are not otherwise encumbered;

(c) Pledge to the payment of the principal of, any premium on, and the interest on any bonds issued by such county pursuant to provisions of this part 5 all or any portion of the county capital improvement trust fund of such county; and

(d) Do any and all things necessary to effect the purposes and exercise the powers authorized under the provisions of this part 5.

(5) The board of each county for which a county capital improvement trust fund is established shall prepare guidelines consistent with the provisions of this part 5 for the allocation, distribution, pledging, investment, and expenditure of any moneys from time to time on deposit in the county capital improvement trust fund established for such county.

(6) If any portion of this part 5 is held unconstitutional by a decision of the Colorado court of appeals, the Colorado supreme court, or any federal court, moneys on deposit in each county capital improvement trust fund shall be transferred to the county general fund; such transfer shall take effect on the day after such decision becomes final.

(7) No moneys deposited in a capital improvement trust fund shall be appropriated, allocated, pledged, or distributed for a project if any statute, ordinance, resolution, or contract otherwise limits or restricts the use of such money for the particular type of project.

Source: L. 82: Entire part added, p. 485, § 1, effective July 1.

30-26-505. Bonds - issuance - terms. (1) Any county, in addition to all other powers authorized by law, may, from time to time:

(a) Issue revenue bonds, in such principal amounts as the county may deem necessary or appropriate, for the purpose of financing any project, including the payment, funding, or refunding of the principal of, any premium on, and the interest on any bonds issued by such county, whether the bonds or interest to be funded or refunded have or have not become due;

(b) Establish or increase any reserve funds deemed necessary to secure payment of such bonds or interest thereon; and

(c) Appropriate moneys necessary to pay for all other costs or expenses of the county incident to and necessary to carry out its authorized corporate and public purposes powers under this part 5.

(2) Bonds issued pursuant to the authority of this part 5 shall constitute special obligations of the county issuing such bonds and shall be payable solely out of any county capital improvement trust fund moneys or the income from the investment thereof, to the extent that all or a portion of the same are made available for such purpose by the board of the county issuing such bonds. Bonds issued by any county pursuant to the authority of this

part 5 may also be payable, in whole or in part, from any funds, revenues, income, or other moneys which are otherwise lawfully available for such purpose and which may be pledged by such county for the purpose of paying the principal of, any premium on, and the interest on its bonds.

(3) Any such bonds may also be payable, in whole or in part, from the revenues and receipts derived from the project financed with such issue of bonds and may be additionally secured by a pledge of any grant, subsidy, or contribution from the United States or any agency or instrumentality thereof, from the state or any governmental agency thereof, or from any person unless otherwise prohibited by applicable state or federal law.

(4) Whether or not such bonds are of such form and character as to be negotiable instruments under the terms of the "Uniform Commercial Code", title 4, C.R.S., all such bonds are hereby made negotiable instruments within the meaning of and for all the purposes of said title, subject only to the provisions contained in such bonds for registration.

(5) Any such bonds shall be authorized by the board, may be issued in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject for such terms of redemption, with or without premium, as the board may provide.

(6) Any such bonds may be sold at public or private sale at such price or prices and in such manner as the board shall determine.

(7) Any such bonds may be issued under the provisions of this part 5 without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or happening of any other conditions for other things than those proceedings, conditions, or things which are specifically required by this part 5, including, in particular, all such bonds, so long as and to the extent that such bonds are payable exclusively from all or any portion of any county capital improvement trust fund created pursuant to this part 5, and such bonds may be issued without the requirement of any approval by the electorate of the county issuing such bonds.

(8) Any such bonds shall not be in any way construed to be a debt or liability of the state or any political subdivision thereof and shall not create or constitute any indebtedness, liability, or obligation to the state or to any such political subdivision or be or constitute a pledge of the faith and credit of the state or of any such political subdivision; but all such bonds, unless funded or refunded by bonds of such county, shall be payable solely from revenues or funds pledged or available for the payment as authorized in this part 5. Each bond issued by a county pursuant to this part 5 shall contain on its face a statement to the effect that the county issuing such bonds is obligated to pay the principal of, any premium on, and the interest on such bonds only from revenues or funds of such county pledged for such payment, that neither the state nor any other political subdivision thereof is obligated to pay such principal of, any premium on, and the interest on such bonds, and that neither the faith and credit of the taxing power of the state nor any political subdivision thereof is pledged for the payment of the principal of, any premium on, and the interest on any such bonds.

(9) All expenses incurred in carrying out the provisions of this part 5 shall be payable solely from the revenues or funds provided or to be provided under the provisions of this part 5, and nothing in this part 5 shall be construed to authorize any county to incur any indebtedness on behalf of or payable by the state or any political subdivision thereof other than such county.

(10) The board of a county may, in any resolution relating to the issuance of any such bonds and in order to secure the payment of such bonds, make such covenants as otherwise authorized by law to do or refrain from doing such acts and things as may be necessary, convenient, and desirable in order to better secure bonds, which covenants will, in the opinion of the board, tend to make such bonds more marketable.

30-26-506. Pledge of revenues, funds, or other property lien. Any pledge of revenues, moneys, funds, or other property made by a county pursuant to the provisions of this part 5 shall be valid and binding from the time when the pledge is made; the revenues, moneys, funds, or other property so pledged and thereafter received by such county shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the county, irrespective of whether such parties have notice thereof. Any resolution or any other instrument by which a pledge of revenues, moneys, or funds is created shall be filed or recorded with the county.

Source: L. 82: Entire part added, p. 488, § 1, effective July 1.

30-26-507. Personal liability. Neither the members of the board of a county nor any person executing bonds or notes issued pursuant to this part 5 shall be personally liable on any bonds of such county by reason of the issuance of such bonds.

Source: L. 82: Entire part added, p. 488, § 1, effective July 1.

30-26-508. Bonds - exempt from taxation. Any bonds issued under the provisions of this part 5, the transfer of any such bonds, and the income from such bonds shall be free from taxation by the state or any political subdivision or other instrumentality of the state.

Source: L. 82: Entire part added, p. 488, § 1, effective July 1.

30-26-509. Annual audit. Each county for which a county capital improvement trust fund has been established shall prepare and submit, in accordance with the provisions of article 1 of title 29, C.R.S., an annual audit report of its activities with respect to such fund for the preceding fiscal year.

Source: L. 82: Entire part added, p. 488, § 1, effective July 1.

30-26-510. Bonds - eligible for investment. Bonds issued under the provisions of this part 5 are hereby made securities in which all insurance companies, trust companies, banking associations, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest moneys, including capital, under the control of or belonging to such entities. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds is authorized by law.

Source: L. 82: Entire part added, p. 489, § 1, effective July 1. **L. 89:** Entire section amended, p. 1130, § 70, effective July 1.

30-26-511. Agreement of counties. (1) Any county is authorized to enter into agreements with the state or any of its agencies or departments, any of its political subdivisions, any agency or department of the United States, or any person with respect to any project in order to facilitate the financing, acquisition, and construction of such project and to promote the purposes of this part 5. Such agreements may be for a term covering the life of a project, for any other term, or for any indefinite period. Pursuant to any such agreement, counties or persons may obligate themselves to make payments in amounts which shall be sufficient to enable such counties or persons to pay their expenses and the interest and principal payments (whether at maturity or upon sinking fund redemption) for any bonds issued pursuant to this part 5, to maintain reasonable reserves for debt service,

operation and maintenance, and renewals and replacements, and to meet the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture, or other security instrument.

(2) The obligations of a governmental agency or persons under an agreement with the county or arising out of the default by any other purchaser with respect to such an agreement shall not be construed to constitute debt of the governmental agency or persons. To the extent provided in agreements with the county, such obligations shall constitute special obligations of the governmental agency or persons and shall be payable solely from the revenues and other moneys derived by the governmental agency or persons.

Source: L. 82: Entire part added, p. 489, § 1, effective July 1.

30-26-512. Effect on inconsistent acts and rules and regulations. It is the intent of the general assembly that, in the event of any conflict or inconsistency between the provisions of this part 5 and any other statute pertaining to matters established or provided for in this part 5 or in any rules and regulations adopted under this part 5 or under any other statutes, to the extent of such conflict or inconsistency, the provisions of this part 5 and the rules and regulations adopted under this part 5 shall be enforced, and the provisions of any other statute or rules and regulations adopted under such statute shall have no force and effect.

Source: L. 82: Entire part added, p. 489, § 1, effective July 1.

30-26-513. Construction of this part 5. This part 5 shall be liberally construed to effectuate the legislative intent and the purposes of this part 5 as the complete and independent authority for the performance of each and every act and thing authorized in this part 5. All the powers granted in this part 5 shall be broadly interpreted to effectuate such intent and purposes and shall not be interpreted as a limitation of such powers.

Source: L. 82: Entire part added, p. 489, § 1, effective July 1.

COUNTY PLANNING AND BUILDING CODES

ARTICLE 28

County Planning and Building Codes

Cross references: For definitions applicable to this article, see § 30-26-301 (2)(d).

Law reviews: For article, “Land Use Decisionmaking: Legislative or Quasi-judicial Action”, see 18 Colo. Law. 241 (1989); for article, “Transferable Development Rights and Their Application in Colorado: An Overview”, see 34 Colo. Law. 75 (March 2005).

PART 1		30-28-110.	Regional planning commission approval - required when - recording.
COUNTY PLANNING		30-28-111.	Zoning plan.
30-28-101.	Definitions.	30-28-112.	Certification of plan - hearings.
30-28-102.	Unincorporated territory.	30-28-113.	Regulation of size and use - districts - repeal.
30-28-103.	County planning commission.	30-28-114.	Enforcement - inspector - permits.
30-28-104.	Chairman - rules - staff - information - grants and gifts.	30-28-115.	Public welfare to be promoted - legislative declaration - construction.
30-28-105.	Regional planning commission.	30-28-116.	Regulations may be amended.
30-28-106.	Adoption of master plan - contents.	30-28-117.	Board of adjustment.
30-28-107.	Surveys and studies.	30-28-118.	Appeals to board of adjust-
30-28-108.	Adoption of plan by resolution.		
30-28-109.	Certification of plan.		

- ment.
- 30-28-119. District planning commissions.
- 30-28-120. Existing structures - county property.
- 30-28-121. Temporary regulations.
- 30-28-122. Submission to division of planning.
- 30-28-123. Higher standards govern.
- 30-28-124. Penalties.
- 30-28-124.5. County court actions for civil penalties for zoning violations.
- 30-28-125. Filing with county clerk and recorder.
- 30-28-126. Appropriation authorized.
- 30-28-127. Public utilities exceptions.
- 30-28-128. Term of membership.
- 30-28-129. Inclusion of land in regional planning commission.
- 30-28-130. Notice of intent to withdraw.
- 30-28-131. Planning commission responsibilities in a common geographic area.
- 30-28-132. Concurrent planning jurisdiction - authorized agreements and contracts.
- 30-28-133. Subdivision regulations.
- 30-28-133.1. Subdivision plan or plat - access to public highways.
- 30-28-133.5. Review of plats and other plans.
- 30-28-134. Telecommunications research facilities of the United States - inclusions in planning and zoning.
- 30-28-135. Safety glazing materials.
- 30-28-136. Referral and review requirements.
- 30-28-137. Guarantee of public improvements.
- 30-28-138. Referral to municipality.
- 30-28-139. Merger of lots - notice - hearing - assessment of merged parcels.

PART 2

BUILDING CODES

- 30-28-201. Commissioners may adopt - emission performance standards required.
- 30-28-202. Designation of zoned area - hearing.
- 30-28-203. Purpose of codes.

- 30-28-204. Amendment of building code.
- 30-28-205. County building inspector - permit required - appeal.
- 30-28-206. Board of review - qualifications - powers.
- 30-28-207. Board of review - meetings - appeals.
- 30-28-208. Copies of code available - evidence.
- 30-28-209. Violation - injunction and other remedies.
- 30-28-210. County court actions for civil penalties for building violations.
- 30-28-211. Energy efficient building codes - legislative declaration - definitions.

PART 3

ESTABLISHMENT OF SUBDIVISION
EXEMPTION PLATS FOR THE
PURPOSE OF CORRECTING
LEGAL DESCRIPTIONS

- 30-28-301. Legislative declaration.
- 30-28-302. Definitions.
- 30-28-303. Creation of land division study area.
- 30-28-304. Preparation and adoption of plan for platting notice - withdraw from plan - requirements for adoption.
- 30-28-305. Preparation of subdivision exemption plat.
- 30-28-306. Preparation of deeds.
- 30-28-307. Conveyance of title to district court.
- 30-28-308. Recordation of subdivision exemption plat.
- 30-28-309. Reconveyance of title to property owners.
- 30-28-310. Assessment of costs.
- 30-28-311. Cancellation of process.
- 30-28-312. Limitation on liability.
- 30-28-313. Severability.

PART 4

CLUSTER DEVELOPMENT

- 30-28-401. Legislative declaration.
- 30-28-402. Definitions.
- 30-28-403. Cluster development.
- 30-28-404. Water - sewage - roadways - notification to state engineer.

PART 1

COUNTY PLANNING

30-28-101. Definitions. As used in this part 1, unless the context otherwise requires:
(1) "Disposition" means a contract of sale resulting in the transfer of equitable title to

an interest in subdivided land; an option to purchase an interest in subdivided land; a lease or an assignment of an interest in subdivided land; or any other conveyance of an interest in subdivided land which is not made pursuant to one of the foregoing.

(2) "Evidence" means any map, table, chart, contract, or other document or testimony, prepared or certified by a qualified person to attest to a specific claim or condition, which evidence shall be relevant and competent and shall support the position maintained by the subdivider.

(3) "Municipal planning commission" means any planning commission or other body charged with the functions of such commission of any city, city and county, or incorporated town, whether created pursuant to the authority of state statute or of home rule charter.

(4) "Planning commission" means either a planning commission or, in a county where there is no planning commission, the board of county commissioners.

(5) "Plat" means a map and supporting materials of certain described land prepared in accordance with subdivision regulations as an instrument for recording of real estate interests with the county clerk and recorder.

(6) "Preliminary plan" means the map of a proposed subdivision and specified supporting materials, drawn and submitted in accordance with the requirements of adopted regulations, to permit the evaluation of the proposal prior to detailed engineering and design.

(7) "Region" means the area encompassed by a regional planning commission, being the combined land areas subject to the jurisdiction of the participating governmental units.

(8) "Sketch plan" means a map of a proposed subdivision, drawn and submitted in accordance with the requirements of adopted regulations, to evaluate feasibility and design characteristics at an early state in the planning.

(9) "Subdivider" or "developer" means any person, firm, partnership, joint venture, association, or corporation participating as owner, promoter, developer, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.

(10) (a) "Subdivision" or "subdivided land" means any parcel of land in the state which is to be used for condominiums, apartments, or any other multiple-dwelling units, unless such land when previously subdivided was accompanied by a filing which complied with the provisions of this part 1 with substantially the same density, or which is divided into two or more parcels, separate interests, or interests in common, unless exempted under paragraph (b), (c), or (d) of this subsection (10). As used in this section, "interests" includes any and all interests in the surface of land but excludes any and all subsurface interests.

(b) The terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection (10), shall not apply to any division of land which creates parcels of land each of which comprises thirty-five or more acres of land and none of which is intended for use by multiple owners.

(c) Unless the method of disposition is adopted for the purpose of evading this part 1, the terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection (10), shall not apply to any division of land:

(I) Which creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any such parcel, results in thirty-five or more acres per interest;

(II) Which could be created by any court in this state pursuant to the law of eminent domain, or by operation of law, or by order of any court in this state if the board of county commissioners of the county in which the property is situated is given timely notice of any such pending action by the court and given opportunity to join as a party in interest in such proceeding for the purpose of raising the issue of evasion of this part 1 prior to entry of the court order; and, if the board does not file an appropriate pleading within twenty days after receipt of such notice by the court, then such action may proceed before the court;

(III) Which is created by a lien, mortgage, deed of trust, or any other security instrument;

(IV) Which is created by a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity;

(V) Which creates cemetery lots;

(VI) Which creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property;

(VII) Which is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy or as tenants in common, and any such interest shall be deemed for purposes of this subsection (10) as only one interest;

(VIII) Which is created by the combination of contiguous parcels of land into one larger parcel. If the resulting parcel is less than thirty-five acres in land area, only one interest in said land shall be allowed. If the resulting parcel is greater than thirty-five acres in land area, such land area, divided by the number of interests in the resulting parcel, must result in thirty-five or more acres per interest. Easements and rights-of-way shall not be considered interests for purposes of this subparagraph (VIII).

(IX) Which is created by a contract concerning the sale of land which is contingent upon the purchaser's obtaining approval to subdivide, pursuant to this article and any applicable county regulations, the land which he is to acquire pursuant to the contract;

(X) Which creates a cluster development pursuant to part 4 of this article.

(d) The board of county commissioners may, pursuant to rules and regulations or resolution, exempt from this definition of the terms "subdivision" and "subdivided land" any division of land if the board of county commissioners determines that such division is not within the purposes of this part 1.

(11) "Subdivision improvements agreement" means one or more security arrangements which a county shall accept to secure the actual cost of construction of such public improvements as are required by county subdivision regulations within the subdivision. The "subdivision improvements agreement" may include any one or a combination of the types of security or collateral listed in this subsection (11), and the subdivider may substitute security in order to release portions of the subdivision for sale. The types of collateral which may be used as security under the "subdivision improvements agreement" are as follows: Restrictions on the conveyance, sale, or transfer of any lot, lots, tract, or tracts of land within the subdivision as set forth on the plat or as recorded by separate instrument; performance or property bonds; private or public escrow agreements; loan commitments; assignments of receivables; liens on property; letters of credit; deposits of certified funds; or other similar surety agreements. Security, other than plat restrictions, required under the "subdivision improvements agreement" shall equal in value the cost of improvements to be completed but shall not be required on the portion of the subdivision subject to plat restriction. The county shall not require security arrangements with collateral arrangements in excess of the actual cost of construction of the public improvements. The amount of security may be incrementally reduced as subdivision improvements are completed.

(12) "Unincorporated" means situated outside of cities and towns, so that, when used in connection with "territory", "areas", or the like, it covers, includes, and relates to territory or areas which are not within the boundaries of any city or town.

Source: L. 39: p. 309, § 28. CSA: C. 45A, § 28. CRS 53: §§ 106-2-28, 106-2-34. L. 59: p. 624, § 6. L. 61: p. 591, § 1. C.R.S. 1963: §§ 106-2-27, 106-2-33. L. 72: pp. 499, 500, §§ 4, 5. L. 73: pp. 1083, 1084, §§ 1, 1. L. 74: (3)(a) amended, p. 334, § 1, effective May 14. L. 75: (11) R&RE, p. 988, § 2, effective July 14. L. 77: (10)(a) amended, p. 1453, § 1, effective May 24; (10)(c)(II) R&RE, p. 1455, § 1, effective May 26. L. 83: (10)(c)(IX) added, p. 1250, § 1, effective May 20. L. 96: (10)(c)(X) added, p. 1880, § 1, effective June 6.

Cross references: (1) For municipal planning and zoning, see § 31-23-101 et seq.

(2) For definitions applicable to this article, see § 30-26-301 (2)(d).

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Inverse Condemnation — A Viable Alternative", see 51 Den. L.J. 529

(1974). For article, "Synthetic Fuels — Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980). For article, "Cumulative Impact Assessment of Western Energy Development: Will it

Happen?", see 51 U. Colo. L. Rev. 551 (1980). For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law. 2527 (1982). For article, "Subdivision Improvement Requirements and Guarantees in Colorado", see 14 Colo. Law. 554 (1985). For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987).

No authority to impose subdivision regulations on larger tracts. By the exemption of subsection (10)(b), the general assembly gave the counties no authority to impose subdivision regulations on the larger tracts. Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982).

Or to adopt contrary definition of subdivision. Sections 29-20-101 to 29-20-107 do not confer the authority upon a county to adopt a definition of "subdivision" in its regulations which is contrary to the express statutory definition found in subsection (10). Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982).

30-28-102. Unincorporated territory. The boards of county commissioners of the respective counties within this state are authorized to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this part 1.

Source: L. 39: p. 294, § 1. CSA: C. 45A, § 1. CRS 53: § 106-2-1. C.R.S. 1963: § 106-2-1.

ANNOTATION

Law reviews. For article, "Effect on Title of Violations of Building Covenants and Zoning Ordinances", see 27 Rocky Mt. L. Rev. 255 (1955). For note, "Colorado Cases on Zoning — Validity of Zoning Undeveloped Areas", see 29 Rocky Mt. L. Rev. 202 (1957). For article, "Colorado Needs a Constitutional and Effective Roadside Sign Law", see 36 Dicta 475 (1959).

Section delegates authority to county commissioners to zone unincorporated areas. This section is a delegation of authority by the state to the boards of county commissioners of the respective counties to zone unincorporated areas of the state. City of Greeley v. Ells, 186 Colo. 352, 527 P.2d 538 (1974).

Authority to zone and appoint planning commission. By this and § 30-28-103 the commissioners of the respective counties are authorized to provide for the zoning of all or any part of the unincorporated territory in their county, and they are authorized to appoint a planning commission. Gordon v. Bd. of County Comm'rs, 152 Colo. 376, 382 P.2d 545 (1963).

Power to adopt means to defray costs of considering exemption requests. Flowing from the grant of express power to grant exemptions from the provisions of title 30, article 8, is the implied power to adopt means to defray the costs of considering requests for exemptions. Hopkins v. Bd. of County Comm'rs, 193 Colo. 230, 564 P.2d 415 (1977).

The requirement of a metes and bounds description of a tract for purposes of qualifying the tract for exemption from the limitations of § 30-28-110(4)(a) was not unreasonable or arbitrary, and the denial of the exemption was not an abuse of discretion. Hopkins v. Bd. of County Comm'rs, 193 Colo. 230, 564 P.2d 415 (1977).

The exemption described in subsection (10)(b) is inapplicable where property owner seeks to construct multiple residences on the parcel which is more than 35 acres. Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

Applied in VanHuysen v. Adams County Bd. of Adjustments, 41 Colo. App. 570, 588 P.2d 392 (1978); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982); Beaver Meadows v. Bd. of County Comm'rs, 709 P.2d 928 (Colo. 1985).

The Land Use Act (§ 29-20-101, C.R.S., et seq.) and the County Planning Code (§ 30-28-101, C.R.S., et seq.) authorize county regulation of land use in the unincorporated areas of the county. Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

Courts should not interfere with decisions of zoning authorities unless the record shows a clear abuse of discretion. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

No clear abuse of discretion shown. Where the question of whether the character of the neighborhood had changed sufficiently to justify a change in zoning was fairly debatable and the zoning decision of a board of county commissioners was supported by some competent evidence, the certiorari record did not show a clear abuse of discretion. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

Standing to challenge of property owner outside territory of zoning authority. An owner of property adjacent to property being

rezoned but not within the territory of the zoning authority has standing to challenge the rezoning. *Bd. of County Comm'rs. v. City of Thornton*, 629 P.2d 605 (Colo. 1981).

Applied in *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

30-28-103. County planning commission. (1) Except as otherwise provided in this subsection (1), the board of county commissioners of any county within the state is authorized to appoint a commission of not less than three and not more than nine members, to be known as the county planning commission; except that, in counties of the state having a population of fifteen thousand or less desiring to establish a commission, the board of county commissioners may constitute the commission, or the board of county commissioners may appoint a separate body to serve as the commission. In counties of the state having a population of one hundred thousand or more, the board of county commissioners is authorized to appoint a commission of not less than three and not more than fifteen members.

(2) Each of such members of the commission shall be a resident of the county. The term of appointed members of the commission shall be three years and until their respective successors have been appointed, but the terms of office shall be staggered by making the appointments so that approximately one-third of the members' terms expire each year. Members of the commission on July 1, 1977, shall serve the remainder of the terms for which they were appointed. Thereafter, members shall be appointed pursuant to this subsection (2).

(3) The members of the commission shall receive such compensation as may be fixed by the board of county commissioners, and the board of county commissioners shall provide for reimbursement of the members of the commission for actual expenses incurred. The board of county commissioners shall provide for the filling of vacancies in the membership of the commission and for the removal of a member for nonperformance of duty or misconduct. The board of county commissioners may appoint associate members of such commission, each of whom shall be a resident of the county, and, in the event any regular member is temporarily unable to act owing to absence from the county, illness, interest in any matter before the commission, or any other cause, his place may be taken during such temporary disability by an associate member designated for that purpose.

Source: L. 39: p. 295, § 3. CSA: C. 45A, § 3. CRS 53: § 106-2-3. L. 56: p. 179, § 1. C.R.S. 1963: § 106-2-3. L. 77: Entire section amended, p. 1456, § 1, effective July 1. L. 2007: (1) amended, p. 32, § 1, effective August 3.

ANNOTATION

Commission authority. By this and § 30-28-102 the commissioners of the respective counties are authorized to provide for the zoning of all or any part of the unincorporated territory in their county, and they are authorized to appoint a planning commission. *Gordon v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Adoption of master plan not mandated. The statutory scheme in Colorado does not mandate the adoption of a master plan by a county, but rather it authorizes the board of county commissioners to appoint a planning commission whose duty it is to make and adopt a master plan. *Concerned Citizens v. Bd. of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

And is not prerequisite to zoning resolution. Absent a statutory requirement that a

county adopt a master plan, a zoning resolution need not be preceded by the adoption of a formal written plan. *Concerned Citizens v. Bd. of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

County cannot enforce provisions of master plan adopted solely by county planning commission when the county planning commission is not a legislative body that affords landowners due process. *Bd. of County Comm'rs v. Conder*, 927 P.2d 1339 (Colo. 1996).

Although master plans are generally advisory only, a county has the authority to require compliance with a master plan when the county includes compliance with the master plan in its legislatively adopted subdivision regulations so long as the master plan is drafted with sufficient exactitude that proponents of a subdivision are

afforded due process, the county does not retain unfettered discretion, and the basis for a county's decision is clear for purposes of a reasoned judicial review. Bd. of County Comm'rs v. Conder, 927 P.2d 1339 (Colo. 1996).

Applied in Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

30-28-104. Chairman - rules - staff - information - grants and gifts. (1) The county planning commission shall elect a chairman from its members, whose term shall be for one year, and the commission may create and fill such other offices as it may determine. The commission shall adopt such rules and regulations governing its procedure as it may consider necessary or advisable and shall keep a record of its proceedings, which record shall be open to inspection by the public at all reasonable times. The board of county commissioners has the authority to employ experts and a staff and shall pay such expenses as may be deemed necessary for carrying out the powers conferred and the duties prescribed in this article. The county planning commission is directed to make use of the expert advice and information which may be furnished by appropriate federal, state, county, and municipal officials, departments, and agencies and in particular by the director of the division of planning in the department of local affairs of the state of Colorado. All state officials, departments, and agencies having information, maps, and data pertinent to county planning or zoning are authorized and directed to make the same available for the use of the county planning commission as well as to furnish such other technical assistance and advice as they may have available for such purpose.

(2) The county planning commission is specifically empowered to receive and expend all grants, gifts, and bequests, specifically including state and federal funds and other funds available for the purposes for which the commission exists, and to contract with the state of Colorado, the United States, and all other legal entities with respect thereto. The county planning commission may provide, within the limitations of its budget, matching funds wherever grants, gifts, bequests, and contractual assistance are available on such basis.

Source: L. 39: p. 294, § 2. CSA: C. 45A, § 2. L. 53: p. 225, § 1. CRS 53: § 106-2-2. L. 59: p. 616, § 1. C.R.S. 1963: § 106-2-2. L. 67: p. 72, § 1. L. 77: (1) amended, p. 1457, § 2, effective July 1.

ANNOTATION

Function and duty of planning commission initially is to make and adopt a master plan for the physical development of the unincorporated territory of a county. To that end, the commission is empowered to employ experts and to make detailed surveys and studies to accomplish the harmonious development of the

county in terms of the general welfare of the inhabitants and the efficient and economic use of its land. Johnson v. Bd. of County Comm'rs, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. Colo. Leisure Prods., Inc. v. Johnson, 187 Colo. 443, 532 P.2d 742 (1975).

30-28-105. Regional planning commission. (1) The governing body or, in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, together with the boards of county commissioners of any counties in which such municipality or group of municipalities is located or of any adjoining counties; or the governing bodies or, in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, acting independently of the boards of county commissioners in which such municipality or group of municipalities is located; or the boards of county commissioners of any two or more counties may cooperate in the creation of a regional planning commission for any region defined as may be agreed upon by said cooperating governing bodies or officials or boards limited to a region within the jurisdiction of said cooperating governing bodies.

(2) The number and qualifications of members of any such regional planning commission, their terms, and the method of their appointment or removal shall be such as may be determined and agreed upon by said cooperating governing bodies or officials and boards; but each participating county or municipality shall be entitled to at least one voting

representative. The regional planning commission shall elect its chairman, whose term shall be one year, with eligibility for reelection. The commission may create and fill such other offices as it may determine.

(3) Any board of county commissioners or other county officials or the chief executive officer of any municipality, from time to time, upon the request of the commission and for the purpose of special surveys, may assign or detail to the commission any members of staffs of county or municipal administrative departments or may direct any such department to make for the commission special surveys or studies requested by the commission.

(4) The proportion of the expenses of the regional planning commission to be borne respectively by any governing body cooperating in the establishment and maintenance of the commission shall be such as may be determined and agreed upon by the cooperating bodies or officials or boards, and they are authorized to appropriate or cause to be appropriated their respective shares of such expense.

(5) Within the amounts duly appropriated or otherwise received, the regional planning commission has the power to appoint such clerical and stenographic employees and such technically qualified staff as are necessary to do the work of the commission. The regional planning commission has the further power to contract for such other services, facilities, and personnel as it may require within its means, including the services of professional planners and other consultants.

(6) The regional planning commission is specifically empowered to receive and expend all grants, gifts, and bequests, specifically including state and federal funds and other funds available for the purposes for which the commission exists, and to contract with the state of Colorado, the United States, and all other legal entities with respect thereto. The regional planning commission may provide, within the limitations of its budget, matching funds wherever grants, gifts, bequests, and contractual assistance are available on such basis.

(7) A regional planning commission shall be a body politic and corporate, with power to sue and be sued. It shall be liable on its undertakings, contractual or otherwise. The individual members thereof and the cooperating governing bodies or officials and boards shall not be liable on the undertakings of the commission, contractual or otherwise, regardless of the procedure by which such undertakings, or any of them, may be entered into.

(8) The regional planning commission has the power to adopt articles to regulate and govern its affairs, whether as an incorporated association or otherwise, in the performance of the regional planning functions as defined by statute; such articles shall contain rules pertaining to the transaction of the commission's business. The regional planning commission shall keep records of its resolutions, transactions, contractual undertakings, findings, and determinations, which records shall be public records. The regional planning commission has and shall exercise all powers necessary or incidental to exercise fully the powers and authority conferred in this section.

(9) A regional planning commission may, to the extent provided for in a resolution adopted by a board of county commissioners, perform the functions of a county planning commission as provided for in this part 1.

(10) Nothing in this part 1 shall preclude participation by any county or municipality in more than one regional planning commission.

Source: L. 39: p. 295, § 4. CSA: C. 45A, § 4. CRS 53: § 106-2-4. L. 56: p. 181, § 1. L. 59: p. 617, § 2. C.R.S. 1963: § 106-2-4. L. 72: p. 498, § 1.

ANNOTATION

Law reviews. For article, "Land Controls in an Urban Society", see 28 Rocky Mt. L. Rev.

502 (1956). For article, "An Engineering — Legal Solution to Urban Drainage Problems",

see 45 Den. L.J. 381 (1968). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977).

Applied in Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

30-28-106. Adoption of master plan - contents. (1) It is the duty of a county planning commission to make and adopt a master plan for the physical development of the unincorporated territory of the county. When a county planning commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan.

(2) (a) It is the duty of a regional planning commission to make and adopt a regional plan for the physical development of the territory within the boundaries of the region, but no such plan shall be effective within the boundaries of any incorporated municipality within the region unless such plan is adopted by the governing body of the municipality for the development of its territorial limits and under the terms of paragraph (b) of this subsection (2). When a regional planning commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the region in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan.

(b) Any plan adopted by a regional planning commission shall not be deemed an official advisory plan of any municipality or county unless adopted by the planning commission of such municipality or county.

(3) (a) The master plan of a county or region, with the accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the county or regional planning commission's recommendations for the development of the territory covered by the plan. The master plan of a county or region shall be an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the county's or region's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. After consideration of each of the following, where applicable or appropriate, the master plan may include:

(I) The general location, character, and extent of existing, proposed, or projected streets or roads, rights-of-way, viaducts, bridges, waterways, waterfronts, parkways, highways, mass transit routes and corridors, and any transportation plan prepared by any metropolitan planning organization that covers all or a portion of the county or region and that the county or region has received notification of or, if the county or region is not located in an area covered by a metropolitan planning organization, any transportation plan prepared by the department of transportation that the county or region has received notification of and that applies to the county or region;

(II) The general location of public places or facilities, including public schools, culturally, historically, or archaeologically significant buildings, sites, and objects, playgrounds, forests, reservations, squares, parks, airports, aviation fields, military installations, and other public ways, grounds, open spaces, trails, and designated federal, state, and local wildlife areas. For purposes of this section, "military installation" shall have the same meaning as specified in section 29-20-105.6 (2) (b), C.R.S.

(III) The general location and extent of public utilities, terminals, capital facilities, and transfer facilities, whether publicly or privately owned, for water, light, power, sanitation, transportation, communication, heat, and other purposes, and any proposed or projected

needs for capital facilities and utilities, including the priorities, anticipated costs, and funding proposals for such facilities and utilities;

(IV) The general location and extent of an adequate and suitable supply of water. If the master plan includes a water supply element, the planning commission shall consult with the entities that supply water for use within the county or region to ensure coordination on water supply and facility planning, and the water supply element shall identify water supplies and facilities sufficient to meet the needs of the public and private infrastructure reasonably anticipated or identified in the planning process. Nothing in this subparagraph (IV) shall be construed to supersede, abrogate, or otherwise impair the allocation of water pursuant to the state constitution or laws, the right to beneficially use water pursuant to decrees, contracts, or other water use agreements, or the operation, maintenance, repair, replacement, or use of any water facility.

(V) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, modification, or change of use of any of the public ways, rights-of-way, including the coordination of such rights-of-way with the rights-of-way of other counties, regions, or municipalities, grounds, open spaces, buildings, properties, utilities, or terminals, referred to in subparagraphs (I) to (IV) of this paragraph (a);

(VI) Methods for assuring access to appropriate conditions for solar, wind, or other alternative energy sources;

(VII) The general character, location, and extent of community centers, townsites, housing developments, whether public or private, the existing, proposed, or projected location of residential neighborhoods and sufficient land for future housing development for the existing and projected economic and other needs of all current and anticipated residents of the county or region, and urban conservation or redevelopment areas. If a county or region has entered into a regional planning agreement, such agreement may be incorporated by reference into the master plan.

(VIII) The general location and extent of forests, agricultural areas, flood control areas, and open development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, flood control, or the protection of urban development;

(IX) A land classification and utilization program;

(X) Projections of population growth and housing needs to accommodate the projected population for specified increments of time. The county or region may base these projections upon data from the department of local affairs and upon the county's or region's local objectives.

(XI) The location of areas containing steep slopes, geological hazards, endangered or threatened species, wetlands, floodplains, floodways, and flood risk zones, highly erodible land or unstable soils, and wildfire hazards. For purposes of determining the location of such areas, the planning commission should consider the following sources for guidance:

(A) The Colorado geological survey for defining and mapping geological hazards;

(B) The United States fish and wildlife service of the United States department of the interior and the parks and wildlife commission created in section 33-9-101, C.R.S., for locating areas inhabited by endangered or threatened species;

(C) The United States Army corps of engineers and the United States fish and wildlife service national wetlands inventory for defining and mapping wetlands;

(D) The federal emergency management agency for defining and mapping floodplains, floodways, and flood risk zones;

(E) The natural resources conservation service of the United States department of agriculture for defining and mapping unstable soils and highly erodible land; and

(F) The Colorado state forest service for locating wildfire hazard areas.

(b) Any master plan of a county or region which includes mass transportation shall be coordinated with that of any adjacent county, region, or other political subdivision, as the case may be, to eliminate conflicts or inconsistencies and to assure the compatibility of such plans and their implementation pursuant to this section and sections 30-11-101, 30-25-202, and 30-26-301.

(c) The master plan of a county or region shall also include a master plan for the extraction of commercial mineral deposits pursuant to section 34-1-304, C.R.S.

(d) The master plan of a county or region may also include plans for the development of drainage basins in all or portions of the county or region. When county subdivision regulations require the payment of drainage fees, as provided in section 30-28-133 (11), the master plan shall include the plan for the development of drainage basins.

(e) In creating the master plan of a county or region, the county or regional planning commission may take into consideration the availability of affordable housing within the county or region. Counties are encouraged to examine any regulatory impediments to the development of affordable housing.

(f) (Deleted by amendment, L. 2007, p. 612, § 1, effective August 3, 2007.)

(g) The master plan of a county or region may include designated utility corridors to facilitate the provision of utilities to all developments in the county or region.

(4) (a) Each county that has not already adopted a master plan and that meets one of the following descriptions shall adopt a master plan within two years after January 8, 2002:

(I) Each county or city and county that has a population equal to or greater than ten thousand and the population of which has demonstrated an increase of either:

(A) Ten percent or more during the calendar years 1994 to 1999; or

(B) Ten percent or more during any five-year period ending in 2000 or any subsequent year;

(II) Each county or city and county that has a population of one hundred thousand or more.

(b) To the extent the county does not meet a description specified in subparagraph (I) or (II) of paragraph (a) of this subsection (4), the counties of Clear Creek, Gilpin, Morgan, and Pitkin shall adopt a master plan within two years after January 8, 2002.

(c) The department of local affairs shall annually determine, based on the population statistics maintained by said department, whether a county is subject to the requirements of this subsection (4), and shall notify any county that is newly identified as being subject to said requirements. Any such county shall have two years following receipt of notification from the department to adopt a master plan.

(d) Once a county is identified as being subject to the requirements of this subsection (4), the county shall at all times thereafter remain subject to the requirements of this subsection (4), regardless of whether it continues to meet any of the descriptions in paragraph (a) of this subsection (4).

(5) A master plan adopted in accordance with the requirements of subsection (4) of this section shall contain a recreational and tourism uses element pursuant to which the county shall indicate how it intends to provide for the recreational and tourism needs of residents of the county and visitors to the county through delineated areas dedicated to, without limitation, hiking, mountain biking, rock climbing, skiing, cross country skiing, rafting, fishing, boating, hunting, shooting, or any other form of sports or other recreational activity, as applicable, and commercial facilities supporting such uses.

(6) The master plan of any county adopted or amended in accordance with the requirements of this section on and after August 8, 2005, shall satisfy the requirements of section 29-20-105.6, C.R.S., as applicable.

(7) Notwithstanding any other provision of this section, no master plan originally adopted or amended in accordance with the requirements of this section shall conflict with a master plan for the extraction of commercial mineral deposits adopted by the county pursuant to section 34-1-304, C.R.S.

Source: L. 39: p. 296, § 5. CSA: C. 45A, § 5. CRS 53: § 106-2-5. L. 59: p. 618, § 3. C.R.S. 1963: § 106-2-5. L. 66: p. 41, § 4. L. 73: pp. 467, 1054, §§ 4, 17. L. 79: (3)(a) amended, p. 1159, § 1, effective May 25. L. 83: (3)(d) added, p. 1236, § 4, effective April 23. L. 97: (3)(e) to (3)(g) added, p. 414, § 1, effective April 24. L. 2000: (1), (2)(a), and (3)(a) amended, p. 869, § 1, effective August 2. L. 2001, 2nd Ex. Sess.: (4) and (5) added, p. 21, § 1, effective January 8, 2002. L. 2002: (5) amended, p. 1036, § 83, effective June 1. L. 2005: (6) added, p. 223, § 2, effective August 8. L. 2007: IP(3)(a) and (3)(f) amended and (7) added, p. 612, § 1, effective August 3. L. 2010: (3)(a)(II) and (6) amended, (HB 10-1205), ch. 242, p. 1078, § 2, effective August 11. L. 2012: IP(3)(a) and (3)(a)(XI)(B) amended, (HB 12-1317), ch. 248, p. 1205, § 12, effective June 4.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "Synthetic Fuels — Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980). For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002).

Function and duty of planning commission initially is to make and adopt a master plan for the physical development of the unincorporated territory of a county. To that end, the commission is empowered to employ experts and to make detailed surveys and studies to accomplish the harmonious development of the county in terms of the general welfare of the inhabitants and the efficient and economic use of its land. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), *aff'd sub nom. Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

It is the duty of zoning officials to have proper information available in a public office so that those affected can determine their rights and privileges, as well as the duties and restrictions applicable to them. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Master plan is advisory only. The master plan is only one source of comprehensive planning, and is generally held to be advisory only, and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Conceptually, a master plan is a guide to development rather than an instrument to control land use. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Planning commission's decisions regarding an amendment to the land use plan are advisory only and legislative in nature. *Stuart v. Bd. of County Comm'rs*, 699 P.2d 978 (Colo. App. 1985).

And does not confer standing to challenge the plan. Considered alone, a master plan is merely advisory and does not affect legally protected interests of property owners so as to confer standing to challenge the plan. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

And is implemented through zoning ordinances. In order to have a direct effect on property rights, the master plan must be further implemented through zoning, with proper notice

and hearing. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

The master plan embodies policy determination and guiding principles; the zoning ordinances provide the detailed means of giving effect to those principles. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Master plan was not used as a guide to future zoning but was used, in effect, to rezone property into a classification in which residences are not permitted. *Vick v. Bd. of County Comm'rs*, 689 P.2d 699 (Colo. App. 1984).

Although master plans are generally advisory only, a county has the authority to require compliance with a master plan when the county includes compliance with the master plan in its legislatively adopted subdivision regulations so long as the master plan is drafted with sufficient exactitude that proponents of a subdivision are afforded due process, the county does not retain unfettered discretion, and the basis for a county's decision is clear for purposes of a reasoned judicial review. *Bd. of County Comm'rs v. Conder*, 927 P.2d 1339 (Colo. 1996).

Adoption authorized but not mandated. That statutory scheme in Colorado does not mandate the adoption of a master plan by a county, but rather it authorizes the board of county commissioners to appoint a planning commission whose duty it is to make and adopt a master plan. *Concerned Citizens v. Bd. of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

Adoption not prerequisite to zoning resolution. Absent a statutory requirement that a county adopt a master plan, a zoning resolution need not be preceded by the adoption of a formal written plan. *Concerned Citizens v. Bd. of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

County had authority under the Local Government Land Use Control Enabling Act, article 20 of title 29 (enabling act), to impose temporary moratorium on developmental approvals concerning certain land within county. The enabling act is designed to give local governments additional or supplemental powers for the purposes set forth in the act, including development in hazardous areas, protecting wildlife habitats, protecting areas of historical or archeological significance, controlling population density, and providing for the phasing in of infrastructure. These special considerations, in many instances, supplement those normally involved in creating a zoning master plan or administering a zoning regimen. Accordingly, the enabling act and this article (county planning statute) have different, though complementary, purposes, and the limitation on temporary zoning in § 30-28-121 does not prohibit or limit a moratorium on development for the purpose of

studies under the enabling act. *Droste v. Bd. of County Comm'rs of Pitkin*, 141 P.3d 852 (Colo. App. 2005), *aff'd*, 159 P.3d 601 (Colo. 2007).

Applied in *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981); *Bd.*

of *County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Beaver Meadows v. Bd. of County Comm'rs*, 709 P.2d 928 (Colo. 1985).

30-28-107. Surveys and studies. In the preparation of a county or regional master plan, a county or regional planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the territory within its jurisdiction. The county or regional master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county or region which, in accordance with present and future needs and resources, will best promote the health, safety, morals, order, convenience, prosperity, or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry, and other purposes as will tend to create conditions favorable to health, safety, energy conservation, transportation, prosperity, civic activities, and recreational, educational, and cultural opportunities; will tend to reduce the wastes of physical, financial, or human resources which result from either excessive congestion or excessive scattering of population; and will tend toward an efficient and economic utilization, conservation, and production of the supply of food and water and of drainage, sanitary, and other facilities and resources.

Source: L. 39: p. 297, § 6. CSA: C. 45A, § 6. CRS 53: § 106-2-6. C.R.S. 1963: § 106-2-6. L. 79: Entire section amended, p. 1159, § 2, effective May 25.

ANNOTATION

Statute does not support conclusion that consideration of demand-side alternatives is a prerequisite to a finding of reasonableness under statutory section requiring conformity to a county land use plan unless a variance is found reasonable. *Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n*, 866 P.2d 919 (Colo. 1994).

Assuming energy conservation is a prerequisite to a finding of reasonableness, this assumption does not lead invariably to the conclu-

sion that demand-side alternatives must be taken into account. To the contrary, demand-side alternatives are only one of many possible conservation measures that could be considered. *Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n*, 866 P.2d 919 (Colo. 1994).

Applied in *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

30-28-108. Adoption of plan by resolution. A county or regional planning commission may adopt the county or regional master plan as a whole by a single resolution or, as the work of making the whole master plan progresses, may adopt parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter which may be included in the plan. The commission may amend, extend, or add to the plan or carry any part of it into greater detail from time to time. The adoption of the plan or any part, amendment, extension, or addition shall be by resolution carried by the affirmative votes of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan. The action taken shall be recorded on the map and descriptive matter by the identifying signature of the secretary of the commission.

Source: L. 39: p. 297, § 7. CSA: C. 45A, § 7. CRS 53: § 106-2-7. C.R.S. 1963: § 106-2-7.

ANNOTATION

This section deals with the powers and duties of the planning commission. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Commission may amend, add, or extend plan once adopted and approved. Once the master plan is adopted by the commission and approved by the board, the commission then may amend, extend, or add to the plan as time and circumstances dictate. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), *aff'd sub nom. Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Also, this section is applicable to the resolutions of county commissioners on the subject of zoning property. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Where a request for change in zoning originates before the planning commission this article contemplates that the question before the county commissioners shall be whether the recommendations of the planning commission shall be approved. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

A recommendation of the planning commission must be in the form of a resolution which itself identifies the property to be affected. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Therefore, in the absence of a resolution which identifies the property to be affected,

there is nothing properly before the county commissioners to be approved or disapproved. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

In amending the zoning law, the official or body making the amendment is enacting law, binding on the public, and is not merely dealing with the rights of the owners of the particular property affected, and the act is legislative and based on present facts, rather than judicial and dependent on past facts. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Municipal ordinance precluded. Where a statute, such as this section, authorizes the adoption of zoning regulations by means of resolution, the municipality may not act by way of ordinance; but where the statute requires an ordinance for the attainment of the zoning restriction, a resolution is ineffective to accomplish the desired result. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

The pronouncements of the supreme court in cases dealing with zoning ordinances adopted by cities are applicable to the actions of county commissioners in connection with zoning "resolutions" which they are now authorized to adopt, unless some specific statutory provision authorizes a different procedure. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Applied in *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

30-28-109. Certification of plan. The county planning commission shall certify a copy of its master plan, or any adopted part or amendment thereof or addition thereto, to the board of county commissioners of the county. The regional planning commission shall certify such copies to the boards of county commissioners of the counties lying wholly or partly within the region. The county or regional planning commission shall certify such copies to the planning commission of all municipalities within the county or region. Any municipal planning commission which receives any such certification may adopt so much of the plan, part, amendment, or addition as falls within the territory of the municipality as a part or amendment of or addition to the master plan of the municipality, and, when so adopted, it shall have the same force and effect as though made and prepared, as well as adopted, by such municipal planning commission.

Source: L. 39: p. 298, § 8. CSA: C. 45A, § 8. CRS 53: § 106-2-8. C.R.S. 1963: § 106-2-8.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977).

Applied in *Bd. of County Comm'rs v. City of*

Thornton, 629 P.2d 605 (Colo. 1981); *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

30-28-110. Regional planning commission approval - required when - recording.
(1) (a) Whenever any county planning commission or, if there is none, any regional

planning commission has adopted a master plan of the county or any part thereof, no road, park, or other public way, ground, or space, no public building or structure, or no public utility, whether publicly or privately owned, shall be constructed or authorized in the unincorporated territory of the county until and unless the proposed location and extent thereof has been submitted to and approved by such county or regional planning commission.

(b) In case of disapproval, the commission shall communicate its reasons to the board of county commissioners of the county in which the public way, ground, space, building, structure, or utility is proposed to be located. Such board has the power to overrule such disapproval by a vote of not less than a majority of its entire membership. Upon such overruling, said board or other official in charge of the proposed construction or authorization may proceed therewith.

(c) If the public way, ground, space, building, structure, or utility is one the authorization or financing of which does not, under the law governing the same, fall within the province of the board of county commissioners or other county officials or board, the submission to the commission shall be by the body or official having such jurisdiction, and the commission's disapproval may be overruled by said body by a vote of not less than a majority of its entire membership or by said official. In the case of a utility owned by an entity other than a political subdivision, the submission to the commission shall be by the utility and shall not be by the public utilities commission; however, the commission's disapproval may be overruled by the public utilities commission by a vote of not less than a majority of its entire membership.

(d) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, or sale or lease of or acquisition of land for any road, park, or other public way, ground, place, property, or structure shall be subject to similar submission and approval, and the failure to approve may be similarly overruled.

(e) The failure of the commission to act within thirty days after the date of official submission to it shall be deemed approval, unless a longer period is granted by the submitting board, body, or official.

(2) (a) In any geographic area of common planning jurisdiction, which area consists of part or all of several counties for which a regional plan has been duly adopted, the district, county, or municipal planning commission shall refer to the regional planning commission for review any proposed new or changed land use plan, zoning amendments, subdivision proposals, housing codes, sign codes, urban renewal projects, proposed public facilities, or other planning functions which clearly affect another local governmental unit, or which affect the region as a whole, or which are the subject of primary responsibility of the regional planning commission.

(b) In any geographic area of common planning jurisdiction which involves part or all of only one county for which a regional plan has been duly adopted, the district, county, or municipal planning commission shall refer to the regional planning commission for review any proposed new or changed land use plan, zoning amendments, subdivision proposals, housing codes, sign codes, urban renewal projects, proposed public facilities, or other planning functions which clearly affect another local governmental unit, or which affect the region as a whole, or which are the subject of primary responsibility of the regional planning commission.

(c) The regional planning commission shall, within thirty days after the receipt of such referral, report to the district, county, or municipal planning commission on the effect of the referred matter on the regional plan. This time may be extended by mutual agreement. If, during the review time, a satisfactory adjustment in the referred matter cannot be worked out, the regional planning commission may report to the district, county, or municipal planning commission that this referred matter is inconsistent with the regional plan. In that case, if the district, county, or municipality has theretofore adopted the regional plan for the development of its area, the concurrent vote of two-thirds of the total membership of the district, county, or municipal planning commission shall be required to issue a different independent report on such matters. In all instances, the regional planning commission may also forward its report on the referred matter to the governing body of the governmental unit having authority to decide the matter.

(d) The failure of the regional planning commission to reply within thirty days after the receipt of the referral, or within the agreed extension of time, shall be deemed approval of the matter referred.

(e) A failure on the part of any district, county, or municipal planning commission to refer to the regional planning commission any plan or authorization provided for in paragraphs (a) and (b) of this subsection (2) shall be deemed a determination by such district, county, or municipal planning commission that the matter is local in nature.

(f) The regional planning commission, on its own initiative, may initiate a review of any matter involving its regional planning functions, whether such matter has been referred to it or not, if the subject of the review affects two or more local jurisdictions and may make a report of the result of such review to the governing bodies of the jurisdictions involved.

(g) The provisions of this subsection (2) shall not apply to any proposed business or industrial zoning change of less than twenty acres nor to any proposed residential zoning change or subdivision of less than forty acres.

(3) (a) All plans of streets or highways for public use, and all plans, plats, plots, and replots of land laid out in subdivision or building lots and the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the board of county commissioners for review and subsequent approval, conditional approval, or disapproval. It is not lawful to record any such plan or plat in any public office unless the same bears thereon, by endorsement or otherwise, the approval of the board of county commissioners and after review by the appropriate planning commission.

(b) The approval of said plan or plat by such commission shall not be deemed an acceptance of the proposed dedication by the public. Such acceptance, if any, shall be given by action of the governing body of the municipality or by the board of county commissioners. The owners and purchasers of such lots shall be presumed to have notice of public plans, maps, and reports of such commission affecting such property within its jurisdiction.

(4) (a) Any subdivider, or agent of a subdivider, who transfers legal or equitable title or sells any subdivided land before a final plat for such subdivided land has been approved by the board of county commissioners and recorded or filed in the office of the county clerk and recorder is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than five hundred dollars for each parcel of or interest in subdivided land which is sold. All fines collected under this paragraph (a) shall be credited to the general fund of the county. No person shall be prosecuted, tried, or punished under this paragraph (a) unless the indictment, information, complaint, or action for the same is instituted prior to the expiration of eighteen months after the recordation or filing in the office of the county clerk and recorder of the instrument transferring or selling such subdivided land. The board of county commissioners may provide for the enforcement of subdivision regulations by means of withholding building permits. No plat for subdivided land shall be approved by the board of county commissioners unless at the time of the approval of platting the subdivider provides the certification of the county treasurer's office that all ad valorem taxes applicable to such subdivided land, for years prior to that year in which approval is granted, have been paid.

(b) The board of county commissioners of the county in which the subdivided land is located has the power to bring an action to enjoin any subdivider from selling subdivided land before a final plat for such subdivided land has been approved by the board of county commissioners.

(c) The board of county commissioners shall distribute, or cause to be distributed, the sets of plans or plats submitted to the agencies as referred to in section 30-28-136 (1).

(d) Any violation of paragraph (a) of this subsection (4) is prima facie evidence of a fraudulent land transaction and shall be grounds for the purchaser to void the transfer or sale.

(e) This subsection (4) applies only with respect to parcels of land less than thirty-five acres in area.

(5) (a) Notice of the filing of preliminary plans of any type required by this section to be submitted to a district, regional, or county planning commission or to the board of county commissioners, if the situs of these plans lies wholly or partially within two miles of the

corporate limits of a municipality but not within the corporate limits of another municipality, shall be referred to the town or city clerk of such municipality by the county planning commission or, if there be none, by the board of county commissioners. Within fourteen days of the receipt of such plans, the municipality, by action of its city council or town board, or, if one exists, by action of its planning commission, may make its recommendations to the board of county commissioners, which shall forward the same to the district, regional, or county planning commission, if any. Failure of the town board, city council, or agents designated by them to make any recommendation within fourteen days of the receipt of such plans shall constitute waiver of its right to make such recommendation.

(b) If such recommendation is made by the municipality, it shall be taken into consideration by the board of county commissioners and district, regional, or county planning commission, if any, before action is taken upon the plans. The board of county commissioners and district, regional, or county planning commission, if any, shall take no action on such plans until the recommendation of the municipality is received or until fifteen days after receipt of the preliminary plans, whichever is sooner.

Source: L. 39: p. 298, § 9. CSA: C. 45A, § 9. CRS 53: § 106-2-9. L. 59: p. 619, § 4. L. 61: p. 592, § 3. C.R.S. 1963: § 106-2-9. L. 72: pp. 498, 499, §§ 2, 3. L. 79: (4)(a) amended, p. 1166, § 1, effective June 15. L. 83: (1)(c) amended, p. 1252, § 1, effective June 3; (4)(a) and (4)(b) amended and (4)(d) and (4)(e) added, p. 1250, § 2, effective July 1.

Cross references: For required monumentation within a subdivision before sales contract is executed, see § 38-51-105 (3) and (4).

ANNOTATION

Law reviews. For article, "Recent Developments in Zoning Law in Colorado", see 39 Dicta 211 (1962). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Inverse Condemnation — A Viable Alternative", see 51 Den. L.J. 529 (1974).

The powers of the board of county commissioners must be construed strictly. Bd. of County Comm'rs v. Pfeifer, 190 Colo. 275, 546 P.2d 946 (1976).

Express and implied county powers. As a political subdivision of the state, a county possesses only those powers which are expressly granted to it and those implied powers which are reasonably necessary to execute the express powers. Bd. of County Comm'rs v. Pfeifer, 190 Colo. 275, 546 P.2d 946 (1976).

One of the purposes of this section is to provide a method by which the county through its planning commission can inform and advise other governmental units of the effects of their proposed actions upon the county and its residents. Blue River Defense Comm. v. Town of Silverthorne, 33 Colo. App. 10, 516 P.2d 452 (1973).

This section does not provide that county approval of a plat is sufficient in itself to permit construction of any improvement. The effect of the approval and recording of a plat is to permit the owner to transfer or sell land by reference to the plat without penalty. Beyond that, the approval has no specific effect by stat-

ute. SK Fin. SA v. La Plata County, Bd. of Comm'rs, 126 F.3d 1272 (10th Cir. 1997).

It is incumbent upon entity having jurisdiction over project to submit proposal to county planning commission, even though such entity has authority to later override the planning commission's disapproval. Blue River Defense Comm. v. Town of Silverthorne, 33 Colo. App. 10, 516 P.2d 452 (1973).

In order that county residents may present objections and views. Even though a town may affirmatively overrule a county's decision regarding the town's proposed construction of a sewage plant, the residents of the county are entitled to an opportunity to present their objections and views and to have these considered as part of the planning commission's approval or disapproval and to require that if construction is to proceed, the town must determine to proceed in the face of county's objection. Blue River Defense Comm. v. Town of Silverthorne, 33 Colo. App. 10, 516 P.2d 452 (1973).

Subsection (1)(a) of this section is limited by the public utilities commission's exercise of its police power to regulate transmission lines in the interest of public safety pursuant to § 40-4-106. Mountain View Elec. Ass'n v. Pub. Utils. Comm'n, 686 P.2d 1336 (Colo. 1984).

Subsection (4) is in derogation of the common law and must be construed strictly. Bd. of County Comm'rs v. Pfeifer, 190 Colo. 275, 546 P.2d 946 (1976).

Although subsection (4) does not address who bears the burden of obtaining a survey

and exemption, the trial court possesses broad discretion in fashioning equitable remedies and did not abuse its discretion in ordering that the defendants shall bear the cost of the survey and the responsibility for obtaining the exemption required prior to the sale of a subdivided parcel of land. *Schreck v. T&C Sanderson Farms, Inc.*, 37 P.3d 510 (Colo. App. 2001).

Subsection (4)(a) of this section is constitutional. *Hopkins v. Bd. of County Comm'rs*, 193 Colo. 230, 564 P.2d 415 (1977).

General assembly intended the permitting process under § 24-65.1-501 to apply to utility projects that involve designated activities of state interest and this section to apply to any other utility project. *Colo. Springs v. Eagle Cty. Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

Restriction on free alienation of property. The statutory provision requiring approval of the plat by a board prior to the conveyance places a restriction on the free alienation of property, which is one of the essential attributes of common-law property ownership. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Board remedies limited. The general assembly has clearly and expressly established the remedies available to the board in order to enforce its subdivision requirements, and they are so limited. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Subsection (4) specifies the relief a county would be entitled to where land is transferred in violation of the terms of this section; namely, injunction prior to sale or initiation of prosecution for a misdemeanor following sale. *Bd. of County Comm'rs v. Pfeifer*, 35 Colo. App. 89, 532 P.2d 51 (1974), modified, 190 Colo. 275, 546 P.2d 946 (1976).

Subsection (4)(a) confers no power on court to set aside conveyance at request of board. *Hinton v. Lake Fork Dev. Co.*, 35 Colo. App. 94, 531 P.2d 974 (1974), aff'd, 190 Colo. 394, 548 P.2d 122 (1976).

Word "enjoin" as used in subsection (4)(b) does not authorize the setting aside of a conveyance which occurred without the filing of a plat. *Bd. of County Comm'rs v. Pfeifer*, 35 Colo. App. 89, 532 P.2d 51 (1974), modified, 190 Colo. 275, 546 P.2d 946 (1976).

Although C.R.C.P. 65(f), provides for the issuance of a mandatory injunction, the strict construction of subsection (4) precludes the availability of such relief to a county. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Misdemeanor and fine adequate. A person who violates subsection (4)(a) may be fined and found guilty of a misdemeanor, but a county has no authority under subsection (4)(b) to seek the setting aside of a conveyance. *Bd. of County*

Comm'rs v. Pfeifer, 190 Colo. 275, 546 P.2d 946 (1976).

This section creates a problem for the counties in preventing the sales of land where the sale is completed and the deed recorded before the county has had the opportunity to secure an injunction. However, the general assembly has sought to deter violations by making such conduct a misdemeanor. The general assembly apparently determined that this would be an adequate remedy. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Continuing violation. Ordinarily, actual or proposed use itself would constitute "violation" under this section. However, where alleged violation is the failure to secure the approval of the plat by the board, this violation will continue until the board actually approves the plat and, therefore, the board's claim for relief adequately pleaded the necessary facts upon which relief may be granted. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Town exercising eminent domain beyond corporate limits must comply with section. A town must comply with county zoning procedures enunciated in this section when the town exercises its power of eminent domain for construction of sewage facilities beyond its corporate limits pursuant to § 38-6-122. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

Disregard of zoning regulations. Even without definite statutory direction, as found in this section, courts of last resort have recognized that districts, authorities, and other state authorized governmental subdivisions have the power to overrule or disregard the restrictions of county or municipal zoning regulations. *Reber v. South Lakewood San. Dist.*, 147 Colo. 70, 362 P.2d 877 (1961); *Hygiene Fire Prot. Dist. v. Bd. of County Comm'rs*, 205 P.3d 487 (Colo. App. 2008), aff'd, 221 P.3d 1063 (Colo. 2009).

Statutory county may not refuse to process an otherwise complete application for location and extent review of a public project under subsection (1)(a) on the basis that the applicant political subdivision must first seek modification of a planned unit development (PUD). The override authority of political subdivisions with special statutory purposes, codified in subsection (1), is applicable to the PUD act. *Bd. of County Comm'rs v. Hygiene Fire Prot. Dist.*, 221 P.3d 1063 (Colo. 2009).

The extent and exact location as referred to in this section could not be determined in eminent domain proceedings until the question of necessity had been decided. *Miller v. Pub. Serv. Co.*, 129 Colo. 513, 272 P.2d 283 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 338, 99 L. Ed. 724 (1955).

Application by town to the state water pollution control commission for approval of location for sewage treatment facilities did not

constitute submission to the county planning commission as contemplated by this section where one page of the application contained a signature of approval on behalf of the planning commission. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

Denver did not need to first obtain the consent of Arapahoe county to the acquisition, for an airport, of lands already zoned for airport purposes by the Arapahoe county officials. *City and County of Denver v. Bd. of Comm'rs*, 113 Colo. 150, 156 P.2d 101 (1945).

The master plan is only one source of comprehensive planning, and is generally held to be advisory only, and not the equivalent of zoning, nor binding upon the zoning discretion

of the legislative body. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

The requirement of a metes and bounds description of a tract for purposes of qualifying the tract for exemption from the limitations of subsection (4)(a) was not unreasonable or arbitrary, and the denial of the exemption was not an abuse of discretion. *Hopkins v. Bd. of County Comm'rs*, 193 Colo. 230, 564 P.2d 415 (1977).

Statute as basis for jurisdiction. See *Bd. of County Comm'rs v. Hinton*, 190 Colo. 394, 548 P.2d 122 (1976).

Applied in *McArthur v. Zabka*, 177 Colo. 337, 494 P.2d 89 (1972); *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981).

30-28-111. Zoning plan. (1) The county planning commission of any county may, and upon order by the board of county commissioners in any county having a county planning commission shall, make a zoning plan for zoning all or any part of the unincorporated territory within such county, including both the full text of the zoning resolution and the maps, and representing the recommendations of the commission for the regulation by districts or zones of the location, height, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, access to sunlight for solar energy devices, and the uses of land for trade, industry, recreation, or other purposes. To the end that adequate safety may be secured, the county planning commission may include in said zoning plan provisions establishing, regulating, and limiting such uses on or along any storm or floodwater runoff channel or basin as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters.

(2) The county planning commission or the board of adjustment of any county, in the exercise of powers pursuant to this article, may condition any portion of a zoning resolution, any amendment thereto, or any exception to the terms thereof upon the preservation, improvement, or construction of any storm or floodwater runoff channel designated and approved by the Colorado water conservation board.

Source: L. 39: p. 299, § 10. CSA: C. 45A § 10. CRS 53: § 106-2-10. C.R.S. 1963: § 106-2-10. L. 66: p. 42, § 5. L. 79: (1) amended, p. 1160, § 3, effective May 25.

ANNOTATION

Law reviews. For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982). For article, "Judicial Review, Referral and Initiation of Zoning Decisions", see 13 Colo. Law. 387 (1984). For article, "Substantive Due Process and Zoning Decisions", see 25 Colo. Law. 71 (March 1996).

In Colorado zoning resolutions by counties are authorized by statute which have been held constitutional. *Di Salle v. Giggall*, 128 Colo. 208, 261 P.2d 499 (1953).

And the principal constitutional limitation is that zoning provisions must be reasonable and for the promotion of the public welfare, this must be determined by the court from the

facts, circumstances, and locality in the particular case. *Di Salle v. Giggall*, 128 Colo. 208, 261 P.2d 499 (1953).

Zoning regulations must bear a real and substantial relationship to the public health, safety, morals, or welfare. *Bd. of County Comm'rs v. Echternacht*, 194 Colo. 311, 572 P.2d 143 (1977).

The purpose of this section is to regulate the density of population and use of lands, and where not so designated, the act clearly implies such intended purposes. *Di Salle v. Giggall*, 128 Colo. 208, 261 P.2d 499 (1953).

Courts will indulge every intent and in favor of a zoning resolution and that the

presumption of constitutionality casts the heavy burden upon one who seeks a declaration of invalidity of proving beyond a reasonable doubt that the resolution is unconstitutional. *Bd. of County Comm'rs v. Thompson*, 177 Colo. 277, 493 P.2d 1358 (1972); *Famularo v. Bd. of County Comm'rs*, 180 Colo. 333, 505 P.2d 958 (1973).

A zoning plan is presumed to be constitutional, and one challenging such a plan has the burden of demonstrating its unconstitutionality. *Bd. of County Comm'rs v. Echternacht*, 194 Colo. 311, 572 P.2d 143 (1977).

To sustain an attack upon the validity of a zoning limitation, the aggrieved property owner must show that the enforced restriction upon his property will preclude its use for any purpose to which it is reasonably adapted, so where the reasonableness of a zoning ordinance is fairly debatable, it must be upheld. *Famularo v. Bd. of County Comm'rs*, 180 Colo. 333, 505 P.2d 958 (1973).

And a board of county commissioners, as the legislative body, has a wide prerogative in classifying and regulating uses of land for trade, industry, recreation, and other purposes, and it is not the function of the courts to determine how uses shall be defined or what uses shall be permitted in various districts under comprehensive zoning resolutions. *Bd. of County Comm'rs v. Thompson*, 177 Colo. 277, 493 P.2d 1358 (1972).

Thus, whether one use of land is more or less objectionable than another is for legislative determination in classifying land uses in respective zoning districts. *Bd. of County Comm'rs v. Thompson*, 177 Colo. 277, 493 P.2d 1358 (1972).

And a zoning ordinance is not to be held unconstitutional because it prohibits the most desirable and convenient use of the land. *Bd. of County Comm'rs v. Thompson*, 177 Colo. 277, 493 P.2d 1358 (1972).

Nor is a zoning ordinance required to permit most profitable use of land. The due process and just compensation clauses of the state and federal constitutions do not require that zoning ordinances permit a landowner to make the most profitable use of his property. For there to be a taking, the landowner must show he has been deprived of all reasonable uses of his land. *C.F. Lytle Co. v. Clark*, 491 F.2d 834 (10th Cir. 1974).

No denial of due process or equal protection. Where land users make no showing that other land users within the same zoning district

are permitted to do what they have been denied the right to do, a court finds no denial of due process or equal protection. *Bd. of County Comm'rs v. Thompson*, 177 Colo. 277, 493 P.2d 1358 (1972).

And where zoning regulations relating to mineral conservation districts provide for sufficient uses, such uses of land are limited, but limitation upon land use is one of the fundamental purposes of zoning necessary to achieve the purposes of the mineral conservation district, and such regulations, on their face, do not amount to a taking of property without due process of law. *Famularo v. Bd. of County Comm'rs*, 180 Colo. 333, 505 P.2d 958 (1973).

Submission to county board required. This section does require the county planning commission, when it formulates a zoning plan or plans, to submit both the full text of the zoning resolution and the maps representing its recommendations to the board of county commissioners. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

The fact that the planning department and not the planning commission itself prepared zoning plan does not violate the provision of this section requiring the planning commission to make a zoning plan. *Raygor v. Bd. of County Comm'rs*, 21 P.3d 432 (Colo. App. 2000).

Minimizing adverse traffic conditions is a legitimate zoning objective. *Western Paving Constr. Co. v. Bd. of County Comm'rs*, 689 P.2d 703 (Colo. App. 1984).

The regulation of the number of families to a given lot area is of vital importance to the orderly development of a rapidly growing territory adjoining a city, particularly for reasons of sanitation therein. *Di Salle v. Giggall*, 128 Colo. 208, 261 P.2d 499 (1953).

Landowner cannot create his own hardship and then require that zoning regulations be changed to meet that hardship. *C.F. Lytle Co. v. Clark*, 491 F.2d 834 (10th Cir. 1974).

Master plan not binding on zoning discretion. The master plan in only one source of comprehensive planning, and is generally held to be advisory only, and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Applied in *Western Paving Constr. Co. v. Bd. of County Comm'rs*, 181 Colo. 77, 506 P.2d 1230 (1973); *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

30-28-112. Certification of plan - hearings. The county planning commission shall certify a copy of the plans for zoning all or any part of the unincorporated territory within the county, or any adopted part or amendment thereof or addition thereto, to the board of county commissioners of the county. After receiving the certification of said zoning plans from the commission and before the adoption of any zoning resolutions, the board of county

commissioners shall hold a public hearing thereon, the time and place of which at least fourteen days' notice shall be given by one publication in a newspaper of general circulation in the county. Such notice shall state the place at which the text and maps so certified by the county planning commission may be examined. No substantial change in or departure from the text or map so certified by the county planning commission shall be made unless such change or departure is first submitted to the certifying county planning commission for its approval, disapproval, or suggestions and, if disapproved, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. The county planning commission shall have thirty days after such submission within which to send its report to the board of county commissioners.

Source: L. 39: p. 299, § 11. CSA: C. 45A, § 11. CRS 53: § 106-2-11. C.R.S. 1963: § 106-2-11. L. 92: Entire section amended, p. 965, § 4, effective June 1.

ANNOTATION

Legislative intent was to provide the board with expertise of the commission in the form of recommendations on each specific amendment to that plan. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

If an amendment is proposed by the planning commission, this section applies. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Section applies if amendment intended to alter all zoned areas. This section is applicable where the proposed amendment is intended to alter the original zoning plan in comprehensive fashion and in a manner which would affect all zoned areas. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Substantially altered amendment resubmitted to commission. If the board of county commissioners concludes that an amendment should be substantially altered, then it must be resubmitted to the planning commission in order that the county commissioners receive the recommendations of the planning commission on the revised amendment which the board proposes to adopt. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Resubmission not required for nonfundamental changes. Where the resolution proposed by the county planning commission was most comprehensive, but it proposed numerous classifications for zoning districts, including five classes of each district, and the board of county commissioners eased the restrictions relating to the location of fur farms, kennels, portable sawmills, and veterinary buildings in an agricultural and forestry district, the change was not so fundamental in nature as to in any wise materially alter the basic overall zoning policy contained in the resolution of the

board, and did not necessitate a resubmission of the matter to the commission. *Grant v. Bd. of County Comm'rs*, 164 Colo. 69, 432 P.2d 762 (1967).

Public hearing. This section provides that before the adoption of any part of a zoning plan there shall be a public hearing thereon the time and place of which at least 30 days notice shall be given by one publication in a newspaper of general circulation in the county, and such notice shall state the place at which the text and maps so certified by the county planning commission may be examined. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Legislative intent as to publicity. The legislative intent very properly was and is that overall plans or changes should be given such publicity as will reasonably inform those owners affected, as well as the public, of what is proposed. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Notice must be clear, definite, explicit, and not ambiguous; and unless its meaning can be apprehended without explanation or argument, it cannot be said to be clear. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

The plain language of this section does not require a board of county commissioners to give notice after the date the plan is certified by the planning commission. Rather, the plain language requires only that the public receive 14 days' advance notice of the hearing. *Raygor v. Bd. of County Comm'rs*, 21 P.3d 432 (Colo. App. 2000).

Notice adequate. Where all who appeared for the "first" meeting necessarily learned that the earlier date was incorrect, and presumably, if they made any inquiry, also ascertained that the actual hearing would be held two days later, and the public hearing was exceedingly well attended with about one-half of those persons present opposing with the remaining one-half testifying in support of the resolution, the notice

in the instant case was not defective and incorrectly dated notice did not neutralize the "valid" first notice. *Grant v. Bd. of County Comm'rs*, 164 Colo. 69, 432 P.2d 762 (1967).

Applied in *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

30-28-113. Regulation of size and use - districts - repeal. (1) (a) Except as otherwise provided in section 34-1-305, C.R.S., when the county planning commission of any county makes, adopts, and certifies to the board of county commissioners plans for zoning the unincorporated territory within any county, or any part thereof, including both the full text of a zoning resolution and the maps, after public hearing thereon, the board of county commissioners, by resolution, may regulate, in any portions of such county that lie outside of cities and towns:

- (I) The location, height, bulk, and size of buildings and other structures;
- (II) The percentage of lots that may be occupied;
- (III) The size of yards, courts, and other open spaces;
- (IV) The uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes;
- (V) Access to sunlight for solar energy devices; and
- (VI) The uses of land for trade, industry, residence, recreation, or other purposes and for flood control.

(b) (I) In order to accomplish such regulation, the board of county commissioners:

(A) May divide the territory of the county that lies outside of cities and towns into districts or zones of such number, shape, or area as it may determine, and, within such districts or any of them, may regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land; and

(B) May require and provide for the issuance of building permits as a condition precedent to the right to erect, construct, reconstruct, or alter any building or structure within any district covered by such zoning resolution.

(II) A county shall not charge permit, plan review, or other fees to install an active solar electric or solar thermal device or system that, in aggregate, exceed the lesser of the county's actual costs in issuing the permit or five hundred dollars for a residential application or one thousand dollars for a nonresidential application if the device or system produces fewer than two megawatts of direct current electricity or an equivalent-sized thermal energy system, or that exceed the county's actual costs in issuing the permit if the device or system produces at least two megawatts of direct current electricity or an equivalent-sized thermal energy system. The county shall clearly and individually identify all fees and taxes assessed on an application subject to this subparagraph (II) on the invoice. The general assembly hereby finds that there is a statewide need for certainty regarding the fees that can be assessed for permitting such devices or systems, and therefore declares that this subparagraph (II) is a matter of statewide concern. This subparagraph (II) is repealed, effective July 1, 2018.

(2) The county planning commission may make and certify a single plan for the entire unincorporated portion of the county or separate and successive plans for those parts which it deems to be urbanized or suitable for urban development and those parts which, by reason of distance from existing urban communities or for other causes, it deems suitable for nonurban development. Any resolution adopted by the board of county commissioners may cover and include the unincorporated territory covered and included in any such single plan or in any of such separate and successive plans. No resolution covering more or less than the territory covered by any such certified plan shall be adopted or put into effect until and unless it is first submitted to the county planning commission which certified the plan to the board of county commissioners and is approved by said commission or, if disapproved, receives the favorable vote of not less than a majority of the entire membership of such board. All such regulations shall be uniform for each class or kind of building or structure throughout any district, but the regulations in any one district may differ from those in other districts.

Source: L. 39: p. 300, § 12. CSA: C. 45A, § 12. CRS 53: § 106-2-12. C.R.S. 1963: § 106-2-12. L. 66: p. 43, § 6. L. 73: p. 1054, § 18. L. 79: (1) amended, p. 1160, § 4, effective January 1, 1980. L. 2008: (1) amended, p. 892, § 1, effective May 20. L. 2011: (1)(b)(II) amended, (HB 11-1199), ch. 311, p. 1518, § 2, effective June 10.

Cross references: In 2011, subsection (1)(b)(II) was amended by the "Fair Permit Act". For the short title, see section 1 of chapter 311, Session Laws of Colorado 2011.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

The limitations set forth in this section necessary regulate the density and distribution of population. Di Salle v. Giggall, 128 Colo. 208, 261 P.2d 499 (1953).

State has specifically granted county commissioners the authority to regulate, by resolution, the uses of land in unincorporated areas for trade, industry, residence, recreation, or other purposes, and for flood control, authorizing the establishment of districts or zones in order to accomplish such regulation. Famularo v. Bd. of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973); Di Salle v. Giggall, 128 Colo. 208, 261 P.2d 499 (1953); Crittenden v. Hasser, 41 Colo. App. 235, 585 P.2d 928 (1978).

Parcel by parcel delineation and regulation of land use does not invalidate zoning regulations; nor does it constitute prohibited "spot zoning." Carron v. Bd. of County Comm'rs, 976 P.2d 359 (Colo. App. 1998).

And establishment of flood control district and mineral conservation district was within

powers granted County commissioners to regulate uses of land in unincorporated areas. Famularo v. Bd. of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Regulations relating to mineral conservation districts do not so limit uses of land included in such districts as to be unconstitutional on their face or as applied. Famularo v. Bd. of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Highest and best use not test of validity of regulation. Although other uses of plaintiff's land would not be as profitable as mobile home use, validity of zoning regulations is not determined by the highest and best use concept or in terms of dollars and cents profitability. Famularo v. Bd. of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Applied in Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

30-28-114. Enforcement - inspector - permits. The board of county commissioners may provide for the enforcement of the zoning regulations by means of the withholding of building permits, and, for such purpose, may establish and fill a position of county building inspector and may fix the compensation attached to said position, or may authorize one or more administrative officials of the county to assume some or all functions of such position in addition to their customary functions. Such board may also fix a reasonable schedule of fees for the issuance of such permits. After the establishment of such position and the filling of the same, it shall be unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within the unincorporated territory covered by such zoning regulations without obtaining a building permit from such county building inspector. Such building inspector shall not issue any permit unless the plans for the proposed erection, construction, reconstruction, alteration, or use fully conform to all zoning regulations then in effect.

Source: L. 39: p. 300, § 13. CSA: C. 45A, § 13. CRS 53: § 106-2-13. C.R.S. 1963: § 106-2-13. L. 77: Entire section amended, p. 1458, § 1, effective June 9.

ANNOTATION

General assembly did not intend in this section and § 30-28-205 (1) to limit schedule of fees for county building permits to direct costs of operating building department. Indi-

rect costs, including, for example, services furnished by county manager, county attorney's office, the assessor's office, and various other divisions of county government may be calcu-

lated in determining overall costs required to operate that department for purposes of imposing fees for building department services. Fees generated must generally approximate the overall costs of operating the building department to prevent the fees from constituting an unlawful tax in violation of the state constitutional provision mandating uniform property taxation. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 964 P.2d 575 (Colo. App. 1998).

On remand, trial court correctly concluded that general governmental expenses relating to growth management are recoverable from builders under this section and § 30-28-205 (1) through permit fees charged as indirect costs. Evidence demonstrated that growth has driven the costs of the county's building department. The evidence also supports the finding

that the fees charged by the building department were approximately required to offset the direct and indirect costs of operating the department. Mathematical exactitude is not required. Thus, it was permissible for part of the growth costs to be allocated to the building department as indirect costs. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 53 P.3d 646 (Colo. App. 2001).

A building permit is required from the county building inspector before the construction of any building or other structure within an unincorporated territory covered by a zoning regulation and such a permit may only be issued if the plans for the proposed building or structure conform to all zoning regulations then in effect. *Bd. of County Comm'rs of La Plata County v. Moga*, 947 P.2d 1385 (Colo. 1997).

30-28-115. Public welfare to be promoted - legislative declaration - construction.

(1) Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state, including lessening the congestion in the streets or roads or reducing the waste of excessive amounts of roads, promoting energy conservation, securing safety from fire, floodwaters, and other dangers, providing adequate light and air, classifying land uses and distributing land development and utilization, protecting the tax base, securing economy in governmental expenditures, fostering the state's agricultural and other industries, and protecting both urban and nonurban development.

(2) (a) The general assembly hereby finds and declares that it is the policy of the state to assist developmentally disabled persons to live in normal residential surroundings. Further, the general assembly declares that the establishment of state-licensed group homes for the exclusive use of developmentally disabled persons, which are known as community residential homes as defined in section 27-10.5-102 (4), C.R.S., is a matter of statewide concern and that a state-licensed group home for eight developmentally disabled persons is a residential use of property for zoning purposes. The phrase "residential use of property for zoning purposes", as used in this subsection (2), includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. "Developmentally disabled" in this section means a person with a developmental disability as defined in section 27-10.5-102, C.R.S.

(b) (I) (Deleted by amendment, L. 2001, p. 103, § 1, effective March 21, 2001.)

(II) The general assembly declares that the establishment of group homes for the aged for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need nursing facilities and who so elect to live in normal residential surroundings, including single-family residential units. Group homes for the aged shall be distinguished from nursing facilities, as defined in section 25.5-4-103 (14), C.R.S., and institutions providing life care, as defined in section 12-13-101 (5), C.R.S. Every county having adopted or which shall adopt a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this paragraph (b) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the county.

(b.5) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with mental illness as that term is defined in section 27-65-102, C.R.S., is a matter of statewide concern and that a state-licensed group home for eight persons with mental illness is a residential use of property for zoning purposes, as defined in section 31-23-301 (4), C.R.S. A group home for persons with mental illness established under this paragraph (b.5) shall not be located within seven hundred fifty feet of another such group home or of another group home as defined in paragraphs (a) and (b)

of this subsection (2), unless otherwise provided for by the county. A person shall not be placed in a group home without being screened by either a professional person, as defined in section 27-65-102 (17), C.R.S., or any other such mental health professional designated by the director of a facility, which facility is approved by the executive director of the department of human services pursuant to section 27-90-102, C.R.S. Persons determined to be not guilty by reason of insanity to a violent offense shall not be placed in such group homes, and any person who has been convicted of a felony involving a violent offense shall not be eligible for placement in such group homes. The provisions of this paragraph (b.5) shall be implemented, where appropriate, by the rules of the department of public health and environment concerning residential treatment facilities for persons with mental illness. Nothing in this paragraph (b.5) shall be construed to exempt such group homes from compliance with any state, county, or municipal health, safety, and fire codes.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage, or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulation may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

(2.5) In connection with an application for development approval of the siting of a new facility to be used exclusively as a group home for the aged or for at-risk adults under the county's subdivision, zoning, platting, planned unit development, or other similar land development regulations, in addition to any other information required to be submitted, the county may request the applicant to submit a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan submitted pursuant to this subsection (2.5) may be considered by the county in reviewing the application but may not, by itself, constitute grounds for denying the application.

(3) (a) As used in this subsection (3), unless the context otherwise requires:

(I) "Manufactured home" means a single family dwelling which:

(A) Is partially or entirely manufactured in a factory;

(B) Is not less than twenty-four feet in width and thirty-six feet in length;

(C) Is installed on an engineered permanent foundation;

(D) Has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and

(E) Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401 et seq., as amended.

(II) "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units.

(b) (I) No county shall have or enact zoning regulations, subdivision regulations, or any other regulation affecting development which exclude or have the effect of excluding manufactured homes from the county if such homes meet or exceed, on an equivalent performance engineering basis, standards established by the county building code.

(II) Nothing in this subsection (3) shall prevent a county from enacting any zoning, developmental, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and setback standards to the extent that

such standards or requirements are applicable to existing or new housing within the specific use district of the county.

(III) Nothing in this subsection (3) shall preclude any county from enacting county building code provisions for unique public safety requirements such as snow load roof, wind shear, and energy conservation factors.

(IV) Nothing in this subsection (3) shall be deemed to supersede any valid covenants running with the land.

Source: L. 39: p. 301, § 14. CSA: C. 45A, § 14. CRS 53: § 106-2-14. C.R.S. 1963: § 106-2-14. L. 66: p. 43, § 7. L. 75: Entire section amended, p. 933, § 56, effective July 14. L. 76: (2)(a.5) added, p. 695, § 1, effective April 29. L. 79: (1) amended, p. 1161, § 5, effective January 1, 1980. L. 84: (3) added, p. 823, § 1, effective January 1, 1985. L. 87: (2)(b.5) added, p. 1216, § 1, effective July 1. L. 90: (2)(b) amended, p. 1476, § 1, effective July 1. L. 91: (2)(b)(II) amended, p. 1858, § 20, effective April 11. L. 94: (2)(b.5) amended, p. 2715, § 297, effective July 1. L. 2001: (2)(a), (2)(b), and (2)(b.5) amended, p. 103, § 1, effective March 21. L. 2006: (2)(b)(II) amended, p. 2021, § 114, effective July 1; (2)(b.5) amended, p. 1407, § 75, effective August 7. L. 2008: (2.5) added, p. 167, § 1, effective August 5. L. 2010: (2)(b.5) amended, (SB 10-175), ch. 188, p. 806, § 81, effective April 29.

Cross references: For the care and treatment of persons with developmental disabilities, see article 10.5 of title 27.

ANNOTATION

Law reviews. For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Group Homes: Mandated by Statute but Locally Regulated", see 21 Colo. Law. 1643 (1992). For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (Feb. 2006).

Purposes set forth. This section sets forth the many purposes for which zoning regulations may be designed and enacted, including not only the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state but also, among other purposes, the classification of land uses and distribution of land development and utilization, protection of the tax base, fostering of the state's agricultural and other industries, and the protection of urban and non-urban development. Bd. of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972).

Judicial presumption of adequate consideration. In the absence of evidence to the contrary, the court will presume that the board of county commissioners did give ample consideration to the multiple purposes of zoning when it adopted the zoning resolution. Bd. of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972).

Adoption of section permitting developmentally disabled persons to live in group homes reflects legislative intent to assist such

persons to live in normal residential surroundings. Double D Manor v. Evergreen Meadows, 773 P.2d 1046 (Colo. 1989).

Delegation of zoning authority to county. A delegation of authority is not invalid simply because its terms are broad and general, although there must be sufficient standards and procedural safeguards involved in the delegation and subsequent implementation to ensure that any action taken by a county in response to a land use proposal will be rational and consistent and that judicial review of that action will be available and effective. Beaver Meadows v. Bd. of County Comm'rs, 709 P.2d 928 (Colo. 1985).

Zoning regulations precluding construction of church building in agricultural zone did not arise from an unconstitutional delegation of authority, nor did such regulations deny due process to the church or regulate religious beliefs of the church. Messiah Baptist Church v. County of Jefferson, Colo., 697 F. Supp. 396 (D. Colo. 1987), aff'd, 859 F.2d 820 (10th Cir. 1988), cert. denied, 490 U.S. 1005, 109 S. Ct. 1638, 104 L. Ed.2d 154 (1989).

Applied in City of Thornton v. Bd. of County Comm'rs, 42 Colo. App. 102, 595 P.2d 264 (1979); Info. Please, Inc. v. Bd. of County Comm'rs, 49 Colo. App. 392, 600 P.2d 86 (1979); Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983); Beaver Meadows v. Bd. of County Comm'rs, 709 P.2d 928 (Colo. 1985).

30-28-116. Regulations may be amended. From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment, to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

Source: L. 39: p. 301, § 15. CSA: C. 45A, § 15. CRS 53: § 106-2-15. C.R.S. 1963: § 106-2-15. L. 92: Entire section amended, p. 965, § 5, effective June 1.

ANNOTATION

Legislative intent was to provide board with expertise of commission in the form of recommendations on each specific amendment to that plan. Section 30-28-112 and this section were enacted to accomplish that purpose. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Substantial compliance with statutory provisions is required for lawful enactment of a zoning change and failure to comply with essential mandates of the statutes invalidates the proceeding. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

This section pertains to those instances in which an amendment to an existing zone is proposed. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Also section applies if amendment proposed by board or private citizen. When an amendment is proposed by the board or by private citizens directly to the board, then this section applies and the proposed amendment must be submitted first to the planning commission for its approval, disapproval, or recommendation. In this manner, the board receives the recommendations of the planning commission on the specific amendment that has been proposed. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Amendment cannot become effective until commission studies problem. If the board of county commissioners is considering a possible amendment to a previously zoned area, the amendment cannot become effective until the planning commission has had the opportunity to study the problem and the proposal and to convey its responses regarding the suggested change to the board. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

The power to amend is not arbitrary, it cannot be exercised merely because certain in-

dividuals want it done or think it ought to be done, the change must be necessary for the public good. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Therefore, amendments of zoning ordinances should be made with caution and only when changing conditions clearly require amendment. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Changes not estopped. Estoppel does not operate to prevent a legislative body or commission from carrying out its public functions, and if conditions warranted later changes it is the duty of such public bodies to act accordingly. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Readopted or comprehensive amendment not contemplated. This section permitting amendment to a zoning plan without first having maps prepared, does not sanction in that category a readopted or comprehensive amendment of the original zoning plan which affects all zoned areas, the legislative intent being that overall plans or changes should be given such publicity as will reasonably inform the owners affected, and is governed by § 30-28-112 dealing with the adoption of a zoning plan. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Notice by publication is the law's substitute for personal notice, but to be effective as against any one whose rights are involved in compliance with, an allegation of, or a showing of strict compliance with the proper statute is essential to a good complaint. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Strict compliance with notice provisions. A notice of hearing as the basis of a local ordinance should unambiguously set forth reasonable information concerning the subject matter of the hearing to the end that adequate warning be given to all persons whose rights may be affected by action of the local board, because

changes in zoning ordinances affect property rights, and the provisions as to a notice of hearing must be strictly complied with, and a notice which does not warn of the nature of the proposed amendments is no notice. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Strict compliance with statutory provisions for notice and public hearing required for amendatory zoning resolution. *Webster Props. v. Bd. of County Comm'rs*, 682 P.2d 506 (Colo. App. 1984).

There is no statutory provision for notice of planning commission hearings. *Center Land Co. v. Bd. of County Comm'rs*, 44 Colo. App. 523, 619 P.2d 782 (1980).

Hearing requirement does not give landowner a right to an unlimited hearing with regard to zoning changes. Landowner's procedural due process rights not infringed when he sought permission to present 4 to 5 hours of evidence, but the board limited his presentation to 15 minutes, and landowner introduced 4 affidavits and 16 exhibits into the hearing record. *Jafay v. Bd. of County Comm'rs of Boulder County*, 848 P.2d 892 (Colo. 1993).

Condition precedent. If legislative authority is delegated by the state to some inferior body with a restriction by which it is to be used only on notice to persons whose interests are thereby affected, compliance therewith is a condition precedent to its lawful exercise. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Ambiguity resolved against notice. Any ambiguity in a notice to the public of an important zoning change, which is the only notice that the public has, should be resolved against the notice. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Lay meaning applied to notice. When a statute requires a notice to be given to the public, such a notice should fairly be given the meaning it would reflect upon the mind of the ordinary layman, and not as it would be construed by one familiar with the technicalities solely applicable to the laws and rules of the zoning commission. otherwise, such a notice, instead of informing, would actually mislead the public, including the persons immediately interested. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Factors to be considered in construing ordinance. Because zoning laws should be given a fair and reasonable construction in light of the setting in which employed, the factors surrounding adoption of an ordinance should be considered. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

As soon as reasonably possible after their adoption, actual changes should be placed upon an authorized copy of an original county zoning map or maps with the date of the action shown along with the type of change, because this enables the public readily to discover the relative location of the legal description contained in both the public notice and the commissioners' minutes. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

As soon as reasonably possible after adoption by the board of county commissioners of changes in zoning, they should be placed upon an authorized copy of an original map or maps with the date of the action shown along with the type of change. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Effect of inadvertent change in zoning map. Where there was no resolution by the board of county commissioners amending a zoning map, the inadvertent or erroneous change in the zoning map was without effect. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Failure to comply with section renders board's proceeding and resolution void. Where the amendment which the board enacted was neither proposed by the planning commission nor submitted for commission consideration, although the planning commission provided a recommendation, it was never given an opportunity to pass upon the amendment which the board of county commissioners adopted, the proceedings before the board, as well as the resultant zoning resolution, were null and void. *Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Arbitrary or capricious action. Where the board of county commissioners in amending a county zoning resolution, fails to give consideration to the need for reasonable stability in zoning regulations and the requirement of certainty of description as well as proper notice of the proposed change, it acts arbitrarily and capriciously, abuses its discretion and exceeds its jurisdiction. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

When a general zoning ordinance is passed, those who by property in zoned districts have the right to rely upon the rule of law that the classification made in the ordinance will not be changed unless the change will be required for the public good. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Applied in *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Beaver Meadows v. Bd. of County Comm'rs*, 709 P.2d 928 (Colo. 1985).

30-28-117. Board of adjustment. (1) The board of county commissioners of any county which enacts zoning regulations under the authority of this part 1 shall provide for

a board of adjustment of three to five members and for the manner of the appointment of such members. Not more than half of the members of such board may at any time be members of the planning commission. The board of county commissioners shall fix per diem compensation and terms for the members of such board of adjustment, which terms shall be of such length and so arranged that the term of at least one member will expire each year. Any member of the board of adjustment may be removed for cause by the board of county commissioners upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term in the same manner as in the case of original appointments. The board of county commissioners may appoint associate members of such board, and, in the event that any regular member is temporarily unable to act owing to absence from the county, illness, interest in a case before the board, or any other cause, his place may be taken during such temporary disability by an associate member designated for that purpose.

(2) The board of county commissioners shall provide and specify in its zoning or other resolutions general rules to govern the organization, procedure, and jurisdiction of said board of adjustment, which rules shall not be inconsistent with the provisions of this part 1. The board of adjustment may adopt supplemental rules of procedure not inconsistent with this part 1 or such general rules.

(3) Any zoning resolution of the board of county commissioners may provide that the board of adjustment, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the zoning resolution, may make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent. Where feasible, special exception may be made for the purpose of providing access to sunlight for solar energy devices. The board of county commissioners may also authorize the board of adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions, as they may arise in the administration of the zoning regulations.

(4) Meetings of the board of adjustment shall be held at the call of the chairman and at such other times as the board in its rules of procedure may specify. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses by application to the district court. The court, upon proper showing, may issue subpoenas and enforce obedience by contempt proceedings. All meetings of the board of adjustment shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(5) The governing body of a county that has entered into an intergovernmental agreement with a municipality located or partially located within that county for the purposes of joint participation in land use planning, subdivision procedures, and zoning pursuant to the authority granted in section 31-23-227 (2), C.R.S., may enter into an intergovernmental agreement with that municipality for the purpose of establishing a joint zoning board of adjustment for a specific area designated in the intergovernmental agreement.

Source: L. 39: p. 301, § 16. CSA: C. 45A, § 16. CRS 53: § 106-2-16. C.R.S. 1963: § 106-2-16. L. 79: (3) amended, p. 1161, § 6, effective May 25. L. 98: (5) added, p. 689, § 1, effective May 18.

ANNOTATION

Law reviews. For article, "Recent Developments in Zoning Law in Colorado", see 39 Dicta 211 (1962).

Rules of procedure and evidence not strictly followed. A hearing before a board of adjustment should be conducted in an orderly manner but need not strictly conform to the rules of procedure and evidence necessary in a judicial proceeding. *Monte Vista Prof'l Bldg., Inc. v.*

City of Monte Vista, 35 Colo. App. 235, 531 P.2d 400 (1975).

County commissioners had authority to appoint themselves to a board of adjustment; such offices are not incompatible and statutory limitation applies only to the number of members of planning commission on such board. *Fedder v. McCurdy*, 768 P.2d 711 (Colo. App. 1989).

30-28-118. Appeals to board of adjustment. (1) (a) Appeals to the board of adjustment may be taken by any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the board of adjustment may be taken by any officer, department, board, or bureau of the county affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the zoning resolution. The time within which such appeal shall be made, and the form or other procedure relating thereto, shall be as specified in the general rules provided by the board of county commissioners to govern the procedure of such board of adjustment or in the supplemental rules of procedure adopted by such board.

(b) No such appeal to the board of adjustment shall be allowed for building use violations that may be prosecuted pursuant to section 30-28-124 (1) (b).

(2) Upon appeals the board of adjustment has the following powers:

(a) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of the zoning resolution;

(b) To hear and decide, in accordance with the provisions of any such resolution, requests for special exceptions or for interpretation of the map or for decisions upon other special questions upon which such board is authorized by any such resolution to pass;

(c) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this part 1 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning resolutions. In determining whether difficulties to, or hardship upon, the owner of such property exist, as used in this paragraph (c), the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980, may properly be considered. Regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

(3) The concurring vote of four members of the board in the case of a five-member board and of three members in the case of a three-member board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or agency or to decide in favor of the appellant.

Source: L. 39: p. 303, § 17. CSA: C. 45A, § 17. CRS 53: § 106-2-17. C.R.S. 1963: § 106-2-17. L. 77: (1) amended, p. 1458, § 2, effective June 9. L. 79: (2)(c) amended, p. 1161, § 7, effective May 25.

ANNOTATION

The board of adjustment has the powers enumerated in this section. Bd. of County Comm'rs of La Plata County v. Moga, 947 P.2d 1385 (Colo. 1997).

Requirement of hardship relates to variances, not to special exceptions or special use permits. Guildner, Way Inc. v. Bd. of Adjustment, 35 Colo. App. 70, 529 P.2d 332 (1974).

Proof required. In order to obtain rezoning to permit a use which an applicant seeks, he must prove that it is not possible to use and develop the property for any other use enumer-

ated in the existing zoning; similarly, if one seeks a lower classification of zoning than the zone presently existing, he must prove that it is not possible to use and develop the land for any uses permitted in zones which are in between the zone sought and the presently existing zone. Garrett v. City of Littleton, 177 Colo. 167, 493 P.2d 370 (1972).

Applicant had the burden of proving that variance would avoid unnecessary hardship or was reasonably necessary for the convenience or welfare of the public. Monte Vista Prof'l

Bldg., Inc. v. City of Monte Vista, 35 Colo. App. 235, 531 P.2d 400 (1975).

Courts may not substitute their judgment for that of the board or disturb an exercise of the board's discretion in zoning matters unless such discretion is clearly abused. Monte Vista Prof'l Bldg., Inc. v. City of Monte Vista, 35 Colo. App. 235, 531 P.2d 400 (1975).

A stop work order issued by a county building inspector for lack of compliance with a zoning variance is an administrative order made in enforcement of a zoning regulation and the board of adjustment has original jurisdiction to hear any challenge to such order. Bd. of County Comm'rs of La Plata County v. Moga, 947 P.2d 1385 (Colo. 1997).

A person challenging a stop work order must exhaust administrative remedies by seeking re-

lief from the board of adjustment before requesting judicial intervention. Bd. of County Comm'rs of La Plata County v. Moga, 947 P.2d 1385 (Colo. 1997).

An injunction could not be obtained to prevent construction of buildings approved by board of adjustment, although lot was slightly smaller than zoning requirement, since remedy is review by court only to see if board has abused its discretion. Bacon v. Steigman, 123 Colo. 62, 225 P.2d 1046 (1950).

Applied in Johnson v. Bd. of County Comm'rs, 158 Colo. 311, 406 P.2d 338 (1965); Murray v. Bd. of Adjustments, 42 Colo. App. 113, 594 P.2d 596 (1979); Gramiger v. Crowley, 638 P.2d 797 (Colo. 1981); Gramiger v. Crowley, 660 P.2d 1279 (Colo. 1983).

30-28-119. District planning commissions. (1) Whether or not a county planning commission has been created, the board of county commissioners of any county which is unzoned, on petition, from time to time, may appoint district planning commissions for the purpose of preparing plans for zoning certain portions of the unincorporated territory within such county. Such petition shall:

(a) Be signed by more than fifty percent of the qualified electors who are residents in the proposed district and more than fifty percent of the residents and nonresidents who own more than fifty percent of the area of real property situated within the boundaries of the district described in the petition;

(b) Request the appointment of a planning commission for such district;

(c) Contain all of the following:

(I) A list of the parcels of land as shown in the records of the county assessor to be included within the proposed district;

(II) A list of proposed planning commissioners; and

(III) A map that shows the boundaries of the proposed district and the total number of acres within the proposed district and that meets the minimum standards for land surveys and plats provided in article 51 of title 38, C.R.S.;

(d) Be submitted to the county clerk and recorder.

(1.3) The county clerk and recorder shall review the petition and prepare a report for the board of county commissioners. The board of county commissioners may adopt rules on processing the petition and establish a reasonable fee for the cost of reviewing the petition.

(1.6) At the next regular meeting following the receipt of the report, the board of county commissioners shall determine the sufficiency of the petition and, if found to be sufficient, shall order a public hearing to be held on the question of whether a planning commission for the proposed district should be appointed. The board of county commissioners shall hold the public hearing not more than sixty days after the date the petition is determined sufficient. The petitioner has the burden of proof that a planning commission for the proposed district should be appointed.

(2) Notice of the time, place, and purpose of such hearing, containing a description of the boundaries of the proposed district, shall be given by publication in a newspaper of general circulation within the county by one publication at least fourteen days prior to the date of such hearing and shall be mailed by the petitioner for the appointment of a planning commission at least fourteen days before the hearing by certified mail to each person who owns property within the proposed district as shown in the records of the county assessor.

(2.3) Any owner of property included within the boundaries of the proposed district shall be entitled to protest the appointment of a planning commission by filing with the board of county commissioners a written statement setting forth in brief the grounds of the protest or by presenting evidence of the grounds of the protest at the hearing. At the time and place specified in said notice, the board of county commissioners shall sit for the purpose of determining whether the public interest requires that a planning commission for

the proposed district should be appointed. A person protesting the appointment of the planning commission for the proposed district has the burden of proof that a planning commission should not be appointed.

(2.7) At the next regular meeting after termination of the hearing, the board of county commissioners, if satisfied that the public interest requires such action, may enter an order appointing a district planning commission and may exclude parcels of land from the proposed district. The district planning commission shall consist of three or five members, each of whom shall be a resident of the district and the owner of real property situated therein.

(3) (a) The members of such commission shall serve for terms of not more than three years as determined by the board of county commissioners. They shall serve without compensation. The board of county commissioners shall provide for the filling of vacancies in the membership of the commission and for the removal of a member for nonperformance of duty or misconduct.

(b) The district planning commission:

(I) Has all the powers and is subject to all the duties by this part 1 conferred and imposed upon county planning commissions insofar as such powers and duties relate to zoning and in respect to the territory included within the boundaries of such proposed district;

(II) Shall develop proposed plans and regulations for the zoning of the proposed district; and

(III) Shall hold public hearings and certify a copy of the proposed zoning plans, including the full text of the zoning resolution and the maps, to the board of county commissioners of the county, and, if a county planning commission has been created in the county wherein the said district is situated, such plans must first be reviewed by the commission.

(c) (I) After receiving the certification of said zoning plans from the commission and before the creation of the planning district and adoption of any zoning resolutions, the board of county commissioners shall hold a public hearing in the manner prescribed in section 30-28-112 on the question of establishing the planning district. Notice of the time, place, and purpose of the hearing shall be made in the same manner as provided in subsection (2) of this section.

(II) Any property owner within the proposed district may protest inclusion of the owner's property within the district by filing with the board of county commissioners a written statement setting forth briefly the grounds of the protest or by presenting evidence of the grounds of the protest at the hearing. The owner has the burden of proof that the public interest requires exclusion of the owner's property from the district. The board of county commissioners may exclude any parcel of land from the proposed district if the board determines it is within the public interest.

(III) If the board of county commissioners determines it is in the public interest, the board may:

(A) Enter an order after the hearing that establishes the planning district, describes the boundaries of the district, and gives the district an appropriate and distinctive name;

(B) By resolution, adopt all or any part of the proposed zoning plan and regulations; and

(C) By resolution, exercise, as to the territory included within the boundaries of such district, all the powers conferred upon it by law.

(IV) The zoning regulations established for the district may be administered in the same manner as all other land use regulations of the county or as otherwise provided in the district zoning regulations.

(4) Wherever the regulations for a district made pursuant to this section require a greater width or size of yards, courts, or other open spaces, require a lower height of buildings or smaller number of stories, require a greater setback from a road or street, require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other regulations made under the authority of this part 1 and effective within the same territory, the provisions of the regulations for such district made pursuant to this section shall govern. Wherever the provisions of other regulations

made under the authority of this part 1 and effective within the territory of a district established pursuant to this section impose higher standards than are imposed by the regulations for such district made pursuant to this section, the provisions of such other regulations shall govern.

(5) The boundaries of a planning district may be increased or decreased from time to time through the addition or deletion of contiguous property by order of the board of county commissioners pursuant to petition signed by the owners of more than fifty percent of the area of the real property to be added or deleted or on motion of the board of county commissioners after published notice, opportunity for protest, and hearing, as provided in the case of original establishment of a district.

(6) Planning districts may be dissolved by action of the board of county commissioners if the affected county adopts a zoning resolution which covers the district in question. Action for dissolution may also be initiated by a petition calling for dissolution of the district signed by more than fifty percent of the qualified electors who are residents in the district and more than fifty percent of the residents and nonresidents who own more than fifty percent of the area of real property situated within the boundaries of the district or by the board of county commissioners. The board shall hold a public hearing at the county seat within the county on the question of the dissolution of the district. A notice of the time, place, and purpose of such hearing, containing a description of the boundaries of the district, shall be given by publication in a newspaper of general circulation within the county by one publication at least fourteen days prior to the date of such hearing. Prior to the hearing, the county planning commission shall review the proposed dissolution at a public meeting and shall transmit its findings to the board of county commissioners. Any owner of property included within the boundaries of the proposed district shall be entitled to protest the dissolution by filing with the board of county commissioners a written statement setting forth in brief the grounds of the protest or by providing evidence on the grounds of the protest at the hearing. At the time and place specified in said notice, the board of county commissioners shall sit for the purpose of determining whether or not such district should be dissolved, and, at such time and place, it shall consider and pass upon any protests filed. The board of county commissioners, if satisfied that the public interest would be served by such action, shall enter an order dissolving the planning district, or, if satisfied that the public interest would be served by retaining such district, the board shall enter an order dismissing such petition.

Source: L. 39: p. 304, § 18. CSA: C. 45A, § 18. CRS 53: § 106-2-18. C.R.S. 1963: § 106-2-18. L. 65: p. 916, § 1. L. 74: (1), (5), and (6) amended, p. 332, § 1, effective April 5. L. 94: Entire section amended, p. 583, § 1, effective April 7.

30-28-120. Existing structures - county property. (1) The lawful use of a building or structure or the lawful use of any land, as existing and lawful at the time of the adoption of a zoning resolution or, in the case of an amendment of a resolution, at the time of such amendment, may be continued, although such use does not conform with the provisions of such resolution or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. The addition of a solar energy device to such building shall not necessarily be considered a structural alteration. The board of county commissioners may provide in any zoning resolution for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution.

(2) If any county acquires title to any property by reason of tax delinquency and such property is not redeemed as provided by law, the future use of such property shall be in conformity with the then provisions of the zoning resolution of the county, or with any amendment of such resolution, equally applicable to other like properties within the district in which the property acquired by the county is located.

Source: L. 39: p. 306, § 19. CSA: C. 45A, § 19. CRS 53: § 106-2-19. C.R.S. 1963: § 106-2-19. L. 79: (1) amended, p. 1162, § 8, effective May 25. L. 2003: (1) amended, p. 2667, § 3, effective June 6.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 420, Session Laws of Colorado 2003.

ANNOTATION

A county zoning resolution was not arbitrary, unreasonable, or unconstitutional in that it provided that, if a non-conforming use of land, preserved under this section, was discontinued for one year, any further use of the premises must conform to the provisions of the resolution. *Beszedes v. Bd. of Comm'rs*, 116 Colo. 123, 178 P.2d 950 (1947).

Declaration as to public nuisance. Where the legislative arm of the government has declared by statute and zoning resolution what activities may or may not be conducted in a prescribed zone, it has in effect declared what is or is not a public nuisance. *Robinson Brick Co. v. Luthi*, 115 Colo. 106, 169 P.2d 171 (1946).

Landowner cannot create his own hardship and then require that zoning regulations be changed to meet that hardship. *C.F. Lytle Co. v. Clark*, 491 F.2d 834 (10th Cir. 1974).

This section only applies to valid nonconforming uses. *Bd. of County Comm'rs v. Mountain Air Ranch*, 192 Colo. 364, 563 P.2d 341 (1977).

Conditional use is a use which is permitted within the zone, but which because of the possibility that the permitted use could become incompatible in certain respects with other uses within the zone, special permission is required before the land may be put to that use. *Elam v. Albers*, 44 Colo. App. 281, 616 P.2d 168 (1980).

Uses permitted by particular zoning classification are not vested rights, and subsequent zoning changes are binding on the owners of the property affected. *Elam v. Albers*, 44 Colo. App. 281, 616 P.2d 168 (1980).

And issuance of conditional use permit creates no greater right in property owners than they would have possessed had they desired to develop in conformance with any other use permitted within the zone. *Elam v. Albers*, 44 Colo. App. 281, 616 P.2d 168 (1980).

Conditional use permit only represents determination that, as to the land, a use additional to those generally permitted will be allowed. *Elam v. Albers*, 44 Colo. App. 281, 616 P.2d 168 (1980).

A restriction on the right to expand or extend a nonconforming use is valid. *Bd. of County Comm'rs v. Mountain Air Ranch*, 192 Colo. 364, 563 P.2d 341 (1977).

For purposes of this section, preparation for use is not equal to actual use. There are no grounds for the operation of this section to protect a residential use where there was no residential use at the time the zoning resolution affecting the property was adopted. This is so even where prior law authorized the construction of a residence on the property affected. *Wilkinson v. Bd. of County Comm'rs*, 872 P.2d 1269 (Colo. App. 1993).

30-28-121. Temporary regulations. The board of county commissioners of any county, after appointment of a county or district planning commission and pending the adoption by such commission of a zoning plan, where in the opinion of the board conditions require such action, may promulgate, by resolution without a public hearing, regulations of a temporary nature, to be effective for a limited period only and in any event not to exceed six months, prohibiting or regulating in any part or all of the unincorporated territory of the county or district the erection, construction, reconstruction, or alteration of any building or structure used or to be used for any business, residential, industrial, or commercial purpose.

Source: L. 39: p. 306, § 20. CSA: C. 45A, § 20. CRS 53: § 106-2-20. C.R.S. 1963: § 106-2-20. L. 74: Entire section amended, p. 354, § 2, effective May 17.

ANNOTATION

Section does not conflict with, preempt, or control necessarily implied authority of a local government under the Local Government Land Use Control Enabling Act (enabling act) to adopt a reasonable moratorium of sufficient duration to prepare a master plan. Section pertains to temporary moratoria adopted without a public hearing in connection with the adoption of a zoning plan. This section constitutes an additional grant of authority to local governments in the context of zoning plan adop-

tion: The local government is permitted to adopt a moratorium for a six-month period without a public hearing. *Droste v. Bd. of County Comm'rs of Pitkin*, 159 P.3d 601 (Colo. 2007).

County had authority under the Local Government Land Use Control Enabling Act (enabling act) to impose temporary moratorium on developmental approvals concerning certain land within county. The enabling act is designed to give the local governments additional or supplemental powers for the purposes

set forth in the act, including development in hazardous areas, protecting wildlife habitats, protecting areas of historical or archeological significance, controlling population density, and providing for the phasing in of infrastructure. These special considerations, in many instances, supplement those normally involved in creating a zoning master plan or administering a zoning regimen. Accordingly, the enabling act and this article (county planning statute) have different,

though complementary, purposes, and the limitation on temporary zoning authorized by this section does not prohibit or limit a moratorium on development for the purpose of conducting studies under the enabling act. *Droste v. Bd. of County Comm'rs of Pitkin*, 141 P.3d 852 (Colo. App. 2005), *aff'd*, 159 P.3d 601 (Colo. 2007).

Applied in *Dollaghan v. Boulder County*, 749 P.2d 444 (Colo. App. 1987).

30-28-122. Submission to division of planning. Before finally adopting and certifying any plan, either master or zoning, the planning commission, regional, county, or district, making such plan shall submit such plan to the division of planning of the department of local affairs for advice and recommendations. The director of the division of planning, within thirty days after such submission, shall present his advice and criticism in respect to such plan. Such advice and criticism shall be advisory only, and the commission submitting such plan shall not be bound thereby. If such advice and criticism have not been presented within such period of thirty days, the approval of such plan by the director of the division of planning shall be presumed.

Source: L. 39: p. 307, § 21. CSA: C. 45A, § 21. CRS 53: § 106-2-21. L. 63: p. 145, § 7. C.R.S. 1963: § 106-2-21. L. 67: p. 468, § 13. L. 71: p. 1061, § 3.

30-28-123. Higher standards govern. Wherever the regulations made under authority of this part 1 require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute, the provisions of the regulations made under authority of this part 1 shall govern. Wherever the provisions of any other statute require a greater width or size of yards, courts, or other open spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this part 1, the provisions of such statute shall govern.

Source: L. 39: p. 308, § 23. CSA: C. 45A, § 23. CRS 53: § 106-2-23. C.R.S. 1963: § 106-2-22.

ANNOTATION

Law reviews. For article, "The Lawyer's Role in Developing an Area", see 28 Rocky Mt. L. Rev. 453 (1956).

30-28-124. Penalties. (1) (a) It is unlawful to erect, construct, reconstruct, or alter any building or structure in violation of any regulation in, or of any provisions of, any zoning resolution, or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 1. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof, or any provision of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal erection, construction, reconstruction, or alteration continues shall be deemed a separate offense.

(b) (I) It is unlawful to use any building, structure, or land in violation of any regulation in, or of any provision of, any zoning resolution, or any amendment thereto, enacted or adopted by any board of county commissioners under the authority of this part 1. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine

of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal use of any building, structure, or land continues shall be deemed a separate offense.

(II) Whenever a county zoning official authorized pursuant to section 30-28-114 has personal knowledge of any violation of this paragraph (b), he or she shall give written notice to the violator to correct the violation within ten days after the date of the notice. Should the violator fail to correct the violation within the ten-day period, the zoning official may request that the sheriff of the county issue a summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of the charge to the violator. The summons and complaint shall require that the violator appear in county court at a definite time and place stated therein to answer and defend the charge.

(III) One copy of said summons and complaint shall be served upon the violator by the sheriff of the county in the manner provided by law for the service of a criminal summons. One copy each shall be retained by the sheriff and the county zoning official, and one copy shall be transmitted by the sheriff to the clerk of the county court.

(c) It is the responsibility of the county attorney to enforce the provisions of this subsection (1). In the event that there is no county attorney or in the event that the board of county commissioners deems it appropriate, the board of county commissioners may appoint the district attorney of the judicial district to perform such enforcement duties in lieu of the county attorney.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is or is proposed to be used, in violation of any regulation or provision of any zoning resolution, or amendment thereto, enacted or adopted by any board of county commissioners under the authority granted by this part 1, the county attorney of the county in which such building, structure, or land is situated, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, or use. In the event that there is no county attorney or in the event that the board of county commissioners deems it appropriate, the board of county commissioners may appoint the district attorney of the judicial district to perform such enforcement duties in lieu of the county attorney.

Source: L. 39: p. 308, § 24. CSA: C. 45A, § 24. CRS 53: § 106-2-24. C.R.S. 1963: § 106-2-23. L. 77: Entire section R&RE, p. 1459, § 3, effective June 9. L. 2006: (1)(b)(II) amended, p. 233, § 1, effective July 1.

ANNOTATION

A zoning resolution may legally restrict the right to extend or enlarge a nonconforming use, and the stopping of an expansion of a nonconforming use is not an arbitrary or unreasonable exercise of governmental power. *Wasinger v. Miller*, 154 Colo. 61, 388 P.2d 250 (1964).

“Use” defined. “Use” means “to employ” or “to be the subject of customary practice, employment, or occupation”. *Bd. of County Comm’rs v. Pfeifer*, 35 Colo. App. 89, 532 P.2d 51 (1974), modified, 190 Colo. 275, 546 P.2d 946 (1976).

Sale or buying of land is not a “use” prohibited by this section. *Bd. of County Comm’rs v. Pfeifer*, 35 Colo. App. 89, 532 P.2d 51 (1974), modified, 190 Colo. 275, 546 P.2d 946, (1976).

Court’s duties upon considering request for injunction. When considering a request for an injunction and the affirmative defenses to that request, the district court sits as a trial court, not a reviewing court, and therefore has the responsibility for determining the legal merit of those affirmative defenses. *Garland v. Bd. of County Comm’rs*, 660 P.2d 20 (Colo. App. 1982).

Nothing in this section precludes an investigation by the board of county commissioners of alleged zoning violations. *Sundheim v. Bd. of County Comm’rs of Douglas County*, 904 P.2d 1337 (Colo. App. 1995), *aff’d*, 926 P.2d 545 (Colo. 1996).

30-28-124.5. County court actions for civil penalties for zoning violations. (1) It is unlawful to erect, construct, reconstruct, alter, or use any building, structure, or land in

violation of any regulation in, or of any provisions of, any zoning resolution or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 1. In addition to any penalties imposed pursuant to section 30-28-124, any person, firm, or corporation violating any such regulation, provision, or amendment thereof or any provision of this part 1 may be subject to the imposition, by order of the county court, of a civil penalty in an amount of not less than five hundred dollars nor more than one thousand dollars. It is within the discretion of the county attorney to determine whether to pursue the civil penalties set forth in this section, the remedies set forth in section 30-28-124, or both. Each day after the issuance of the order of the county court during which such unlawful activity continues shall be deemed a separate violation and shall, in accordance with the subsequent provisions of this section, be the subject of a continuing penalty in an amount not to exceed one hundred dollars for each such day. Until paid, any civil penalty ordered by the county court and assessed under this subsection (1) shall, as of recording, be a lien against the property on which the violation has been found to exist. In case the assessment is not paid within thirty days, it may be certified by the county attorney to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection (1). Any lien placed against the property pursuant to this subsection (1) shall be recorded with the clerk and recorder of the county in which the property is located.

(2) (a) In the event any building or structure is erected, constructed, reconstructed, altered, or used or any land is used in violation of any regulation or provision of any zoning resolution, or amendment thereto, enacted or adopted by any board of county commissioners under the authority granted by this part 1, the county attorney of the county in which such building, structure, or land is situated, in addition to other remedies provided by law, may commence a civil action in county court for the county in which such building, structure, or land is situated, seeking the imposition of a civil penalty in accordance with the provisions of this section.

(b) A county zoning official designated by resolution of the board of county commissioners shall, upon personal information and belief that a violation of any regulation or provision of any zoning resolution enacted under the authority of this part 1 has occurred, give written notice to the violator to correct the violation within ten days after the date of the notice. If the violator fails to correct the violation within the ten-day period or within any extension period granted by the zoning official, the zoning official, the sheriff of the county, or the county attorney may issue a summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of the charge to the violator.

(c) One copy of the summons and complaint issued pursuant to paragraph (b) of this subsection (2) shall be served upon the violator in the manner provided by law for the service of a county court civil summons and complaint in accordance with the Colorado rules of county court civil procedure. The summons and complaint shall also be filed with the clerk of the county court and thereafter the action shall proceed in accordance with the Colorado rules of county court civil procedure.

(d) If the county court finds, by a preponderance of the evidence, that a violation of any regulation or provision of a zoning resolution, or amendment thereto, as enacted and adopted by the board of county commissioners, has occurred, the court shall order the violator to pay a civil penalty in an amount allowed pursuant to subsection (1) of this section. The penalty shall be payable immediately by the violator to the county treasurer. In the event that the alleged violation has been cured or otherwise removed and the violator has notified the county zoning official of the cure or removal at least five business days prior to the appearance date in the summons, then the county attorney shall so inform the court and request that the action be dismissed without fine or appearance of the defendant.

(3) Upon the filing with the court of a receipt issued by the county treasurer showing payment in full of a civil penalty assessed pursuant to this section and upon the filing of an affidavit of the county zoning official that the violation has been cured, removed, or corrected, the court shall dismiss the action and issue a satisfaction in full of the judgment

so entered. The court may also dismiss the action upon a motion of the county attorney indicating that the matter has been otherwise resolved.

(4) If a receipt showing full payment of the civil penalty or the affidavit or the motion by the county attorney required by subsection (3) of this section is not filed, the action shall continue and the court shall retain jurisdiction to impose an additional penalty against the violator in the amount specified in subsection (1) of this section. The additional penalty shall be imposed by the court upon motion filed by the county and proof that the violation has not been cured, removed, or corrected. Thereafter, the action shall continue until the filing with the court of a receipt issued by the county treasurer showing payment in full of the civil penalty and any additional penalties so assessed and the filing of an affidavit of the county zoning official that the violation has been cured, removed, or corrected, or until a motion by the county attorney to dismiss the action is granted by the court.

Source: L. 98: Entire section added, p. 338, § 1, effective July 1. L. 2006: (1), (2)(b), (2)(d), (3), and (4) amended, p. 233, § 2, effective July 1.

30-28-125. Filing with county clerk and recorder. Upon the adoption of any zoning ordinance or regulation, or map, the board of county commissioners shall file a certified copy of each in the office of the county clerk and recorder, which copies shall be accessible to the public. The county clerk and recorder shall index such ordinances and regulations as nearly as possible in the same manner as he indexes instruments pertaining to the title of land.

Source: L. 39: p. 309, § 25. CSA: C. 45A, § 25. CRS 53: § 106-2-25. C.R.S. 1963: § 106-2-24.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

30-28-126. Appropriation authorized. The board of county commissioners is empowered to appropriate out of the general county fund such moneys, otherwise unappropriated, as it may deem fit to finance the work of the county and district planning commissions and of the boards of adjustment, and to enforce the zoning regulations and restrictions which are adopted, and to accept grants of money and service for these purposes and other purposes, in accordance with this part 1, from either private or public sources, state or federal.

Source: L. 39: p. 309, § 26. CSA: C. 45A, § 26. CRS 53: § 106-2-26. C.R.S. 1963: § 106-2-25.

30-28-127. Public utilities exceptions. None of the provisions of this part 1 shall apply to any existing building, structure, or plant or other equipment owned or used by any public utility. After the adoption of a plan, all extensions, betterments, or additions to buildings, structures, or plant or other equipment of any public utility shall only be made in conformity with such plan, unless, after public hearing first had, the public utilities commission orders that such extensions, betterments, or additions to buildings, structures, or plant or other equipment are reasonable and that such extensions, betterments, or additions may be made even though they conflict with the adopted plan.

Source: L. 39: p. 309, § 27. CSA: C. 45A, § 27. CRS 53: § 106-2-27. C.R.S. 1963: § 106-2-26.

ANNOTATION

Administrative agency proceeding by Public Utilities Commission was quasi-judicial where it rendered its decision by applying the reasonableness standard set forth in this section, the parties adversely affected by the decision were identifiable, no new rule of general application resulted, and notice and a public hearing were required. Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n, 829 P.2d 1303 (Colo. 1992).

The requirement that the Public Utilities Commission find a proposed improvement to be "reasonable" before ordering an upgrade to equipment contrary to a county land use plan, read in the context of the statutory scheme covering county planning along with the rules that the Public Utilities Commission has adopted, provides an adequate standard. Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n, 829 P.2d 1303 (Colo. 1992).

In determining whether any improvement or upgrade in accordance with this section is reasonable statutory considerations for county or regional planning commissions are also factors for the Public Utilities Commission to consider. Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n, 829 P.2d 1303 (Colo. 1992).

It is within the discretion of the Public Utilities Commission to determine what factors are germane to assessing the reasonableness of an utility upgrade, because the Public Utilities Commission has the knowledge and expertise to determine when, and under what circumstances, an upgrade is reasonable and it is constitutionally authorized to make such determinations. Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n, 866 P.2d 919 (Colo. 1994).

30-28-128. Term of membership. In order to ensure adequate time for the preparation of those plans which are specified as the primary responsibility of a regional planning commission, the term of membership of any governing body in a regional planning commission shall be not less than three years.

Source: L. 59: p. 622, § 6. CRS 53: § 106-2-29. C.R.S. 1963: § 106-2-28.

30-28-129. Inclusion of land in regional planning commission. Any county or municipality adjacent to an area under the jurisdiction of a regional planning commission may be included in such regional planning commission by agreement between its board of county commissioners, or governing body, or in charter cities the officials having charge of public improvements and the governing bodies which are members of the regional planning commission. Any such county or municipality, upon being included in the regional planning commission, shall be subject to all provisions of this part 1 relating to regional planning commissions.

Source: L. 59: p. 623, § 6. CRS 53: § 106-2-30. C.R.S. 1963: § 106-2-29.

30-28-130. Notice of intent to withdraw. Written notice of intent to withdraw shall be given to the regional planning commission at least ninety days prior to the date of intended withdrawal, and no withdrawal shall be effective until such notice has been given. In the event of withdrawal of a county or municipality, no refund shall be made of any moneys paid to the regional planning commission.

Source: L. 59: p. 623, § 6. CRS 53: § 106-2-31. C.R.S. 1963: § 106-2-30.

30-28-131. Planning commission responsibilities in a common geographic area. The regional planning commission shall have primary responsibility for those broad plans described in section 30-28-106 (3) and surveys and studies described in section 30-28-107 which clearly affect the physical development of two or more governmental units. The district, county, or municipal planning commission shall have primary responsibility for all other plans, surveys, and studies and implementation thereof in zoning, subdivision, housing, recreation, transportation, public works, health and safety, and other similar subjects.

Source: L. 59: p. 623, § 6. CRS 53: § 106-2-32. C.R.S. 1963: § 106-2-31.

30-28-132. Concurrent planning jurisdiction - authorized agreements and contracts. (1) In any instance where a regional planning commission is unable to perform on time and in sufficient detail a plan or survey or study which is its primary responsibility and where such plan or survey or study has been requested and is urgent for the development of a district, county, or municipality, then, upon formal notice to the regional planning commission, the local commission may proceed to make such plan or survey or study for its own area. In such instances, the regional planning commission may adopt such plan or survey or study as part of its regional plan and may take primary responsibility for the expansion of the study or plan into other jurisdictions.

(2) A regional planning commission may agree or contract with any governmental or quasi-governmental body within the region to make any plan or survey or study for such governmental or quasi-governmental body, irrespective of whether such plan or survey or study is the primary responsibility of such regional planning commission.

(3) A regional planning commission may agree or contract with any constituent government to have it make any plan or survey or study which is the primary responsibility of the regional planning commission.

Source: L. 59: p. 623, § 6. CRS 53: § 106-2-33. C.R.S. 1963: § 106-2-32.

30-28-133. Subdivision regulations. (1) Every county in the state that does not have a county planning commission on July 1, 1971, shall create a county planning commission in accordance with the provisions of section 30-28-103. Every county planning commission in the state shall develop, propose, and recommend subdivision regulations, and the board of county commissioners shall adopt and enforce subdivision regulations for all land within the unincorporated areas of the county in accordance with this section not later than September 1, 1972. Before finally adopting any subdivision regulations, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county. Before adopting any such subdivision regulations, the board of county commissioners may revise, alter, or amend any such subdivision regulations developed, proposed, or recommended by the county planning commission. Such subdivision regulations shall be in full force and effect and enforced by the board of county commissioners.

(2) Prior to the adoption of the regulations referred to in this section, a public hearing shall be held thereupon in the county in which said territory or any part thereof is situated. A copy of such regulations shall be filed with the county clerk and recorder of the county in which said territory is situated.

(3) Subdivision regulations adopted by a board of county commissioners pursuant to this section shall require subdividers to submit to the board of county commissioners data, surveys, analyses, studies, plans, and designs, in the form prescribed by the board of county commissioners, of the following items:

(a) Property survey and ownership of the surface and mineral estates including mineral lessees, if any;

(b) Relevant site characteristics and analyses applicable to the proposed subdivision including the following, which shall be submitted by the subdivider with the sketch plan:

(I) Reports concerning streams, lakes, topography, and vegetation;

(II) Reports concerning geologic characteristics of the area significantly affecting the land use and determining the impact of such characteristics on the proposed subdivision;

(III) In areas of potential radiation hazard to the proposed future land use, evaluations of these potential radiation hazards;

(IV) Maps and tables concerning suitability of types of soil in the proposed subdivision, in accordance with any standard soil classifications and procedures therefor, for the proposed use;

(c) A plat and other documentation showing the layout or plan of development, including, where applicable, the following information:

- (I) Total development area;
- (II) Total number of proposed dwelling units;
- (III) Total number of square feet of proposed nonresidential floor space;
- (IV) Total number of proposed off-street parking spaces, excluding those associated with single-family residential development;
- (V) Estimated total number of gallons per day of water system requirements where a distribution system is proposed;

(VI) Estimated total number of gallons per day of sewage to be treated where a central sewage treatment facility is proposed or sewage disposal means and suitability where no central sewage treatment facility is proposed;

(VII) Estimated construction cost and proposed method of financing of the streets and related facilities, water distribution system, sewage collection system, storm drainage facilities, and such other utilities as may be required of the developer by the county;

(VIII) Maps and plans for facilities to prevent storm waters in excess of historic runoff, caused by the proposed subdivision, from entering, damaging, or being carried by conduits, water supply ditches and appurtenant structures, and other storm drainage facilities;

(d) Adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed. Such evidence may include, but shall not be limited to:

(I) Evidence of ownership or right of acquisition of or use of existing and proposed water rights;

(II) Historic use and estimated yield of claimed water rights;

(III) Amenability of existing rights to a change in use;

(IV) Evidence that public or private water owners can and will supply water to the proposed subdivision stating the amount of water available for use within the subdivision and the feasibility of extending service to that area;

(V) Evidence concerning the potability of the proposed water supply for the subdivision.

(e) Evidence that provision has been made for facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric or, if applicable, natural gas service for the proposed subdivision. Submission of a letter of agreement between the subdivider and utility serving the site shall be deemed sufficient to establish that adequate provision for electric or, if applicable, natural gas service to a proposed subdivision has been made.

(4) Subdivision regulations adopted by the board of county commissioners pursuant to this section shall also include, as a minimum, provisions governing the following matters:

(a) Sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof. Such provisions may include:

(I) Reservation of such sites and land areas, for acquisition by the county;

(II) Dedication of the sites and land areas to the county, to a school district, or to the public or, in lieu thereof, payment of a sum of money not exceeding the fair market value of the sites and land areas or a combination of such dedication and such payment; except that the value of the combination shall not exceed the fair market value of the sites and land areas. Any sums, when required, or moneys to be paid to the board of county commissioners pursuant to this paragraph (a) may, if approved by the board of county commissioners, be paid directly to a school district. If the sites and land areas are dedicated to the county, to a school district, or the public, the board of county commissioners may, at the request of the affected entity, sell the land. The subdivider shall have a right of first refusal to purchase all or a portion of any land dedicated by the subdivider to a county, school district, or other public entity pursuant to this subparagraph (II) before the land is sold, transferred, or conveyed to any party other than a school district. Prior to selling or otherwise transferring ownership of the land, the county, school district, or other public entity selling the land shall provide written notice to the subdivider of its intention to sell or transfer ownership of all or any portion of the land. The subdivider shall then have sixty days to provide written

notice to the county, school district, or other public entity of the subdivider's interest in purchasing all or a portion of the land to be sold. The purchase of the land by the subdivider shall be upon such terms and conditions and for such consideration as the parties may mutually agree; however, in no event shall the purchase price exceed the fair market value of the land at the time the subdivider dedicated the land to the county, school district, or other public entity. Any right of first refusal created pursuant to this subparagraph (II) shall expire twenty years from the date the land was dedicated by the subdivider to a county, school district, or other public entity. Except as provided in subsection (4.3) of this section, any such sums, when required, or moneys paid to the board of county commissioners from the sale of the dedicated sites and land areas shall be held by the board of county commissioners:

(A) For the acquisition of reasonably necessary sites and land areas or for other capital outlay purposes for schools or parks;

(B) For the development of the sites and land areas for park purposes; or

(C) For growth-related planning functions by school districts for educational purposes;

(III) Dedication of such sites and land areas for the use and benefit of the owners and future owners in the proposed subdivision;

(b) Standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, which may require, in the opinion of the board of county commissioners, detention facilities which may be dedicated to the county or the public, as are deemed necessary to control, as nearly as possible, storm waters generated exclusively within a subdivision from a one hundred year storm which are in excess of the historic runoff volume of storm water from the same land area in its undeveloped and unimproved condition;

(c) Standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(d) Standards and technical procedures applicable to water systems.

(4.3) After final approval of a subdivision plan or plat and receipt of dedications of sites and land areas or payments in lieu thereof required pursuant to subparagraph (II) of paragraph (a) of subsection (4) of this section, the board of county commissioners shall give written notification to the appropriate school districts and local government entities. Following such notice, a school district or local government entity may request periodic transfer on no longer than an annual basis of such land or moneys to the district or entity. When a board of county commissioners determines that the school district or local government entity has demonstrated a need for the land or moneys based on a long-range capital plan or evidence of the impact of the subdivision on the district or entity, or both, it shall periodically transfer on no longer than an annual basis the land or moneys to the appropriate school district or local government entity. The district or entity shall use the transferred land or moneys only for a purpose authorized by sub-subparagraphs (A) to (C) of subparagraph (II) of paragraph (a) of subsection (4) of this section. Any moneys received by the board of county commissioners that are transferred pursuant to this subsection (4.3) are not county revenues for purposes of paragraph (d) of subsection (7) of section 20 of article X of the state constitution.

(4.5) Subdivision regulations adopted by a board of county commissioners may provide for the protection and assurance of access to sunlight for solar energy devices by considering the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street orientation and width requirements, or other permissible forms of land use controls.

(5) No subdivision shall be approved under section 30-28-110 (3) and (4) until such data, surveys, analyses, studies, plans, and designs as may be required by this section and by the county planning commission or the board of county commissioners have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the county contained in its subdivision regulations.

(6) No board of county commissioners shall approve any preliminary plan or final plat for any subdivision located within the county unless the subdivider has provided the following materials as part of the preliminary plan or final plat subdivision submission:

(a) Evidence to establish that definite provision has been made for a water supply that is sufficient in terms of quantity, dependability, and quality to provide an appropriate supply of water for the type of subdivision proposed;

(b) Evidence to establish that, if a public sewage disposal system is proposed, provision has been made for such system and, if other methods of sewage disposal are proposed, evidence that such systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary plan or final plat;

(c) Evidence to show that all areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified by the subdivider and that the proposed uses of these areas are compatible with such conditions.

(7) and (8) (Deleted by amendment, L. 2005, p. 668, § 6, effective June 1, 2005.)

(9) The subdivision regulations adopted under this section may provide that, without a hearing or compliance with any of the submission, referral, or review requirements in this section and section 30-28-136, the board of county commissioners may approve a correction plat if the sole purpose of such correction plat is to correct one or more technical errors in an approved plat and where such correction plat is consistent with an approved preliminary plan. However, if the technical error or errors of an approved plat meet the description of any errors under section 38-51-111 (2), C.R.S., a surveyor's affidavit of correction, as defined in section 38-51-102, C.R.S., shall be prepared in lieu of a correction plat.

(10) It is recognized that surface and mineral estates are separate and distinct interests in land and that one may be severed from the other and that the owners of subsurface mineral interests and their lessees, if any, are entitled to the notice specified in section 24-65.5-103, C.R.S., and shall be recognized by the commission as having the same rights and privileges as surface owners.

(11) The subdivision regulations adopted under this section may provide for the payment of a sum of money or proof of a line of credit or other fees in connection with a subdivision on a per-acre basis, to represent an equitable contribution to the total costs of the drainage facilities in the drainage basin in which the subdivision is located. The subdivision regulations shall provide for the repayment to a subdivider, from any surplus basin funds available, of any costs he incurs because of compliance with the plans for the development of drainage basins in excess of the sum of the drainage fees assessed against his acreage. When the subdivision regulations require such payment, a plan for the development of drainage basins shall be adopted pursuant to section 30-28-106 (3) (d). The provisions of this section shall not apply to any area which is within an existing drainage district organized or created pursuant to law without the approval of such district.

(12) The subdivision regulations adopted under this section may provide that a subdivider is entitled to fair-share reimbursement of the cost of any streets and related facilities, water distribution systems, sewage collection systems, storm drainage facilities, and other improvements the county requires the subdivider to construct adjacent to or outside the subdivision. Any such reimbursable costs shall be paid to the subdivider, less any reimbursement by the county, by the owner or owners of property that is adjacent to or has presumed use of the improvements when that property is developed. Subdivision regulations providing for such reimbursement shall prescribe the period, not to exceed fifteen years from the date of completion of an improvement, during which a subdivider may seek reimbursement. Subdivision regulations providing for such reimbursement may entitle subdividers to interest on the amount to be reimbursed.

Source: L. 61: p. 592, § 2. CRS 53: § 106-2-35. C.R.S. 1963: § 106-2-34. L. 67: p. 110, § 1. L. 71: p. 1055, §§ 1, 2. L. 72: p. 501, §§ 6, 7. L. 73: p. 1085, §§ 1, 2. L. 75: (3)(b)(IV) amended, p. 1001, § 1, effective July 14. L. 77: (9) added, p. 1453, § 2, effective May 24. L. 79: (3)(a) amended and (10) added, p. 1167, §§ 1, 2, effective July 1; (4)(a)(II) amended, p. 1169, § 1, effective July 1; (4.5) added, p. 1162, § 9, effective January 1, 1980. L. 83: (11) added, p. 1236, § 5, effective July 1. L. 84: (4)(a)(II) amended, p. 826, § 1, effective April 14; (4)(a)(II) amended and (4.3) added, p. 827, § 1, effective April 30. L. 92: (1) amended, p. 966, § 6, effective June 1. L. 96: (4)(a)(II) and

(4.3) amended, p. 979, § 1, effective May 23. **L. 2000:** (3)(e) added, p. 1618, § 1, effective July 1. **L. 2001:** (10) amended, p. 490, § 4, effective July 1; (12) added, p. 242, § 1, effective August 8. **L. 2005:** (1), (2), (7), and (8) amended, p. 668, § 6, effective June 1. **L. 2007:** (10) amended, p. 2121, § 7, effective August 3. **L. 2010:** (9) amended, (HB 10-1085), ch. 95, p. 325, § 6, effective August 11.

Editor's note: Amendments to subsection (4)(a)(II) by House Bill 84-1087 and House Bill 84-1189 were harmonized.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Pre-Enforcement Judicial Review: CF & I Steel Corp. v. Colorado Air Pollution Control Commission", see 58 Den. L.J. 693 (1981). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "Subdivision Improvement Requirements and Guarantees in Colorado", see 14 Colo. Law. 554 (1985). For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For comment, "School Impact Fees in Colorado: Gone, but Hopefully Not Forgotten", see 70 U. Colo. L. Rev. 257 (1998).

A landowner must comply with all county as well as state subdivision requirements. Shoptaugh v. Bd. of County Comm'rs, 37 Colo. App. 39, 543 P.2d 524 (1975).

But county subdivision regulations are of primary importance. Shoptaugh v. Bd. of County Comm'rs, 37 Colo. App. 39, 543 P.2d 524 (1975).

Land use regulations generally may be applied prospectively only. Bd. of County Comm'rs v. Goldenrod Corp., 43 Colo. App. 221, 601 P.2d 360 (1979).

Not necessary to pursue administrative remedies where county initiates court action to enforce regulations. Although usually a landowner must first present his objections to land use regulations to the appropriate administrative agency before challenging those regulations in the courts, where a board of county commissioners initiates an action to enforce its subdivision regulations, a landowner is under no obligation to first exhaust available administrative remedies prior to asserting a defense predicated upon allegations of unconstitutionality. Bd. of County Comm'rs v. Goldenrod Corp., 43 Colo. App. 221, 601 P.2d 360 (1979).

Subsection (3) neither mandates the submission of a sketch plan nor qualifies the language allowing the board of commissioners

to decide what form submissions should take. Save Park County v. Bd. of County Comm'rs, 969 P.2d 711 (Colo. App. 1998), aff'd on other grounds, 990 P.2d 35 (Colo. 1999).

It is within the board of commissioners' discretion to find that the addition of two lots to a 34-lot subdivision proposal is not a significant change requiring resubmission of a preliminary plan, that a drainage plan and a radiation hazard study were not required, and that water quality issues were adequately addressed. Save Park County v. Bd. of County Comm'rs, 969 P.2d 711 (Colo. App. 1998), aff'd on other grounds, 990 P.2d 35 (Colo. 1999).

This section contains no deadline for submission of a final plat to a board of commissioners. Save Park County v. Bd. of County Comm'rs, 969 P.2d 711 (Colo. App. 1998), aff'd on other grounds, 990 P.2d 35 (Colo. 1999).

County commissioners have no implied power to require monetary exactions at the time of issuance of a building permit or certificate of occupancy above the cap set forth in subsection (4)(a)(II). County Comm'rs of Douglas County v. Bainbridge, 929 P.2d 691 (Colo. 1996).

Exaction payments can be utilized for a project on or off the site of a subdivision. County Comm'rs of Douglas County v. Bainbridge, 929 P.2d 691 (Colo. 1996).

The language of subsection (4) providing that subdivision regulations adopted by local governments shall also include "at a minimum" the land dedication or in lieu fees does not imply that a county has the authority to impose fees upon the issuance of the building permit or the certificate of occupancy. The use of the phrase "at a minimum" addresses the overall content of subdivision regulations. County Comm'rs of Douglas County v. Bainbridge, 929 P.2d 691 (Colo. 1996).

Applied in Stagecoach Prop. Owners Ass'n v. Young's Ranch, 658 P.2d 1378 (Colo. App. 1982); Winslow v. Morgan County Comm'rs, 697 P.2d 1141 (Colo. App. 1985); Beaver Meadows v. Bd. of County Comm'rs, 709 P.2d 928 (Colo. 1985); Delta County Bd. of County Comm'rs v. Sherrill, 757 P.2d 1085 (Colo. App. 1987).

30-28-133.1. Subdivision plan or plat - access to public highways. No person may submit an application for subdivision approval to a local authority unless the subdivision plan or plat provides, pursuant to section 43-2-147, C.R.S., that all lots and parcels created by the subdivision will have access to the state highway system in conformance with the state highway access code.

Source: L. 80: Entire section added, p. 796, § 57, effective June 5. L. 82: Entire section amended, p. 626, § 32, effective April 2.

ANNOTATION

Law reviews. For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987).

Board of county commissioners abused its discretion in approving planned unit development because record contains no evidence of year-around access to the state highway system at the time of final approval. Plain language of this section does not allow postponing access beyond the application for final subdivision approval. Final approval of a subdivision application predicated on obtaining access to the state highway system by an as yet undetermined

route would constitute an abuse of discretion because the subdivision might never have the required statutory access. This section requires at a minimum year-round wheeled vehicle access between state highway and village. Because subject road is not usable by wheeled vehicles during winter, purpose of this section not satisfied. *Wolf Creek Ski Corp. v. Bd. of County Comm'rs*, 170 P.3d 821 (Colo. App. 2007).

Applied in *Beaver Meadows v. Bd. of County Comm'rs*, 709 P.2d 928 (Colo. 1985).

30-28-133.5. Review of plats and other plans. (1) The process for review and approval of any plat or other plan required by section 30-28-133 or 30-28-133.1, for any agreement required by section 30-28-137, or for plans for extensions, betterments, or additions to buildings, structures or plant or other equipment of a public utility under section 30-28-127 shall be conducted pursuant to duly adopted county resolutions, ordinances, or regulations that are available to the applicant prior to commencement of such process. The denial of a plat, plan, or agreement shall be supported by written findings specifying the provisions that the plat, plan, or agreement failed to address or satisfy. The denial of any plat, plan, or agreement shall be based on a failure to conform to the requirements of the adopted resolution, ordinance, or regulation.

(2) Nothing in this section shall be construed to preclude a county from taking any action permitted by law with respect to the plat, plan, or agreement based on the consideration of the rights and privileges of the owners of subsurface mineral interests and their lessees pursuant to section 30-28-133 (10).

(3) During the administrative review of any plat, plan, or agreement, the county shall make every effort to apprise the applicant of any deficiency or nonconformity in the plat, plan, or agreement prior to any required public hearing. A technical dispute between a licensed or registered professional of the applicant and the county may be referred, at the applicant's request, to a qualified employee in the appropriate state department for a recommendation to facilitate a resolution of the dispute.

(4) The county planning commission or board of county commissioners may request redesign of all or any portion of a plat or plan submitted for approval, but any such request shall be based on specific, objective criteria. If the applicant redesigns the plat or plan in accordance with the request, no further redesign shall be required unless necessary to comply with a duly adopted county resolution, ordinance, or regulation.

(5) Any required public hearing on any plat, plan, or agreement shall be conducted expeditiously and concluded when all those present and wishing to testify have done so. No public hearing shall continue for more than forty days from the date of commencement without the written consent of the applicant. Any continuation of a public hearing shall be to a date certain.

(6) Unless withdrawn by the applicant, any plat, plan, or agreement that has been neither approved, conditionally approved, nor denied within a time certain mutually agreed to by the county and the applicant at the time of filing shall be deemed approved under

sections 30-28-127, 30-28-133, 30-28-133.1, or 30-28-137. Such time period may be extended by the county to receive a recommendation from any agency to which a plat or plan was referred pursuant to section 30-28-136, but such extension shall not exceed thirty days unless the agency has notified the county that it will require additional time to complete its recommendation.

(7) Any requirement set forth in this section may be waived in writing by the applicant.

Source: L. 96: Entire section added, p. 1837, § 1, effective June 5.

ANNOTATION

A county may deny an application based upon failure to comply with requirements of an adopted resolution, ordinance, or regulation. Such decision will be upheld if competent evi-

dence in the record supports the denial. County Comm'rs of Douglas County v. Bainbridge, 929 P.2d 691 (Colo. 1996).

30-28-134. Telecommunications research facilities of the United States - inclusions in planning and zoning. Any zoning plan, modification thereof, or variance therefrom adopted or granted under this part 1 on or after April 23, 1969, shall comply with the requirements of part 6 of article 11 of this title.

Source: L. 69: p. 238, § 2. **C.R.S. 1963:** § 106-2-35.

30-28-135. Safety glazing materials. The board of county commissioners of each county in this state shall adopt standards governing the use of safety glazing materials for hazardous locations in the unincorporated areas of the county. No building permit shall be issued for the construction, reconstruction, or alteration of any structure in the unincorporated area of such county unless such construction, reconstruction, or alteration conforms to the standards adopted pursuant to this section. The county building inspector shall inspect all places to determine whether such places are in compliance with the standards for the use of safety glazing materials.

Source: L. 71: p. 885, § 2. **C.R.S. 1963:** § 106-2-36. **L. 86:** Entire section amended, p. 501, § 122, effective July 1.

30-28-136. Referral and review requirements. (1) Upon receipt of a complete preliminary plan submission, the board of county commissioners or its authorized representative shall distribute copies of prints of the plan as follows:

- (a) To the appropriate school districts;
- (b) To each county or municipality within a two-mile radius of any portion of the proposed subdivision;
- (c) To any utility, local improvement and service district, or ditch company, when applicable;
- (d) To the Colorado state forest service, when applicable;
- (e) To the appropriate planning commission;
- (f) To the local conservation district board within the county for explicit review and recommendations regarding soil suitability, floodwater problems, and watershed protection. Such referral shall be made even though all or part of a proposed subdivision is not located within the boundaries of a conservation district.
- (g) When applicable, to the county or district public health agency or the state department of public health and environment for its review of the on-lot sewage disposal reports, for review of the adequacy of existing or proposed sewage treatment works to handle the estimated effluent, and for a report on the water quality of the proposed water supply to serve the subdivision. The department of public health and environment or county or district public health agency to which the plan is referred may require the subdivider to submit additional engineering or geological reports or data and to conduct a study of the

economic feasibility of a sewage treatment works prior to making its recommendations. No plan shall receive the approval of the board of county commissioners unless the department of public health and environment or county or district public health agency to which the plan is referred has made a favorable recommendation regarding the proposed method of sewage disposal.

(h) (I) To the state engineer for an opinion regarding material injury likely to occur to decreed water rights by virtue of diversion of water necessary or proposed to be used to supply the proposed subdivision and adequacy of proposed water supply to meet requirements of the proposed subdivision. If the state engineer finds such injury or finds inadequacy, he shall express such finding in an opinion in writing to the board of county commissioners, stating the reason for his finding, including, but not limited to, the amount of additional or exchange water that may be required to prevent such injury. In the event the subdivision is approved notwithstanding the state engineer's opinion, the subdivider shall furnish to all potential purchasers a copy of the state engineer's opinion prior to the sale or a synopsis of the opinion; except that the subdivider need not supply the potential purchaser with a copy of such opinion or synopsis if, in the opinion of the board of county commissioners, the subdivider has corrected the injury or inadequacy set forth in the state engineer's finding.

(II) A municipality or quasi-municipality, upon receiving the preliminary plan designating said municipality or quasi-municipality as the source of water for a proposed subdivision, shall file, with the board of county commissioners and the state engineer, a statement documenting the amount of water which can be supplied by said municipality or quasi-municipality to proposed subdivisions without causing injury to existing water rights. The state engineer shall file, with said board of county commissioners, written comments on the report. If, in the judgment of the state engineer, the report is insufficient to issue an opinion, the state engineer shall notify the board of county commissioners to this effect, indicating the deficiencies.

(i) To the Colorado geological survey for an evaluation of those geologic factors that would have a significant impact on the proposed use of the land; except that, upon written request from the board of county commissioners or the board's authorized representative, the Colorado geological survey may exempt any preliminary plan from this referral and review requirement.

(2) The agencies named in this section shall make recommendations within twenty-one days after the mailing by the county or its authorized representative of such plans unless a necessary extension of not more than thirty days has been consented to by the subdivider and the board of county commissioners of the county in which the subdivision area is located. The failure of any agency to respond within twenty-one days or within the period of an extension shall, for the purpose of the hearing on the plan, be deemed an approval of such plan; except that, where such plan involves twenty or more dwelling units, a school district shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and the adequacy of school structures.

(3) The provisions of this part 1 shall not modify the duties or enlarge the authority of the state engineer or the division engineers nor divest the water courts of jurisdiction over actions concerning water right determinations and administration; neither shall any opinion of the state engineer submitted under subsection (1) (h) of this section nor any finding by a board of county commissioners concerning subdivision water supply matters create any presumption concerning injury or noninjury to water rights; and neither the state engineer's opinion nor the finding of the board of county commissioners may be used as evidence in any administrative proceeding or in any judicial proceeding concerning water right determinations or administration.

(4) Repealed.

Source: L. 72: p. 504, § 8. C.R.S. 1963: § 106-2-37. L. 73: pp. 781, 1087, 1088, §§ 2, 1, 1. L. 75: (1)(h) R&RE, p. 1002, § 1, effective July 18. L. 77: (2) amended, p. 1453, § 3, effective May 24. L. 92: (2) amended, p. 966, § 7, effective June 1. L. 94: (1)(g) amended, p. 2801, § 561, effective July 1. L. 2002: (1)(f) amended, p. 518, § 14,

effective July 1. **L. 2005:** (4) repealed, p. 667, § 1, effective June 1. **L. 2010:** (1)(g) amended, (HB 10-1422), ch. 419, p. 2119, § 167, effective August 11. **L. 2012:** (1)(i) amended, (HB 12-1282), ch. 178, p. 641, § 1, effective August 8.

Cross references: For duties of the state geologist upon receipt of copies of prints of the plans, see § 34-1-103 (4).

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

Zoning and subdivision regulations are separate and distinct legislation and serve different purposes. *Shoptaugh v. Bd. of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

A subdivider must first meet zoning regulations and then additionally must comply with state and county subdivision regulations. *Shoptaugh v. Bd. of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

This section is designed to allow a planning commission to make a decision on a preliminary plat without waiting indefinitely for agencies' reports. *Shoptaugh v. Bd. of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

Authority to act on reports implicit. If a planning department or a board of county commissioners has no authority to consider and act on reports required by this section, particularly where they indicate a hazard to the public, then the general purpose to be served by enacting the regulations would be vitiated. *Shoptaugh v. Bd. of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

There was no error or violation of petitioner's due process right in a board's consideration of late agency reports. *Shoptaugh v. Bd. of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

A subdivision proposal may be denied based upon a finding of a lack of available schools to serve the residents of the proposed new development. *County Comm'rs of Douglas County v. Bainbridge*, 929 P.2d 691 (Colo. 1996).

Board of county commissioners did not abuse its discretion when it did not resubmit plans for a subdivision to certain agencies for additional comment and review before granting final approval. Once the board has satisfied the requirements of the statute by submitting the proposed plans for comment, a decision whether or not to require additional comments is within the sound discretion of that board. *Save Park County v. Bd. of County Comm'rs*, 990 P.2d 35 (Colo. 1999).

Board of county commissioners acted within its discretion when, 11 years after a subdivision plan was proposed, it did not seek supplemental information from all agencies, but instead sought any supplemental information it found necessary to reach an informed decision. *Save Park County v. Bd. of County Comm'rs*, 990 P.2d 35 (Colo. 1999).

30-28-137. Guarantee of public improvements. (1) No final plat shall be recorded until the subdivider has submitted and the board of county commissioners has approved one or a combination of the following:

(a) A subdivision improvements agreement agreeing to construct any required public improvements shown in the final plat documents, together with collateral which is sufficient, in the judgment of said board, to make reasonable provision for the completion of said improvements in accordance with design and time specifications; or

(b) Other agreements or contracts setting forth the plan, method, and parties responsible for the construction of any required public improvements shown in the final plat documents which, in the judgment of said board, will make reasonable provision for completion of said improvements in accordance with design and time specifications.

(2) As improvements are completed, the subdivider may apply to the board of county commissioners for a release of part or all of the collateral deposited with said board. Upon inspection and approval, the board shall release said collateral. If the board determines that any of such improvements are not constructed in substantial compliance with specifications, it shall furnish the subdivider a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure such substantial compliance. If the board of county commissioners determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, the board of county commissioners may withdraw

and employ from the deposit of collateral such funds as may be necessary to construct the improvement in accordance with the specifications.

(3) The board of county commissioners or any purchaser of any lot, lots, tract, or tracts of land subject to a plat restriction which is the security portion of a subdivision improvements agreement shall have the authority to bring an action in any district court to compel the enforcement of any subdivision improvements agreement on the sale, conveyance, or transfer of any such lot, lots, tract, or tracts of land or of any other provision of this part 1. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of title of any lot, lots, tract, or tracts of land contrary to the provisions of any such restriction set forth on the plat or in any separate recorded instrument, but any such action shall be commenced prior to the issuance of a building permit by any county where so required or otherwise prior to commencement of construction on any such lot, lots, tract, or tracts of land.

(4) In addition to any other remedy set forth in this part 1, the board of county commissioners, or any purchaser of any lot, lots, tract, or tracts of land in a recorded plat, shall have the authority to bring an action for injunctive relief to enforce any plat restriction, plat note, plat map, or provision of a subdivision improvements agreement and for damages arising out of failure to adhere to any such plat restriction, plat note, plat map, or provision of a subdivision improvements agreement. Nothing in this part 1 shall require the board of county commissioners to bring any action referred to in this subsection (4).

Source: L. 72: p. 506, § 8. C.R.S. 1963: § 106-2-38. L. 75: (3) added, p. 988, § 3, effective July 14. L. 92: (4) added, p. 967, § 10, effective June 1.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

Standing to assert a claim against a board of county commissioners. Under subsection (4), a purchaser of a lot has standing to assert a

claim against a board for the alleged breach of a subdivision improvements agreement. *Langlois v. Bd. of County Comm'rs*, 78 P.3d 1154 (Colo. App. 2003).

Applied in *Colo. Nat'l Bank v. Bd. of County Comm'rs*, 634 P.2d 32 (Colo. 1981).

30-28-138. Referral to municipality. Notwithstanding any provision of law to the contrary, the board of county commissioners shall refer any proposed land use decision that involves a business or agricultural activity identified in section 31-15-501 (1) (a) and (1) (d), C.R.S., to the governing body of a municipality for review and comment if such business or agricultural activity lies wholly or partially within one mile of the corporate limits of the municipality.

Source: L. 99: Entire section added, p. 63, § 2, effective July 1.

30-28-139. Merger of lots - notice - hearing - assessment of merged parcels. (1) Notwithstanding any other provision of law, where a county ordinance, regulation, or resolution provides for the merger of two or more parcels of land for the purpose of eliminating interior lot lines, obsolete subdivisions, or otherwise, the ordinance, regulation, or resolution shall provide that:

(a) Prior to the completion of the merger, the county shall send notice of the county's intent to complete the merger to each owner of the affected parcels by certified mail. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to paragraph (b) of this subsection (1), and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing within one hundred twenty days of the date the notice required by this paragraph (a) is received by said owner.

(b) (I) Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of paragraph (a) of this subsection (1), a public hearing on said merger shall be held before the

board of county commissioners of said county. The hearing shall be conducted for the purpose of allowing the board to discuss with the owner of each affected parcel its reasons for proceeding with the merger and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In such case, notice of the time, place, and manner of the hearing shall be provided to each owner of the affected parcels and also published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of said hearing.

(II) Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of paragraph (a) of this subsection (1), no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this subsection (1).

(c) In order to give the owner of the parcels the opportunity to take whatever remedial action is allowed under law, the hearing authorized by paragraph (b) of this subsection (1) shall take place no sooner than ninety days following the date of the notice required by paragraph (a) of this subsection (1).

(2) No merger of parcels that is the subject of a hearing pursuant to subsection (1) of this section shall be effective unless:

(a) The owner of the parcels has given his, her, or its consent to the merger of said parcels; and

(b) The merger has been approved by a majority of the board of county commissioners.

(3) Upon completion of any merger of parcels in accordance with the requirements of this section, the county shall:

(a) For purposes of the levying and collection of the tax on real and personal property, assess the merged parcels as one parcel of real property; and

(b) File of record a notice of merger in the office of the clerk and recorder of deeds for the county in which the merged parcels of real property are located, and such notice shall constitute prima facie evidence that all of the requirements of subsection (1) of this section have been satisfied.

(4) Notwithstanding any other provision of this section, the requirements of subsections (1) and (2) of this section shall not apply to any merger of parcels of land that is requested in writing by each owner of an affected parcel.

(5) Nothing in this section shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under article 68 of title 24, C.R.S., pertaining to vested property rights.

Source: L. 2003: Entire section added, p. 967, § 1, effective October 1.

Editor's note: Section 2 of chapter 132, Session Laws of Colorado 2003, provides that provisions of this section addressing the requirements of notice and hearing only apply to mergers that take effect on or after October 1, 2003, and that provisions of this section addressing the assessment of merged parcels as one parcel of real property for purposes of the levying and collection of the tax on real and personal property apply to mergers that take effect prior to, on, and after October 1, 2003, but shall not be construed to require a reassessment of property for property tax years commencing prior to January 1, 2003.

PART 2

BUILDING CODES

30-28-201. Commissioners may adopt - emission performance standards required.

(1) A board of county commissioners is authorized to adopt ordinances and a building code consistent with the uniform building code, 1988 edition, as promulgated by the international conference of building officials and as revised from time to time, in all or part of the county, and not embraced within the limits of any incorporated city or town. Buildings or structures used for the sole purpose of providing shelter for agricultural implements, farm products, livestock, or poultry may be excepted. The requirements shall be uniform for each class of dwelling, building, or structure. The board of county

commissioners may employ qualified technical experts to assist in the preparation of the text of such ordinances and the area building code.

(2) By the date established in section 25-7-407, C.R.S., every board of county commissioners of a county which has enacted a building code, and thereafter every board of county commissioners of a county which enacts a building code, shall enact a building code provision to regulate the construction and installation of fireplaces in order to minimize emission levels. Such building code provision shall contain standards which shall be the same as or stricter than the approved emission performance standards for fireplaces established by the air quality control commission in the department of public health and environment pursuant to section 25-7-407, C.R.S.

(3) By the date established in section 30-28-211, every board of county commissioners of a county that has enacted a building code, and thereafter every board that enacts a building code, shall adopt and enforce a building energy code that meets or exceeds the standards in the 2003 version of the international energy conservation code pursuant to section 30-28-211.

Source: L. 45: p. 242, § 1. L. 47: p. 364, § 1. CSA: C. 45B, § 1. CRS 53: § 36-15-1. C.R.S. 1963: § 36-15-1. L. 73: p. 472, § 1. L. 84: Entire section amended, p. 782, § 2, effective April 12. L. 87: (2) amended, p. 1144, § 8, effective June 16. L. 90: (1) amended, p. 1450, § 5, effective July 1. L. 94: (2) amended, p. 2801, § 562, effective July 1. L. 2005: (2) amended, p. 773, § 56, effective June 1. L. 2007: (3) added, p. 695, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Synthetic Fuels — Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980).

Code inapplicable to water project. A county's building code, adopted pursuant to this article, does not pertain to the construction of diversion boxes, conduits, check dams, by-

passes, flumes, or similar appurtenances of a water project which merely passes through the county's land. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981), *aff'd in part, rev'd in part on other grounds*, 695 F.2d 465 (10th Cir. 1982).

30-28-202. Designation of zoned area - hearing. (1) The county planning commission of any county, upon request from the board of county commissioners of the county, may designate part or all of the county for the adoption of a building code. The county planning commission shall certify a copy of the building code to the board of county commissioners of the county. After receiving the certification of said building code from the county planning commission and before the adoption of any building code, the board of county commissioners shall hold a public hearing on the proposed text. The time and place of the hearing shall be designated in a notice to be given by publication once weekly for four consecutive weeks in a newspaper of general circulation in the county. Such notice shall state the place at which the text of the proposed building code may be inspected and the description of the areas to be covered by the code. No substantial change in or departure from the proposed text so certified by the county planning commission shall be made unless such change or departure is first submitted to the certifying county planning commission for its approval, disapproval, or suggestions.

(2) The county planning commission shall have thirty days from such submission within which to send its report to the board of county commissioners. The opinion of the county planning commission shall be advisory only, and, upon receipt thereof, the board of county commissioners may accept, reject, or amend the proposed change or departure. After a public hearing has been held thereon, the board of county commissioners, by resolution, may adopt a building code for all or part of the county.

Source: L. 47: p. 365, § 1. CSA: C. 45B, § 2. CRS 53: § 36-15-2. C.R.S. 1963: § 36-15-2. L. 73: p. 472, § 2.

Cross references: For clarification of terms and requirements for notice by publication, see part 1 of article 70 of title 24.

30-28-203. Purpose of codes. The provisions of any building code shall be made with a reasonable consideration of, and in accordance with, the public health, safety, morals, and general welfare and the safety, protection, and sanitation of such dwellings, buildings, and structures.

Source: L. 45: p. 244, § 3. L. 47: p. 365, § 1. CSA: C. 45B, § 3. CRS 53: § 36-15-3. C.R.S. 1963: § 36-15-3. L. 73: p. 473, § 3.

ANNOTATION

Applied in *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981).

30-28-204. Amendment of building code. The board of county commissioners from time to time by resolution may alter and amend any county building code after public hearing, notice of which hearing shall be given by at least one publication in a newspaper of general circulation in the county at least fourteen days prior to said hearing. In no case shall the area covered by the building code be extended or changed unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. Unless the county planning commission acts within thirty days, approval shall be assumed. The opinion of the county planning commission shall be advisory only and not binding upon the board of county commissioners.

Source: L. 45: p. 244, § 4. L. 47: p. 366, § 1. CSA: C. 45B, § 4. CRS 53: § 36-15-4. C.R.S. 1963: § 36-15-4. L. 92: Entire section amended. p. 966, § 8, effective June 1.

30-28-205. County building inspector - permit required - appeal. (1) The county building inspector, as authorized in section 30-28-114, may be authorized by the board of county commissioners to administer and enforce the building code adopted pursuant to this part 2; and the board of county commissioners shall fix a reasonable schedule of fees for the issuance of building permits by the county building inspector. After the adoption of the building code, it shall be unlawful to erect, construct, reconstruct, alter, or remodel any structure, dwelling, or building in the designated area, except buildings or structures used for the sole purpose of providing shelter for agricultural implements, farm products, livestock, or poultry without first obtaining a building permit from the county building inspector. The county building inspector shall not issue any permit unless the plans for the proposed erection, construction, reconstruction, alteration, or remodeling fully conform to the regulations and restrictions in the building code.

(2) No permit fee provided for pursuant to the provisions of subsection (1) of this section shall be charged unless an inspection is actually made by such inspector who is fully qualified to perform the required type of inspection.

(3) The county building inspector shall not issue any permit unless the plans and specifications for such proposed erection, construction, reconstruction, alteration, or remodeling conform to the regulations and restrictions in said building code. All such proposed erection, construction, reconstruction, alteration, or remodeling shall bear the seal of an architect or engineer licensed by the state of Colorado, unless the preparation of plans and specification is exempted by section 12-25-303, C.R.S. Such plans and specifications prepared by architectural or engineering subdisciplines shall be so designated and shall bear the seal and signature of the architect or engineer for that subdiscipline.

Source: L. 45: p. 244, § 5. L. 47: p. 366, § 1. CSA: C. 45B, § 5. CRS 53: § 36-15-5. C.R.S. 1963: § 36-15-5. L. 73: p. 473, § 4. L. 86: (3) added, p. 610, § 11, effective July 1. L. 2006: (1) amended, p. 235, § 3, effective July 1; (3) amended, p. 762, § 23, effective July 1.

ANNOTATION

General assembly did not intend in § 30-28-114 and subsection (1) of this section to limit schedule of fees for county building permits to direct costs of operating building department. Indirect costs, including, for example, services furnished by county manager, county attorney's office, the assessor's office, and various other divisions of county government may be calculated in determining overall costs required to operate that department for purposes of imposing fees for building department services. Fees generated must generally approximate the overall costs of operating the building department to prevent the fees from constituting an unlawful tax in violation of the state constitutional provision mandating uniform property taxation. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 964 P.2d 575 (Colo. App. 1998).

On remand, trial court correctly concluded that general governmental expenses relating to growth management are recoverable from builders under subsection (1) of this section and § 30-28-114 through permit fees charged as indirect costs. Evidence demonstrated that growth has driven the costs of the county's building department. The evidence also supports the finding that the fees charged by the building department were approximately required to offset the direct and indirect costs of operating the department. Mathematical exactitude is not required. Thus, it was permissible for part of the growth costs to be allocated to the building department as indirect costs. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 53 P.3d 646 (Colo. App. 2001).

30-28-206. Board of review - qualifications - powers. (1) The board of county commissioners of any county which enacts a building code under the authority of this part 2 may provide for a board of review of three or five members and for the manner of appointment of such members. Members of the board shall be experienced in building construction. The board of county commissioners may fix per diem compensation and terms for the members of such boards of review, which terms shall be of such length and so arranged that the terms of at least one member will expire each year. Any member of the board of review may be removed for cause by the board of county commissioners upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term in the same manner as in the case of original appointments. The board of county commissioners shall provide and specify in its building code or other resolution general rules to govern the organization, procedure, and jurisdiction of said board of review, which rules shall not be inconsistent with the provisions of this part 2, and the board of review may adopt supplemental rules of procedure not inconsistent with this part 2 or such general rules.

(2) Any building code adopted by the board of county commissioners may provide that the board of review, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the building code, may make special exceptions to the terms of the building code in harmony with their general purpose and intent. The board of county commissioners also may authorize the board of review to formulate suggested amendments to the building code for the consideration of the board of county commissioners. In addition, the board of review may adopt substantive rules and regulations based on the provisions of the building code adopted by the board of county commissioners. In no case, however, shall these rules become effective unless a public hearing thereon has been conducted by the board of review. Notice of the hearing, stating its time and place and where the text of the proposed substantive rules and regulations may be inspected, shall be given in the same manner as provided in the initial adoption of the code.

Source: L. 45: p. 244, § 6. L. 47: p. 366, § 1. CSA: C. 45B, § 6. CRS 53: § 36-15-6. C.R.S. 1963: § 36-15-6.

30-28-207. Board of review - meetings - appeals. (1) Meetings of the board of review shall be held at the call of the chairman and at such other times as the board in its rules of procedure may specify. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board of review shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such

fact, and it shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(2) Appeals to the board of review may be taken by any person aggrieved by his inability to obtain a building permit or by any officer, department, board, or bureau of the county affected by the grant or refusal of a building permit. Any person, officer, department, board, or bureau may appeal to the board of review from the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the building code. The time within which such appeal shall be made, and the form or other procedure relating thereto, shall be as specified in the general rules provided by the board of county commissioners to govern the procedure of such board of review or in the supplemental rules of procedure adopted by such board.

Source: L. 45: p. 244, § 6. L. 47: p. 366, § 1. CSA: C. 45B, § 6. CRS 53: § 36-15-7. C.R.S. 1963: § 36-15-7.

30-28-208. Copies of code available - evidence. Upon the adoption of such area building code, the board of county commissioners shall file certified copies thereof in its office, which copies shall be accessible to the public at a cost not to exceed that of printing the same. The board of county commissioners shall also file a notice with the county clerk and recorder setting forth a description of the area subject to the building code. Copies of the code printed by authority of the board of county commissioners shall be prima facie evidence of the original text in all courts and tribunals of this state.

Source: L. 45: p. 244, § 6. L. 47: p. 368, § 1. CSA: C. 45B, § 7. CRS 53: § 36-15-8. C.R.S. 1963: § 36-15-8.

30-28-209. Violation - injunction and other remedies. (1) (a) It is unlawful to erect, construct, reconstruct, or alter any building or structure in a manner that results in a violation of any regulation in, or of any provisions of, the area building code, or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 2. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof, or any provision of this part 2, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal erection, construction, reconstruction, or alteration continues shall be deemed a separate offense.

(b) (I) It is unlawful to use any building or structure in violation of any regulation in, or of any provision of, the area building code, or any amendment thereto, enacted or adopted by any board of county commissioners under the authority of this part 2. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal use of any building or structure continues shall be deemed a separate offense. Nothing in this subparagraph (I) shall be construed to prohibit the use of any building or structure in violation of an otherwise applicable building code where the use complies with any building code that was in effect at the time the building or structure was erected, constructed, reconstructed, or altered.

(II) Whenever a county building inspector authorized pursuant to sections 30-28-114 and 30-28-205, or any inspector employed by an intergovernmental entity created in accordance with the requirements of part 2 of article 1 of title 29, C.R.S., who exercises the functions of a county building inspector, has personal knowledge of any violation of the requirements of subparagraph (I) of this paragraph (b), he or she shall give written notice to the violator to correct the violation within ten days after the date of the notice. Where the violator fails to correct the violation within the ten-day period, the county building inspector may request that the sheriff of the county issue a summons and complaint to the violator,

stating the nature of the violation with sufficient particularity to give notice of the charge to the violator. The summons and complaint shall require that the violator appear in county court at a definite time and place stated therein to answer and defend the charge.

(III) One copy of the summons and complaint shall be served upon the violator by the sheriff of the county in the manner provided by law for the service of a criminal summons. One copy each shall be retained by the sheriff and the county building inspector, and one copy shall be transmitted by the sheriff to the clerk of the county court.

(c) It is the responsibility of the county attorney to enforce the provisions of this subsection (1). Where there is no county attorney or in the event that the board of county commissioners deems it appropriate, the board may appoint the district attorney of the judicial district in which the building or structure is located to perform such enforcement duties in lieu of the county attorney.

(2) In case any building or structure is, or is proposed to be, erected, constructed, reconstructed, altered, or used in violation of any regulation or provision of the area building code, or amendment thereto, enacted or adopted by any board of county commissioners under the authority granted by this part 2, the county attorney of the county in which such building, structure, or land is situated, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, or use. Where there is no county attorney or in the event that the board deems it appropriate, the board may appoint the district attorney of the judicial district in which the building or structure is located to perform such enforcement duties in lieu of the county attorney.

Source: L. 45: p. 245, § 7. L. 47: p. 368, § 1. CSA: C. 45B, § 8. CRS 53: § 36-15-9. C.R.S. 1963: § 36-15-9. L. 2003: Entire section R&RE, p. 1836, § 1, effective October 1. L. 2006: (1)(b)(II) amended, p. 235, § 4, effective July 1.

ANNOTATION

No additional civil remedies exist under this section absent a clear legislative intent to allow such a remedy for breach of the obligations imposed on a county by the area building

code. *Bd. of County Comm'rs v. Moreland*, 764 P.2d 812 (Colo. 1988) (decided prior to 2003 repeal and reenactment).

30-28-210. County court actions for civil penalties for building violations. (1) It is unlawful to erect, construct, reconstruct, alter, maintain, or use any building, structure, or land in violation of this part 2 or any provisions of the area building code. In addition to any penalties imposed pursuant to section 30-28-209, any person, firm, or corporation violating any provision of this part 2 or any provision of the area building code may be subject to the imposition, by order of the county court, of a civil penalty in an amount of not less than five hundred dollars nor more than one thousand dollars. It is within the discretion of the county attorney to determine whether to pursue the civil penalties set forth in this section, the remedies set forth in section 30-28-209, or both. Each day after the issuance of the order of the county court during which such unlawful activity continues shall be deemed a separate violation and shall in accordance with the subsequent provisions of this section, be the subject of a continuing penalty in an amount not to exceed one hundred dollars for each such day. Until paid, any civil penalty ordered by the county court and assessed under this subsection (1) shall, as of recording, be a lien against the property on which the violation has been found to exist. In case the assessment is not paid within thirty days, it may be certified by the county attorney to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection (1). Any lien placed against the property pursuant to this subsection (1) shall be recorded with the clerk and recorder of the county in which the property is located.

(2) (a) In the event any building or structure is erected, constructed, reconstructed, altered, maintained, or used in violation of this part 2 or of any provision of the area building code, the county attorney of the county in which such building or structure is situated, in addition to other remedies provided by law, may commence a civil action in county court for the county in which such building or structure is situated seeking the imposition of a civil penalty in accordance with the provisions of this section.

(b) A building inspector designated by resolution of the board of county commissioners shall, upon personal information and belief that a violation of this part 2 or of any provision of the area building code has occurred, give written notice to the violator to correct the violation within ten days after the date of the notice. If the violator fails to correct the violation within the ten-day period or within any extension period granted by the building inspector, the building inspector, the sheriff of the county, or the county attorney may issue a summons and complaint to the violator stating the nature of the violation with sufficient particularity to give notice of the charge to the violator.

(c) One copy of the summons and complaint issued pursuant to paragraph (b) of this subsection (2) shall be served upon the violator in the manner provided by law for the service of a county court civil summons and complaint in accordance with the Colorado rules of county court civil procedure. The summons and complaint shall also be filed with the clerk of the county court and thereafter the action shall proceed in accordance with the Colorado rules of county court civil procedure.

(d) If the county court finds, by a preponderance of the evidence, that a violation of this part 2 or of any provision of the area building code has occurred, the court shall order the violator to pay a civil penalty in an amount allowed pursuant to subsection (1) of this section. The penalty shall be payable immediately by the violator to the county treasurer. In the event that the alleged violation has been cured or otherwise removed and the violator has notified the building inspector of the cure or removal at least five business days prior to the appearance date in the summons, then the county attorney shall so inform the court and request that the action be dismissed without fine or appearance of the defendant.

(3) Upon the filing with the court of a receipt issued by the county treasurer showing payment in full of a civil penalty assessed pursuant to this section and upon the filing of an affidavit of the county building inspector that the violation has been cured, removed, or corrected, the court shall dismiss the action and issue a satisfaction in full of the judgment so entered. The court may also dismiss the action upon a motion of the county attorney indicating that the matter has been otherwise resolved.

(4) If a receipt showing full payment of the civil penalty or the affidavit or the motion by the county attorney required by subsection (3) of this section is not filed, the action shall continue and the court shall retain jurisdiction to impose an additional penalty against the violator in the amount specified in subsection (1) of this section. The additional penalty shall be imposed by the court upon motion filed by the county and proof that the violation has not been cured, removed, or corrected. Thereafter, the action shall continue until the filing with the court of a receipt issued by the county treasurer showing payment in full of the civil penalty and any additional penalties so assessed and the filing of an affidavit of the county building inspector that the violation has been cured, removed, or corrected, or until a motion by the county attorney to dismiss the action is granted by the court.

Source: L. 98: Entire section added, p. 340, § 2, effective July 1. **L. 2006:** (1), (2)(b), (2)(d), (3), and (4) amended, p. 235, § 5, effective July 1.

30-28-211. Energy efficient building codes - legislative declaration - definitions.

(1) The general assembly hereby finds and declares that there is statewide interest in requiring an effective energy efficient building code for the following reasons:

(a) Excessive energy consumption creates effects beyond the boundaries of the local government within which the energy is consumed because the production of power occurs in centralized locations.

(b) Air pollutant emissions from energy consumption affect the health of the citizens throughout Colorado.

- (c) The strain on the grid from peak electric power demands is not confined to jurisdictional boundaries.
- (d) There is statewide interest in the reliability of the electrical grid and an adequate supply of heating oil and natural gas.
- (e) Controlling energy costs for residents and businesses furthers a statewide interest in a strong economy and reducing the cost of housing in Colorado.
- (2) As used in this section, unless the context otherwise requires:
- (a) "Building code" means regulations related to energy performance, electrical systems, mechanical systems, plumbing systems, or other elements of residential or commercial buildings.
- (b) "Energy code" means, at a minimum, the 2003 international energy conservation code, or any successor edition, published by the international code council or any other code determined by the Colorado energy office created in section 24-38.5-101, C.R.S., to be more appropriate for local conditions.
- (c) "Office" means the Colorado energy office created in section 24-38.5-101, C.R.S.
- (3) Within one year of July 1, 2007, every board of county commissioners that has enacted a building code pursuant to section 30-28-201 shall adopt an energy code that shall apply to the construction of, and renovations and additions to, all commercial and residential buildings in the county to which the building code applies.
- (4) The energy code shall apply to any commercial or residential building in the county for which a building permit application is received subsequent to the adoption of the energy code.
- (5) The following buildings are exempt from the provisions of subsection (4) of this section:
- (a) Any building that is otherwise exempt from the provisions of the building code adopted by the board of county commissioners of the county in which the building is located and buildings that do not contain a conditioned space;
- (b) Any building that does not use either electricity or fossil fuels for comfort heating. A building will be presumed to be heated by electricity even in the absence of equipment used for electric comfort heating if the building is provided with electrical service in excess of one hundred amps, unless the code enforcement official of the county determines that the electrical service is necessary for a purpose other than for providing electric comfort heating.
- (c) Historic buildings that are listed on the national register of historic places or Colorado state register of historic properties and buildings that have been designated as historically significant or that have been deemed eligible for designation by a local governing body that is authorized to make such designations; and
- (d) Any building that is exempt pursuant to the energy code.
- (6) Notwithstanding any other provision of this section, the board of county commissioners of a county that is required to adopt an energy code may make any amendments to the energy code that the board deems appropriate for local conditions, so long as the amendments do not decrease the effectiveness of the energy code.
- (7) (a) The office shall ensure that information explaining the requirements of the energy code and describing acceptable methods of compliance is available to builders, designers, engineers, and architects.
- (b) The office shall provide boards of county commissioners with technical assistance concerning the implementation and enforcement of the energy code.

Source: **L. 2007:** Entire section added, p. 695, § 2, effective July 1. **L. 2008:** (2)(b) and (2)(c) amended, p. 72, § 10, effective March 18. **L. 2012:** (2)(b) and (2)(c) amended, (HB 12-1315), ch. 224, p. 974, § 36, effective July 1.

PART 3

ESTABLISHMENT OF SUBDIVISION
EXEMPTION PLATS FOR THE PURPOSE
OF CORRECTING LEGAL DESCRIPTIONS

30-28-301. Legislative declaration. (1) The general assembly hereby finds and declares that, in certain areas of the state, property has been conveyed as irregular parcels or as parcels platted prior to establishment of current subdivision regulations. Situations exist where the physical layout of lots conveyed in this manner are not in dispute, but the legal descriptions of these lots contain inaccuracies such that conflicts exist in the written record locating property boundaries. These conflicts in the legal descriptions jeopardize the ability of property owners to utilize and to convey their property. These conflicts often affect a number of properties such that the most efficient means of correcting them is to create a subdivision exemption plat for the area which can be used as a uniform basis for legal descriptions. The inability of property owners to resolve conflicts in legal descriptions is contrary to the public welfare and interferes with efficient and economic development and utilization of land.

(2) It is the purpose of this part 3 to provide for the preparation of subdivision exemption plats for unplatted areas or for areas platted prior to current subdivision regulations which can be used as a uniform basis for legal descriptions of such areas.

Source: L. 88: Entire part added, p. 1117, § 1, effective April 20.

30-28-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Irregular, divided area" means an area containing parcels of less than thirty-five acres which are either irregular parcels or parcels which were platted prior to June 1, 1972.

(2) "Irregular parcel" means a parcel of land which is not uniquely defined on a subdivision plat but which is described by any of the following methods:

- (a) An aliquot part of a section;
- (b) A metes and bounds description;
- (c) A book and page or reception number reference;
- (d) Any so-called "assessor's tract";
- (e) A description which calls only for the owner's or adjoiner's name.

(3) "Land division study area" means an area of land which qualifies as an irregular, divided area as defined in subsection (1) of this section, and which has been designated by the board of county commissioners for the purpose of preparing a plan for platting in accordance with the provisions of section 30-28-304.

(4) "Land surveyor" means a person registered or licensed pursuant to part 2 of article 25 of title 12, C.R.S.

(5) "Parcel" means a contiguous area of land, except for intervening easements and rights-of-way with a continuous boundary defined either by the methods specified in subsection (2) of this section, when the description of the parcel has been recorded in the office of the county clerk and recorder or by reference to a recorded subdivision plat.

(6) "Property owner" or "owner" means the person or persons who hold title to a parcel of land as shown on the property tax assessment roll in the office of the county assessor.

(7) "Subdivision exemption plat" or "exemption plat" means a subdivision plat which depicts a division of land or the creation of an interest in property for which the board of county commissioners has granted an exemption from subdivision regulations pursuant to section 30-28-101 (10) (d) and which is suitable for recording pursuant to section 38-51-105, C.R.S.

(8) "Subdivision plat" means a map of a platted subdivision recorded for the purpose of creating land parcels which can be identified uniquely by reference to such map.

Source: L. 88: Entire part added, p. 1118, § 1, effective April 20. **L. 94:** (7) amended, p. 1509, § 43, effective July 1.

30-28-303. Creation of land division study area. (1) Upon petition of the property owners who represent not less than ten percent of the land in an irregular, divided area, the board of county commissioners may create a land division study area.

(2) At any regular meeting of the board of county commissioners, the board may designate an area of land as a land division study area if:

(a) The notice and comment provisions of subsection (3) of this section have been complied with; and

(b) The board finds that the area proposed for inclusion in the study qualifies as an irregular, divided area.

(3) Prior to designating an area of land as a land division study area, the board of county commissioners shall publish its intent to consider such designation thirty days prior to the meeting in a newspaper of general circulation in the county. Such notice shall include the time and place of the hearing and an invitation to the public to comment on the proposed designation.

Source: L. 88: Entire part added, p. 1118, § 1, effective April 20.

30-28-304. Preparation and adoption of plan for platting notice - withdraw from plan - requirements for adoption. (1) (a) The board of county commissioners shall have prepared a plan for platting the land division study area.

(b) The plan shall include the estimated cost for preparing a subdivision exemption plat and the estimated amount which must be assessed against each property included in the plan in order to repay the cost of the exemption plat. Costs associated with the following activities shall be eligible for inclusion in the cost estimate:

(I) Surveying and engineering;

(II) Drafting;

(III) Computerized mapping;

(IV) Aerial photography;

(V) Monumentation;

(VI) Title research and documentation;

(VII) Preparation of deeds;

(VIII) Court costs; and

(IX) Project administration.

(c) In addition to the costs set forth in subparagraphs (I) to (IX) of paragraph (b) of this subsection (1), the estimated cost may include a contingency amount of up to fifteen percent of the total costs set forth in such subparagraphs.

(2) (a) The board of county commissioners shall conduct a public hearing to consider adoption of the plan for platting described in subsection (1) of this section and to allow owners of property in the land division study area an opportunity to register either their agreement or objection to having their property included in any subdivision exemption plat for the land division study area.

(b) Notice of the time and place of the hearing shall be given at least thirty days prior to the hearing by publication in a newspaper of general circulation in the county and by certified mail to owners of property included in the land division study area. In addition to the time and place of the hearing, the notice shall include at a minimum the following information:

(I) A map showing the properties included in the land division study area, including the approximate location of parcel boundaries;

(II) The purpose for which the study area was created;

(III) The process by which a subdivision exemption plat for the land division study area can be prepared;

(IV) The cost estimates for preparation of a subdivision exemption plat, with conspicuous notification that such costs would be assessed against the properties included in the exemption plat;

(V) The opportunity for the property owner to object to this property being included in any subdivision exemption plat for the land division study area; and

(VI) A copy of the plan for platting prepared pursuant to subsection (1) of this section.

(3) (a) Any property owner may elect to withdraw from the plan for platting described in subsection (1) of this section by submitting a written request by certified mail to the county clerk and recorder prior to the date of the hearing or by appearing at the hearing and informing the board of county commissioners of his decision to withdraw from the plan.

(b) The board of county commissioners shall exclude properties of owners who request withdrawal pursuant to paragraph (a) of this subsection (3) from any plan adopted for platting the land division study area.

(c) The board of county commissioners shall not adopt a plan for platting if the withdrawal of property owners from participation would result in an increase in the amount of the assessment against the remaining properties from that amount which was stated in the plan, unless written consent is obtained from all owners who elect to participate in the plan for platting.

(4) Prior to adoption of any plan for platting a land division study area:

(a) The board of county commissioners shall obtain written consent from each property owner who elects to participate in the plan. Consent on the part of a property owner to participate in the plan shall constitute consent to the following:

(I) Preparation of a subdivision exemption plat for his property;

(II) Temporary conveyance of title to his property to the district court as provided in section 30-28-307;

(III) Payment of the assessment against his property for the cost of preparing the subdivision exemption plat;

(b) Each property owner participating in the plan shall provide evidence of title insurance or other evidence of title which is acceptable to the board of county commissioners for the property which shall be included in the plan for platting. The board of county commissioners shall have the authority to evaluate evidence of title and to exclude properties where title has not been proven to the board's satisfaction.

(5) The board of county commissioners shall adopt the plan for platting by resolution by a majority vote of the full membership of the board.

Source: L. 88: Entire part added, p. 1119, § 1, effective April 20.

30-28-305. Preparation of subdivision exemption plat. (1) The board of county commissioners shall have a subdivision exemption plat prepared for those properties in the land division study area for which the owners have:

(a) Not elected to withdraw from the plan as provided in section 30-28-304 (3);

(b) Given written consent to participate in the plan for platting and have supplied adequate evidence of title as required by section 30-28-304 (4).

(2) The exemption plat shall be prepared by a professional land surveyor, and shall assign a lot number to each of the properties included in the exemption plat.

Source: L. 88: Entire part added, p. 1121, § 1, effective April 20.

30-28-306. Preparation of deeds. The board of county commissioners shall have deeds prepared for each of the properties included in the subdivision exemption plat, using the exemption plat as the basis for the legal description of such properties. Deeds prepared under the provisions of this section shall constitute a legal means for the conveyance of property only upon recordation of the subdivision exemption plat in the office of the county clerk and recorder.

Source: L. 88: Entire part added, p. 1121, § 1, effective April 20.

30-28-307. Conveyance of title to district court. (1) Upon completion of the preparation of the subdivision exemption plat and of the deeds for the parcels included in the exemption plat, each property owner participating in the subdivision exemption plat shall convey the existing title to his property to the district court having jurisdiction over the property which is to be platted.

(2) The district court shall hold each title in escrow and shall act as the property owner for all properties conveyed in this manner for purposes of executing the owner's certificate for consent to the subdivision of the properties as indicated in the subdivision exemption plat.

Source: L. 88: Entire part added, p. 1121, § 1, effective April 20.

30-28-308. Recordation of subdivision exemption plat. Upon execution of the owner's certificate by the district court, the board of county commissioners shall have the subdivision exemption plat recorded in the office of the county clerk and recorder.

Source: L. 88: Entire part added, p. 1121, § 1, effective April 20.

30-28-309. Reconveyance of title to property owners. (1) Upon recordation of the subdivision exemption plat by the county clerk and recorder, the district court shall reconvey the titles held by the court pursuant to section 30-28-307 to the property owners who conveyed title to their properties to the district court. The district court shall convey title by means of the deeds which were prepared in accordance with section 30-28-306.

(2) (a) A failure to record the subdivision exemption plat and to reconvey title from the district court to the participating property owners within five working days from the date title is conveyed to the district court shall void the original conveyance to the district court.

(b) Voiding of the original conveyance shall not preclude subsequent attempts to convey property to the district court for the purposes stated in this part 3, and the limitation on the length of time the district court may hold title to properties so conveyed shall apply to any subsequent conveyance attempts.

Source: L. 88: Entire part added, p. 1121, § 1, effective April 20.

30-28-310. Assessment of costs. (1) (a) The board of county commissioners shall have the authority to assess all eligible costs incurred in preparing the subdivision exemption plat against the properties included in the exemption plat. The maximum amount of such assessment shall be the maximum cost estimate which was included in the plan for platting. The board of county commissioners may establish a schedule of not more than ten years for repayment of the assessment.

(b) The assessment shall become part of the property taxes owed for the affected properties, and the board of county commissioners shall have power to collect delinquent assessments in the same manner that delinquent property taxes are collected. The amount assessed against each of the affected properties shall be proportionate to the benefit received.

(2) The district court shall have the authority to charge for the costs incurred in administering sections 30-28-307 and 30-28-309. Such costs shall be paid by the county at the time these duties are performed, and the county shall be reimbursed for such costs by adding a proportionate amount of such costs to the property owners' assessments which are levied in accordance with subsection (1) of this section.

Source: L. 88: Entire part added, p. 1122, § 1, effective April 20.

30-28-311. Cancellation of process. (1) After adoption of the plan for platting as set forth in section 30-28-304, the board of county commissioners shall cancel the procedures set forth in this part 3 for the creation of a subdivision exemption plat upon:

(a) Written request from at least seventy-five percent of the participating property owners; or

(b) Refusal on the part of one or more property owners to convey title as required by section 30-28-307.

(2) The board of county commissioners shall have the authority to assess costs as provided in section 30-28-310 against the properties included in the adopted plan for work completed prior to cancellation of the process.

Source: L. 88: Entire part added, p. 1122, § 1, effective April 20.

30-28-312. Limitation on liability. Property owners and any persons representing themselves as property owners who convey property to the district court under the provisions of this part 3 shall bear full responsibility for the condition of the title they hold to the property and for any subsequent litigation regarding defective title. Administration by the board of county commissioners and the district court of the procedures set forth in this part 3 shall not confer liability upon them or anyone in their employ for any litigation regarding defective title of any property which is included in a subdivision exemption plat prepared pursuant to this part 3.

Source: L. 88: Entire part added, p. 1122, § 1, effective April 20.

30-28-313. Severability. If any section, clause, provision, or portion of this part 3 shall be found unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of this part 3 shall not be affected.

Source: L. 88: Entire part added, p. 1122, § 1, effective April 20.

PART 4

CLUSTER DEVELOPMENT

30-28-401. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the public interest to encourage clustering of residential dwellings on tracts of land that are exempt from subdivision regulation by county government pursuant to section 30-28-101 (10) (c) (X), thereby providing a means of preserving common open space, of reducing the extension of roads and utilities to serve the residential development, and of allowing landowners to implement smart growth on land that is exempt from subdivision regulations.

(b) Landowners should have the option to consider cluster development when subdividing land into parcels in a manner that constitutes an alternative to the traditional thirty-five acre interests described in section 30-28-101 (10) (c) (I).

(c) A process should be available for the development of parcels of land for residential purposes that will authorize the use of clustering, water augmentation, density bonuses, not to exceed two units for each thirty-five acre increment, or other incentives, and the transfer of development rights and fulfill the goals of the county to preserve open space, protect wildlife habitat and critical areas, and enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations.

Source: L. 96: Entire part added, p. 1880, § 2, effective June 6.

30-28-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Rural land use process" means a planning process duly enacted and adopted by a county which is designed to offer a land use option for single family residential purposes that differs from traditional thirty-five acre divisions of land, as described in section 30-28-101 (10) (c) (I).

Source: L. 96: Entire part added, p. 1881, § 2, effective June 6.

30-28-403. Cluster development. (1) A cluster development is any division of land that creates parcels containing less than thirty-five acres each, for single-family residential purposes only, where one or more tracts are being divided pursuant to a rural land use process and where at least two-thirds of the total area of the tract or tracts is reserved for the preservation of open space. No rural land use process as authorized by this section shall approve a cluster development that would exceed one residential unit for each seventeen and one-half acre increment.

(2) As a condition of approving a cluster development, a rural land use process shall require that the cluster development plan to set aside land to preserve open space or to protect wildlife habitat or critical areas not permit development of such land for at least forty years from the date the plan is approved.

Source: L. 96: Entire part added, p. 1881, § 2, effective June 6. L. 2001: (1) amended, p. 157, § 1, effective August 8.

30-28-404. Water - sewage - roadways - notification to state engineer. (1) In an effort to preserve open space and water resources, a cluster development may obtain only one well permit for each single-family residential lot pursuant to sections 37-90-105 and 37-92-602, C.R.S., subject to the provisions of subsection (2) of this section.

(2) Except in areas of the state where unappropriated water is available for withdrawal and the vested water rights of others will not be materially injured and except inside designated groundwater basins, a water court-approved plan for augmentation shall be required and shall accompany any county-approved rural land use plan when the water usage in the cluster development would exceed an annual withdrawal rate of one acre-foot for each thirty-five acres within the cluster development. Nothing in this section shall be construed to preclude the use of treated domestic water provided by any public or private entity.

(3) No later than ten days after approval of a cluster development pursuant to a county's rural land use process, the board of county commissioners shall notify the state engineer of such approval and shall provide the state engineer a copy of the approved rural land use plan that includes the cluster development.

Source: L. 96: Entire part added, p. 1881, § 2, effective June 6.

APPORTIONMENT OF FEDERAL MONEYS

ARTICLE 29

Apportionment of Federal Moneys from Public Lands

Editor's note: This article was numbered as article 9 of chapter 112, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of this article, see the comparative tables located in the back of the index.

30-29-101.

Receipts from national forests
- legislative intent.

30-29-102.

Receipts from flood control
projects.

30-29-101. Receipts from national forests - legislative intent. (1) All moneys received by the state treasurer from the federal government under provisions of the act of congress of May 23, 1908, as amended, 16 U.S.C. sec. 500, relating to receipts from national forests, referred to in this section as "national forest payments", shall be credited

to a clearing account.

(2) The state treasurer shall pay over the national forest payments within thirty days after receipt of the payments to the treasurers of the several counties of the state in which national forests are located, on the basis of the acreage of national forest land located in each county and in accordance with information provided by the appropriate agency of the federal government as to source and amount.

(3) (a) The boards of county commissioners of the counties receiving the payments specified in subsection (2) of this section shall allocate a minimum of twenty-five percent to the county road and bridge fund and a minimum of twenty-five percent to the public schools in the county; except that the county may allocate less than twenty-five percent of the national forest payments to the county road and bridge fund in order to maximize the receipt by the county of federal payments in lieu of taxes pursuant to 31 U.S.C. sec. 6901 et seq., referred to in this section as "PILT". The allocation of the remaining fifty percent of the national forest payments shall be determined pursuant to the provisions of paragraph (b) of this subsection (3).

(b) (I) A total of three representatives from the school districts in the county and three members of the board of county commissioners, or their designees, shall meet and shall negotiate the remaining percentage allocation of the national forest payments to either the public schools in the county or the county road and bridge fund. In determining the allocation of the national forest payments, the parties shall seek to maximize the total amount of federal funds that may be received by the county and the public schools in the county.

(II) Unallocated national forest payments shall remain unspent until such time as the parties agree upon the allocation of the national forest payments between the county road and bridge fund and the public schools in the county.

(c) If there is more than one school district in the county, the amount allocated to each district shall be in the proportion that its pupil enrollment during the preceding school year bears to the aggregate pupil enrollment in all districts in the county during said preceding school year.

(4) Notwithstanding the minimum percentage allocations to the public schools in the county and the county road and bridge fund set forth in paragraph (a) of subsection (3) of this section, in any federal fiscal year in which the national forest payments received by the state from the federal government are less than six million dollars, the parties specified in paragraph (b) of subsection (3) of this section shall allocate one hundred percent of the national forest payments to either the public schools in the county or the county road and bridge fund pursuant to the provisions of paragraph (b) of subsection (3) of this section.

(5) Repealed.

Source: L. 73: R&RE, p. 1141, § 2. C.R.S. 1963: § 112-9-1. L. 90: (3) amended, p. 1847, § 44, effective May 31. L. 2009: Entire section amended, (HB 09-1250), ch. 240, p. 1091, § 1, effective August 5. L. 2010: (3)(a) amended and (5) added, (SB 10-209), ch. 411, p. 2029, § 1, effective June 10.

Editor's note: Subsection (5)(c) provided for the repeal of subsection (5), effective July 1, 2011. (See L. 2010, p. 2029.)

30-29-102. Receipts from flood control projects. (1) All moneys received by the state treasurer from the federal government under provisions of Public Law 526, 79th Congress, Second Session, approved July 24, 1946, relating to flood control projects, shall be credited to a clearing account.

(2) As soon as practicable after receipt of the moneys specified in subsection (1) of this section, the state treasurer shall pay over said moneys to the treasurers of the several counties of the state in which flood control projects are located, in accordance with information provided by the appropriate federal agency as to location and amount.

(3) The boards of county commissioners of the counties receiving the payments specified in subsection (2) of this section shall allocate twenty-five percent thereof to the county road and bridge fund and seventy-five percent thereof to the public schools of the

county. If there is more than one school district in the county, the amount allocated to each district shall be in the proportion which its pupil enrollment during the preceding school year bears to the aggregate pupil enrollment in all districts in the county during said preceding school year.

Source: L. 73: R&RE, p. 1141, § 2. **C.R.S. 1963:** § 112-9-2. **L. 90:** (3) amended, p. 1848, § 45, effective May 31.

FLOOD CONTROL

ARTICLE 30

Control of Stream Flow

30-30-101.	Definitions.	30-30-104.	Adoption of plan.
30-30-102.	Authority to remove obstructions in streams.	30-30-105.	Colorado water conservation board - grants to counties.
30-30-103.	Contracts and agreements.		

30-30-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Channel" means that area of a stream where water normally flows between banks and not that area beyond where vegetation exists.

(2) "Obstruction" means sandbars formed by the natural flow of a stream, temporary structures, planks, snags, and debris in and along the existing channel which cause a flood hazard.

Source: L. 74: Entire article added, p. 230, § 1, effective May 14.

30-30-102. Authority to remove obstructions in streams. (1) The board of county commissioners of each county shall have authority within its respective county, for flood control purposes only, to remove or cause to be removed any obstruction to the channel of any natural stream which causes a flood hazard, and for such purpose only the board of county commissioners shall have a right of access to any such natural stream, which access shall be accomplished through existing gates and lanes, if possible. Such authority includes the right to modify existing diversion or storage facilities at no expense to the diverter of a water right, but it shall in no way alter or diminish the quality or quantity of water entitled to be received under any vested water right.

(2) Except in case of imminent flood danger, such right of access shall be exercised only as follows:

(a) Upon five days' notice to the landowner and to the owner of any other property or leasehold interest in the area to be inspected, including public utilities, the board of county commissioners shall have a right of access to any natural stream for the purpose of inspecting it and determining if there are obstructions to its channel which create a flood hazard.

(b) If the board of county commissioners determines that there are obstructions on the property owner's property which in its opinion create a flood hazard, it shall give him written notice of those conditions. Thereafter the board of county commissioners shall negotiate with the owner to reach agreement as to the existence of such conditions and as to the procedures necessary for the elimination thereof. If such agreement is reached, the owner, if he requests, shall be given a reasonable time within which to eliminate such conditions himself, and such agreement may provide for compensation to the owner for such work.

(c) If the board of county commissioners and the owner cannot reach such agreement, then, unless the owner consents to access by the board of county commissioners, the board of county commissioners shall have access only through the institution of proceedings in the district court for a mandatory order compelling the owner to permit access for the purposes

specified in subsection (1) of this section. In such court proceedings, it shall be appropriate for the court to consider the necessity for and the reasonableness of the request of the board of county commissioners for access and to award to the owner such payment, if any, as may be proper to compensate him for damages to his property resulting from the flood control work on his property as authorized by the board of county commissioners.

(d) Whenever such action occurs within the boundaries of a municipality, the board of county commissioners shall consult with the governing body of that municipality.

(3) Prior to the initiation of any flood control work under this article, the board of county commissioners shall give the division of parks and wildlife written notice, specifying the conditions which in its opinion create a flood hazard and the location of such. This subsection (3) shall not apply in the case of imminent flood danger.

Source: L. 74: Entire article added, p. 230, § 1, effective May 14.

30-30-103. Contracts and agreements. The board of county commissioners of a county may enter into contracts and agreements with adjoining counties, the state of Colorado or any agency or political subdivision thereof, or the United States or any agency or political subdivision thereof for the purpose of implementing or carrying out the purposes of this article.

Source: L. 74: Entire article added, p. 231, § 1, effective May 14.

30-30-104. Adoption of plan. A board of county commissioners may by resolution adopt a plan to carry out the purposes of this article.

Source: L. 74: Entire article added, p. 231, § 1, effective May 14.

30-30-105. Colorado water conservation board - grants to counties. The Colorado water conservation board may make grants to counties, out of moneys appropriated by the general assembly or other funds available for such purpose, to assist them in removing stream flow obstructions in accordance with section 30-30-102, C.R.S. Grants under this section shall be made upon application by the county therefor and on the basis of the urgency of the flood control problem in the county and the county's financial need.

Source: L. 74: Entire article added, p. 231, § 1, effective May 14.

HOME RULE

ARTICLE 35

Home Rule Counties

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PART 1

GENERAL PROVISIONS

30-35-101. Short title. This article shall be known and may be cited as the "Colorado County Home Rule Powers Act".

Source: L. 81: Entire article added, p. 1461, § 1, effective June 8.

30-35-102. Legislative declaration. The general assembly declares that, in order to better meet and resolve problems of growth and urbanization and to promote the health, safety, security, and general welfare of the people, county government should be strengthened and provided more flexibility in its powers; therefore, this article is enacted with the intent to implement the provisions of section 16 of article XIV of the state constitution to provide home rule powers for the counties of this state and shall be liberally construed to effect such intent.

Source: L. 81: Entire article added, p. 1461, § 1, effective June 8.

30-35-103. Home rule counties - general powers. (1) Any county which adopts, has adopted, or proposes to adopt a county home rule charter to establish the organization and structure of county government, pursuant to the provisions of part 5 of article 11 of this title, may provide in such charter, or amendment thereto for the adoption of all or certain of the home rule powers authorized pursuant to the provisions of this article. In addition to powers authorized in this article, a home rule county, and its officers and employees, shall have all the powers of any county not adopting a home rule charter, except as otherwise provided in this article or in the charter or in the state constitution.

(2) None of the home rule powers granted in this article shall be exercised by a home rule county within the corporate limits of any municipality or territory annexed thereto, nor shall any fee, tax, assessment, or levy of any kind be imposed within such municipality for the exercise of any of the county home rule powers which are not authorized for nonhome rule counties, unless consent thereto is first given by the governing body of such municipality. Nothing contained in this article shall affect the power, otherwise granted by law, of a home rule county to own, operate, and maintain real and personal property within the corporate limits of any municipality.

(3) Notwithstanding any other provision in this part 1, none of the powers authorized in this article shall be applied to any municipal property, functions, services, or facilities, whether provided or located within or outside municipal boundaries, as the boundaries may from time to time exist, unless consent thereto is first given by the governing body of the municipality. This part 1 shall not be construed as limiting the authority of any municipality nor as expanding the authority of any county with respect to any municipality or any municipal property, functions, services, or facilities.

(4) A home rule county shall provide all mandatory county functions, services, and facilities and shall exercise all mandatory powers as are required by law for counties not having home rule powers. A home rule county may provide all permissive functions, services, and facilities and may exercise all permissive powers granted in this article and by other law applicable to counties not having home rule powers, except as otherwise provided in this article or in the charter or in the state constitution.

(5) A home rule county shall be a body politic and corporate, under such name and style as prescribed by law, and may sue and be sued, contract or be contracted with, acquire and hold real and personal property, have a common seal which it may change and alter at pleasure, and have such other privileges as are incident to corporations of like character or degree, not inconsistent with its charter or the laws of this state.

Source: L. 81: Entire article added, p. 1461, § 1, effective June 8.

PART 2

GENERAL POWERS

30-35-201. Powers of governing bodies. The governing body of a home rule county shall exercise such duties and authority and shall have all the powers and responsibilities as provided by law for governing bodies of counties not adopting a home rule charter and shall also have all of the following powers that have been included in the county's home rule charter or in any amendment thereto, pursuant to the provisions of section 30-35-103 (1):

(Administrative Powers)

- (1) **Finances.** To control the finances and property of the corporation;
- (2) **Appropriations.** To appropriate moneys for corporate purposes only, and provide for payment of debts and expenses of the corporation;
- (3) **Public entertainment.** To appropriate moneys in an amount not exceeding six-tenths of one mill on the valuation for assessment for the purpose of giving public concerts and entertainments by such corporation;

(4) **Advertising.** To appropriate moneys for the purpose of advertising the business, social, and educational advantages, the natural resources, and the scenic attractions of the corporation;

(5) **Taxes.** To levy and collect taxes for general and special purposes on real and personal property, as provided by statute;

(6) **Indebtedness.** (a) To contract an indebtedness on behalf of the county and upon the credit thereof, by borrowing money or issuing the bonds of the county, for any public purpose of the county, including, but not limited to, the supplying of water and sewer facilities service, the purchase of land, and the purchase, construction, extension, and improvement of public roads, streets, buildings, facilities, and equipment, and for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the county;

(b) The total amount of indebtedness for all purposes shall not at any time exceed three percent of the valuation for assessment of the county as determined by the county assessor, except such debt as may be incurred in supplying water, and no loan for any purpose shall be made unless it is by ordinance, which shall be irrevocable until the indebtedness therein provided for is fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied, and providing for the levying of a tax which, together with such other revenues, assets, or funds as may be pledged, shall be sufficient to pay the annual interest on, and extinguish the principal of, said debt within the time limited for the debt to run, which, excepting such debt as may be incurred in supplying water, shall not be more than thirty years; except that said tax when collected shall only be applied for the purposes in said ordinance specified, until the indebtedness is paid and discharged; but no debt shall be created unless the question of incurring the same is submitted, at a regular or special election of the county, to the registered electors thereof and a majority of the registered electors voting upon the question vote in favor of creating such debt.

(c) No statutory provisions of any other law limiting or fixing tax rates shall limit the provisions of this subsection (6).

(d) Bonds issued under this subsection (6) may mature serially during a period of not more than thirty years from the date thereof, in which event the amounts of such annual maturities shall be fixed by the governing body; except that bonds issued to supply water may mature over a longer period. If the governing body so determines, said bonds may be redeemable prior to maturity with or without payment of a premium, not exceeding three percent of the principal thereof. In any event said bonds shall be subject to call commencing not later than fifteen years from the date thereof. The right to redeem all or part of said bonds prior to their maturity, and the order of any such redemption, shall be reserved in the ordinance authorizing the issuance of bonds and shall be set forth on the face of said bonds.

(e) The ordinance or resolution submitting the question of contracting an indebtedness shall contain a statement of the maximum net effective interest rate at which said indebtedness may be incurred. For the purposes of this article:

(I) "Net effective interest rate" of a proposed issue of bonds shall be defined as the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(II) "Net interest cost" of a proposed issue of bonds shall be defined as the total amount of interest to accrue on said bonds from their date to their respective maturities, plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(f) (I) The governing body, having received approval at an election to issue bonds and having determined that the limitations of the original election question are too restrictive to permit the advantageous sale of the bonds so authorized, may submit, at another regular or special election, either the question of issuing the bonds, or any portion thereof, at a higher maximum net effective interest rate than the maximum interest rate or maximum net effective interest rate approved at the original election or the question of issuing the bonds, or any portion thereof, to mature over a longer period of time than the maximum period of

maturity approved at the original election, or the governing body may submit both such questions.

(II) An election held pursuant to this paragraph (f) shall be held in substantially the same manner as an election to authorize bonds initially, except as may be required for the submission of the limited question or questions permitted under this paragraph (f).

(III) At an election held pursuant to this paragraph (f), if the changes submitted are not approved, such result shall not impair the authority of the governing body at a later time to issue the bonds originally approved within the limitations established at the first election.

(7) **Officers and employees.** To provide by ordinance for the powers, duties, appointment, term of office, removal, and compensation of all officers and employees of the county not otherwise provided for by the state constitution or by statute or by charter and to provide for a retirement plan for such officers and employees;

(8) **Supplies.** To provide by ordinance that all the paper, printing, stationery, fuel, and other supplies needed for the use of the county shall be furnished by contract let to the lowest responsible bidder;

(9) **Charges on land.** To prescribe, by general ordinance, the mode in which the charges on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes so authorized by law. Any such charge, when assessed, shall be payable by the owners at the time of the assessment, personally, and also be a lien upon lots or parcels of land from the time of the assessment. Such charge may be collected and such lien enforced by a proceeding in law or in equity, either in the name of such corporation or of any person to whom it shall have directed payment to be made. In any such proceedings where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley, or highway, for sewerage, or for water used. Proceedings may be instituted against all the owners, or any of them, to enforce the lien against all the lots or parcels of land, or each lot or parcel, or any number of them embraced in any one assessment; but the judgment or decree shall be for each separately for the amount properly chargeable to each. Any proceedings may be severed in the discretion of the court for the purpose of trial, review, or appeal.

(10) **Vacancies.** To fill any vacancy occurring by death, removal, or resignation of any member of the governing body or other elective county officer by the appointment of a successor, and such appointee shall hold his office only until the next election, when the vacancy shall be filled by election as in other cases;

(11) **Grants of rights-of-way.** To grant, by ordinance and upon such terms and conditions as may be prescribed therein, rights-of-way through, over, across, and under roads, streets, and alleys;

(Public Works and Services)

(12) **Buildings.** To construct and maintain public buildings;

(12.5) **Energy conservation measures.** To enter into installment purchase contracts or shared-savings contracts or otherwise incur indebtedness under section 29-12.5-103, C.R.S., to finance energy conservation and energy saving measures and enter into contracts for an analysis and recommendations pertaining to such measures under section 29-12.5-102, C.R.S.

(13) **Streets and public grounds.** (a) To plan, establish, open, alter, widen, extend, grade, pave, or otherwise improve roads, streets, alleys, avenues, sidewalks, parks, and public grounds, and vacate the same, and to direct and regulate the landscaping within the rights-of-way of such roads, streets, and, avenues and on public grounds; to regulate the use of the same; to prevent and remove encroachments or obstructions upon the same; to provide for the lighting of the same; and to provide for the maintenance of the same;

(b) To regulate the openings therein for the laying-out of gas or water mains and pipes and the building and repairing of sewers, tunnels, and drains or for any other purpose;

(c) To regulate the use of sidewalks along the streets and alleys, and all structures thereunder, and to require the owner or occupant of any premises to keep the sidewalks free from snow and other obstructions;

(d) To regulate and prevent the throwing or depositing of ashes, garbage, or any offensive matter in, and to prevent any injury to, any road, street, avenue, alley, or public ground;

(e) To provide for and regulate crosswalks, curbs, and gutters;

(f) To regulate and prevent the use of roads, streets, sidewalks, and public grounds for the erection of signs, signposts, awnings, awning posts, and utility poles and for the posting of handbills and advertisements; to regulate and prohibit the exhibition or carrying of banners, placards, advertisements, or handbills upon the streets or public grounds or upon the sidewalks; and to regulate and prevent the flying of flags, banners, or signs across the streets or from houses or other structures;

(g) To regulate the numbering of houses and lots and to name and change the name of any road, street, avenue, alley, or other public place;

(14) **Bridges and tunnels.** To construct and maintain bridges, viaducts, and tunnels and to regulate the use thereof;

(15) **Sewers and water mains.** To construct and maintain culverts, drains, sewers, water mains, septic tanks, and cesspools and to regulate their use and to assess, either in whole or in part, the cost of the construction of sewers, water mains, and drains upon the lots or lands adjacent to and opposite the improvements in proportion to the frontage of such lots or lands abutting upon the road, street, or alley wherein such sewer, water main, or drain is to be laid. The benefit to the public generally, if any, shall be determined by ordinance and shall be assessed against the county, and the balance may be assessed against the lots or lands and the owners thereof, according to the frontage.

(16) **Lease or purchase of canals.** To purchase or lease any canal or ditch already constructed, or which may hereafter be constructed, and all the rights, privileges, and franchises of any person or corporation owning the same or having any interest or right therein, and to hold and operate the same in the same manner as the persons or corporations from whom the same may be purchased or leased might otherwise do, if such purchase or lease is made for the purpose of supplying, by said ditch or canal, water for the use of the people of the county and if a majority of the registered electors of the county voting at any regular election held for the election of county officers vote in favor of said purchase;

(17) **Obligations - repair - management.** In making a purchase or lease pursuant to subsection (16) of this section, to assume all obligations and other duties which by law devolve upon the owner of such ditch or canal from whom the same may be purchased or leased by virtue of subsection (16) of this section and to repair, improve or enlarge said canal or ditch or any flume, dam, or gate connected therewith and, for such objects, to levy and collect taxes in the same manner as other taxes are levied and collected by law. The management of such ditch or canal shall be under the control of the governing body of a home rule county.

(18) **Counties may purchase water rights.** To purchase water and water rights for the purpose of supplying counties and the inhabitants thereof with water. When deemed necessary and proper, the governing body of a county may purchase and hold the lands with which said water right is connected, whether the same is within or beyond the corporate limits thereof.

(19) **May divert waters - sell lands.** To divert the waters acquired by purchase, to the amount and extent theretofore lawfully appropriated, for the use of the county and the inhabitants thereof and to sell such lands whenever the governing body of a county may deem such course advisable;

(20) **Ratification of prior rights purchased.** To exercise the right to hold and retain water rights, or such lands and water rights as may have been purchased prior to June 8, 1981, by any county in this state for the purpose of providing water for the use thereof or for the use of its inhabitants, such right hereby being given and ratified and confirmed to the county; and also to exercise the right to divert the water belonging to such rights for the use of the county and the inhabitants thereof; and to sell and dispose of such lands so purchased separate and apart from the water rights as provided in subsection (19) of this section;

(21) **Water pollution control.** (a) To cooperate with and report to the water quality control commission and the department of public health and environment concerning any instances of water pollution, but this paragraph (a) shall not be construed to affect any

activity conducted in compliance with any valid permit, license, or other authority granted or issued by any agency of the state or federal government;

(b) To apply for and to accept grants or loans or any other aid from the federal or state government or any agent or instrumentality thereof or any private agency;

(c) To construct, reconstruct, lease, improve, better, and extend sewerage facilities and sewage treatment works wholly within or wholly without the county or partially within and partially without the county;

(d) To issue its general obligation bonds or other general obligations for the purpose set forth in, and within the limitations prescribed by, subsection (6) of this section and to issue its revenue bonds or obligations for such purpose in accordance with law;

(e) To provide that such bonds or obligations or any part thereof may be sold to the state of Colorado or the United States of America or any agency or instrumentality of either at private sale and without advertisement;

(f) To cooperate with other local public bodies and with state and federal agencies by contract for the joint construction and financing of sewerage facilities and sewage treatment works and the maintenance and operation thereof;

(g) To enter into joint operating agreements with industrial enterprises and accept gifts or contributions from such industrial enterprises for the construction, reconstruction, improvement, and extension of sewerage facilities and sewage treatment works. When determined by its governing body to be in the public interest and necessary for the protection of the public health, the county is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the county of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the county of amounts at least sufficient, in the determination of such governing body, to compensate the county for the cost of providing, including the payment of the principal and any interest charges, and of operating and maintaining the sewerage facilities serving such industrial establishment.

(22) Firehouses, equipment, and firefighters. To erect firehouses, and provide fire equipment for the extinguishment of fires and to provide for the use and management of the same; to determine the powers and duties of the members of the fire department in taking charge of property to the extent necessary to bring under control and extinguish any fire and to preserve and protect property not destroyed by fire; and to restrain persons from interfering with the discharge of the duties of the members of the fire department in connection with the fighting of any fire;

(23) Hospitals and places of relief. (a) To erect, establish, and maintain public hospitals, medical dispensaries, and other health facilities;

(b) The limitations on borrowing and incurring indebtedness set forth in section 25-3-304 (2), C.R.S., shall not apply to county hospitals established in home rule counties, as that term is defined in part 5 of article 11 of this title. The board of public hospital trustees in such home rule counties shall have the power to borrow money and enter into long term leases even where such indebtedness may not be repaid for more than one year and such indebtedness shall not require the approval of the board of county commissioners of such county unless such power to approve such indebtedness is specifically reserved to the board of county commissioners in the county home rule charter. The home rule county shall incur no liability as a result of the actions to incur indebtedness by such board of public hospital trustees.

(24) Cemeteries. To establish and regulate cemeteries within or without the corporation and acquire lands therefor, by purchase or otherwise, and to cause cemeteries to be removed;

(25) Franchise and charges for utilities. When the right to build and operate such water or cable television systems is granted to private individuals or incorporated companies by the county, to make such grant to inure for a term of not more than twenty-five years and to authorize such individuals or company to charge and collect from each person supplied by them with water or such water or cable television charges as may be agreed upon between said person or corporation so building said works and the county; and to enter into a contract with the individual or company constructing said works to supply the county

with water for fire purposes and for such other purposes as may be necessary for the health and safety thereof and to pay therefor such sums as may be agreed upon between said contracting parties;

(26) **Assessments for utility charges.** To assess from time to time, when constructing such water or cable television systems, in such manner as they shall deem equitable upon each tenement or other place supplied with such service, such charges as may be agreed upon by the governing body. At the regular time for levying taxes in each year, said county is hereby empowered to levy and cause to be collected, in addition to the other taxes authorized to be levied, a special tax on taxable property in the county. Such tax, with charges hereby authorized, shall be sufficient to pay the expenses of operating and maintaining such systems. If the right to build, maintain, and operate such systems is granted to private individuals or incorporated companies by the county, and the county shall contract with said individuals or companies for the supplying of such services for any purpose, the county shall levy each year and cause to be collected a special tax as provided for above, sufficient to pay off such charges so agreed to be paid to said individuals or company constructing said systems, but the said special tax shall not exceed the sum of three mills on the dollar for any one year.

(27) **Water facilities and taxes.** To construct public wells, cisterns, and reservoirs in the roads, streets, and other public and private places within the county, or beyond the limits thereof, and to provide proper pumps and conduits or ditches, for the purpose of supplying such county with water; and to levy an equitable and just tax or charge upon all consumers of water for the purpose of defraying the expense of such improvements;

(28) **Supply water to outside consumers.** To supply water from their water systems to consumers outside of the county and to collect therefor such charges, upon such conditions and upon such limitations as the county may impose by ordinance;

(29) **Parks - recreational facilities - conservation easements.** (a) To acquire, establish, and maintain such lands, or interests in land, within the county as in the judgment of the governing body may be necessary, suitable, or proper for boulevards, parkways, avenues, driveways, and roadways or for park or recreational purposes for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest.

(b) "Interests in land", as used in subsections (29) to (39) of this section, means and includes any and all rights and interests in land less than the full fee interest, including, but not limited to, future interests, easements, covenants, and contractual rights. Every such interest in land held pursuant to this subsection (29), when recorded, shall be deemed to run with the land to which it pertains for the benefit of the county holding such interest and may be protected and enforced by a county in any court of general jurisdiction by any proceeding known at law or in equity.

(c) Any county may unite with any other similarly authorized political subdivision of this state in acquiring, establishing, and maintaining any property which a county is authorized to acquire, establish, or maintain pursuant to this subsection (29).

(30) **Lands or interests in land acquired.** With respect to lands, or interests in land, for any of the purposes mentioned in subsection (29) of this section, to acquire, either by gift, devise, or purchase, but no land shall be purchased for such purpose until the governing body shall adopt an ordinance authorizing such acquisition and stating the location and legal description of the lands to be acquired and, in case of purchase, the price to be paid and the manner of payment or unless the proposal to acquire such lands shall be submitted upon petition pursuant to subsection (33) of this section and approved by the electors of the county. Lands or interests in land given or devised to a county for the purposes mentioned shall be accepted or refused by ordinance passed by the governing body of the county.

(31) **Management - licenses - franchises.** Exclusively, to manage and control all parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads as mentioned in subsection (29) of this section and, exclusively, to lay out, regulate, and improve the same, to prohibit certain or heavy traffic therein and thereon, to grant or refuse licenses to vend goods on the roads, streets, or sidewalks within three hundred feet of any park entrance and on the streets and sidewalks adjoining parks, and to establish and maintain necessary rules and regulations for the proper supervision and government thereof. The

county shall have such additional powers relating thereto as may be prescribed by ordinance, and the governing body shall provide, by ordinance, for the enforcement of such rules and orders.

(32) **Bequests for park purposes.** Upon such trusts or conditions as may be approved by the county real or personal property may be granted, bequeathed, devised, or conveyed to the county for the purpose of the improvement or ornamentation of any park, pleasure ground, boulevard, parkway, avenue, driveway, or road or for the establishment or maintenance in parks or pleasure grounds of museums, zoological or other gardens, collections of natural history, observatories, libraries, monuments, or works of art. All such property or the rents, issues, and profits thereof shall be subject to the exclusive management and control of the county.

(33) **Acquisition and bonds submitted to electors.** (a) For any of the purposes named in subsection (29) of this section within the county limits, to acquire, by purchase, gift, devise, or exchange, lands, or interests in land, which may be necessary, suitable, or proper. No lands or interests in land shall be so acquired by purchase unless the governing body has adopted an ordinance in accordance with the provisions of subsection (30) of this section. No indebtedness shall be created nor shall any bonds be issued for acquiring such lands or interests in land, unless the question of incurring such debt and issuing such bonds shall have been submitted at a regular election to a vote of those persons qualified to vote on authorization of other bonded indebtedness and approved as required by subsection (6) of this section.

(b) The governing body, upon petition of the registered electors of the county, equal in number to ten percent of the total number of such electors voting at the last regular election of the county, shall submit at the next regular election either or both of the questions of acquisition or of incurring bonded indebtedness by separate ordinance. In the ordinance submitting the question of the acquisition of such lands or interests in land, the governing body shall state the location of the land or interests in land proposed to be acquired, describing the same by legal subdivisions, wherever practicable, and the consideration to be given for the purchase and the manner of payment; and, in the ordinance submitting the question of incurring indebtedness, the governing body shall state the maximum net effective interest rate at which the bonds may be issued. If the only question to be submitted is the acquisition of such properties, the question may be submitted at a regular or special election. If the acquisition or incurring of indebtedness or both have been approved as required by subsection (6) of this section, the governing body shall acquire such lands or interests in land, incur said indebtedness, or both, pursuant to said authorization.

(34) **Park fund - certified vouchers.** To provide for a park fund which shall consist of moneys levied, collected, and appropriated therefor and coming into the fund by donation or otherwise. All moneys collected and credited to the park fund shall be used for the maintenance and improvement of parks, parkways, boulevards, avenues, driveways, and roads and shall be expended by the county as in their judgment the needs of such property shall require. The same shall be drawn upon the proper officers of the county, upon vouchers properly authenticated.

(35) **Maximum tax levy - moneys credited.** (a) As a part of the annual levies authorized by law, to annually levy, assess, and collect upon each dollar of taxable property within the county not more than one and one-half mills for the purposes of said park fund, the proceeds of which shall be collected in the same manner as other county taxes and shall be appropriated to the park fund.

(b) All moneys collected or received or levied or appropriated by the county for park purposes shall be deposited in the county treasury to the credit of the park fund. Any portion thereof remaining unexpended at the end of any fiscal year or at any other time shall not in any event revert into the general fund nor be subject to appropriation for general purposes.

(36) **Acquisition of park land by assessment and bond sale.** In addition to the powers conferred to acquire lands for parks and parkways by the sale of the general bonds of the county, to acquire boulevards, parkways, avenues, driveways, and roads, in the manner provided in subsection (37) of this section, the same to be paid for by special assessments upon all the other real estate, except avenues, boulevards, streets, and roads, in

the county or partly out of the proceeds of the sale of the general bonds of the county and partly by such assessments as the same may be determined by ordinance.

(37) **Acquisition by condemnation.** For the purpose of acquiring lands for boulevards, parkways, avenues, driveways, and roads, to select and, by a suitable proceeding in the name of the county and without the passage of any ordinance, to condemn real property, to purchase any real property so selected for one or more boulevards, parkways, avenues, driveways, or roads, and to select routes and streets for the purpose of establishing and maintaining a system of connecting boulevards and pleasure ways or parkways therein. All such condemnation proceedings shall be in accordance with the general laws of the state, so far as the same are applicable, but the benefit to other lands shall be ascertained and assessed.

(38) **Park bonds.** To pay for the parks and pleasure grounds, boulevards, parkways, avenues, driveways, and roads established by any county, or such part thereof, as may be determined by the county, in park bonds of the county of a date and form prescribed by the county, bearing the name of the county, and payable to bearer at such times and in a sufficient period of years to cover the period of payments provided for, with interest annually at a rate or rates such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, as may be determined by the governing body. The bonds shall be signed by the executive officer, countersigned by the county clerk and recorder, and bearing the seal of the county endorsed thereon, the interest to be evidenced by suitable coupons attested by a facsimile of the signature of the county clerk and recorder.

(39) **Control of park grounds.** In all cases where any home rule county has acquired lands for parks, parkways, boulevards, or roads, to have full police power and jurisdiction and full power and authority in the management, control, improvement, and maintenance of and over any and all such lands so acquired; to have power and authority to provide by ordinance for the regulation and control of its lands so acquired and to prevent the commission of any and all acts which are or may be declared unlawful and to prosecute and punish the violation of any ordinances in its county courts. A county shall have like power and jurisdiction to regulate and prevent the erection, construction, and maintenance, within three hundred feet of any such park, parkway, boulevard, or road, of any advertisement or of any billboard or other structure for advertisements, and the county shall also have like power and jurisdiction over the use of any public roads, boulevards, or parkways within such parks and running over or through or between such lands and any public roads, boulevards, or parkways between any such parks or pleasure ground and its county boundaries.

(Building and Zoning Regulations)

(40) **Planning and zoning.** To exercise the powers of planning and zoning pursuant to the provisions of article 28 of this title;

(Condemnation Powers)

(41) **Streets and sewers.** To extend, by condemnation or otherwise, any road, street, alley, or highway, over or across, or to construct any sewer under or through any railroad track, right-of-way, or land of any railroad company, within the county jurisdiction, but, where no compensation is made to such railroad company, the county shall restore such railroad track, right-of-way, or land to its former condition or in a sufficient manner not to have impaired its usefulness;

(42) **Public transportation - rights-of-way.** To grant the use of, or right to lay down, any railroad track in any road or street of the county to any public transportation company;

(43) **Utilities.** To condemn and appropriate so much private property as shall be necessary for the construction and operation of sewers in such manner as may be prescribed by law;

(Ordinance Power)

(44) **Power and penalties.** To pass all ordinances and rules and make all regulations proper or necessary to carry into effect the powers granted to home rule counties, with such fines and penalties as the governing body shall deem proper, but no fine or penalty shall exceed three hundred dollars, and no imprisonment shall exceed ninety days for one offense;

(45) **Enforcement.** To enact and provide for the enforcement of all county ordinances necessary to protect life, health, and property; to prevent and remove nuisances defined by statute and upon complaint to the district attorney; to preserve the general welfare, order, and security of the county and its inhabitants;

(46) **Parking - facilities.** To provide, by ordinance, for the construction, maintenance, and operation of public parking facilities, buildings, stations, or lots by the county and to pay for the cost thereof by general tax levy or otherwise or by the issuance of bonds of the county, which bonds may be retired by revenues assessed and collected as rentals, fees, or charges from the operation of such facilities or from parking meter rentals or charges.

Source: L. 81: Entire article added, p. 1462, § 1, effective June 8. **L. 91:** (12.5) added, p. 733, § 5, effective May 1. **L. 94:** (21)(a) amended, p. 2801, § 563, effective July 1.

30-35-202. Power to sell public works - sell or lease property. (1) The governing body shall have the following additional powers:

(a) To sell and dispose of public utilities, public buildings, real property used or held for park purposes, or by other real property used or held for any governmental purposes. Before any such sale of a park or recreation facility shall be made, the question of said sale and the terms and consideration thereof shall be submitted at a regular election and approved in the manner provided for authorization of bonded indebtedness by section 30-35-201 (6);

(b) By ordinance, to sell and dispose of any other real property owned by the county upon such terms and conditions as such governing body may determine at a regular or special meeting;

(c) To lease any real property, together with any facilities thereon, owned by the county when deemed by the governing body to be in the best interest of the county. Any lease for a period of more than one year shall be by ordinance. Any lease for one year or less than one year shall be by resolution or ordinance.

(2) All leases and deeds of conveyance executed and acknowledged by the proper officers of the county and purporting to have been made pursuant to the provisions of this section shall be deemed prima facie evidence of due compliance with all the requirements hereof.

Source: L. 81: Entire article added, p. 1472, § 1, effective June 8.

PART 3

ORDINANCES - PENALTIES

30-35-301. Duty to make and publish ordinances. A county adopting any of the home rule powers under this article shall make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this article and as seems necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such county and the inhabitants thereof. Such ordinances may be in addition to those authorized by section 30-15-401, and the provisions of sections 30-15-402 to 30-15-411 shall also apply to such ordinances.

Source: L. 81: Entire article added, p. 1473, § 1, effective June 8.

PART 4

ORDINANCE CODES ADOPTED BY REFERENCE

30-35-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Adopting county" means any home rule county adopting an ordinance pursuant to the provisions of this part 4.

(2) "Code" means any published compilation of statutes, ordinances, rules, regulations, or standards adopted by the federal government or the state of Colorado, or by an agency of either of them, or by any municipality or county within the state of Colorado. It includes any codification or compilation of existing ordinances of the adopting county. The operation of this article as to published compilations of any organization or institution shall be limited to building codes, which may embrace any of the following subjects: The construction, alteration, repair, removal, demolition, equipment, use and occupancy, location, and maintenance of buildings or other structures, whether erected before, on, or after June 8, 1981.

(3) "County clerk" means the county clerk and recorder or equivalent officer.

(4) "Governing body" means the governing body of a home rule county.

(5) "Primary code" means any code which is directly adopted by reference in whole or in part by any ordinance passed pursuant to this part 4.

(6) "Published" means issued in printed, lithographed, multigraphed, mimeographed, or similar form.

(7) "Secondary code" means any code which is incorporated by reference, directly or indirectly, in whole or in part, in any primary code or in any secondary code.

Source: L. 81: Entire article added, p. 1473, § 1, effective June 8.

30-35-402. Adoption by reference - title. If all the procedures and requirements of this part 4 are complied with, any home rule county is authorized to enact any ordinance which adopts any code by reference, in whole or in part; and such primary code, thus adopted, may in turn adopt by reference, in whole or in part, any secondary codes duly described therein. However, every primary code and every secondary code which is incorporated in any such adopting ordinance shall be specified in the title of the ordinance.

Source: L. 81: Entire article added, p. 1474, § 1, effective June 8.

30-35-403. Notice - hearing. After the first reading of the adopting ordinance and of the code to be adopted thereby, and of any secondary codes therein adopted by reference, the governing body shall schedule a public hearing thereon. Notice of the hearing shall be published twice in a newspaper of general circulation in the adopting county, once at least fifteen days preceding the hearing and once at least eight days preceding it. If there is no such newspaper, the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and also copies of the secondary codes, if any, being considered for adoption are on file with the county clerk and recorder and are open to public inspection. The notice shall also contain a description which the governing body deems sufficient to give notice to interested persons of the purpose of the code and of any secondary code incorporated therein by reference, the subject matter of each such code, the name and address of the agency by which each has been promulgated, or, if a municipality or county, the corporate name of such municipality or county which has enacted such code, and the date of publication of such code or codes, and in the case of a code of any municipality or county the notice shall contain specific reference to code or codes of a given municipality or county as they existed and were effective at a given date.

Source: L. 81: Entire article added, p. 1474, § 1, effective June 8.

30-35-404. Adopting ordinance - adoption of penalty clauses by reference prohibited. After the hearing, the governing body may amend, adopt, or reject the adopting

ordinance in the same manner in which it is empowered to act in the case of other ordinances; but nothing in this article shall be deemed to permit the adoption by reference of any penalty clauses which may appear in any code which is adopted by reference. Any such penalty clauses may be enacted only if set forth in full in the adopting ordinance. All changes or additions to any code made by the governing body shall be published in the manner which is required for ordinances.

Source: L. 81: Entire article added, p. 1474, § 1, effective June 8.

30-35-405. Publication of ordinance. Nothing contained in this part 4 shall be deemed to relieve any home rule county from the requirement of publishing in full the ordinance which adopts any such code, and all provisions applicable to such publication shall be fully carried out. The adopting ordinance shall contain the same description of the primary adopted code and of each secondary code incorporated therein by reference, as required in the notice of hearing in section 30-35-403.

Source: L. 81: Entire article added, p. 1474, § 1, effective June 8.

30-35-406. Filing of public record - sale of copies. Not less than three copies of each primary code adopted by reference, and of each secondary code pertaining thereto, all certified to be true copies by the county executive officer and the county clerk, shall be filed in the office of the county clerk at least fifteen days preceding the hearing and shall be kept there for public inspection while the ordinance is in force. After the adoption of the code by reference, one of the copies of the primary code and of each secondary code may be kept in the office of the chief enforcement officer instead of in the office of the county clerk. Following the adoption of any code, the county clerk shall at all times maintain a reasonable supply of copies of the primary code and of any secondary codes incorporated in it by reference, available for purchase by the public at a moderate price.

Source: L. 81: Entire article added, p. 1474, § 1, effective June 8.

30-35-407. Amendments. If at any time any code which any home rule county has previously adopted by reference is amended by the agency or municipality or county which originally promulgated, adopted, or enacted it, then the governing body may adopt such amendment by reference through the same procedure as required for the adoption of the original code; or an ordinance may be enacted in the regular manner, setting forth the entire text of such amendment.

Source: L. 81: Entire article added, p. 1475, § 1, effective June 8.

30-35-408. Use as evidence. Copies of such codes in published form, duly certified by the county clerk and executive officer of the home rule county, shall be received without further proof as prima facie evidence of the provisions of such codes or public records in all courts and administrative tribunals of this state.

Source: L. 81: Entire article added, p. 1475, § 1, effective June 8.

PART 5

ACTIONS BY OR AGAINST HOME RULE COUNTIES

30-35-501. Review without bond. In all actions, suits, and proceedings in any court in this state in which a county of this state shall be a party, such county may take an appeal or writ of certiorari, as provided by law or rule of court, without giving bond.

Source: L. 81: Entire article added, p. 1475, § 1, effective June 8.

PART 6

BONDS - FUNDING - FLOATING DEBT

30-35-601. Funding bonds - determination of indebtedness. The governing body of a home rule county may issue negotiable coupon bonds, to be denominated funding bonds, for the purpose of funding any of the legal floating indebtedness of the county, whether such indebtedness is existing on or is created on or after June 8, 1981. The specific indebtedness to be funded and the amount of such funding bonds to be issued under the provisions of this part 6 shall first be determined by the governing body and a certificate of such determination shall be made and entered in and upon the records of the county prior to the issuance of said funding bonds. Nothing in this part 6 shall be construed to repeal or amend any law limiting the indebtedness of the county.

Source: L. 81: Entire article added, p. 1475, § 1, effective June 8.

30-35-602. Floating indebtedness defined. The term "floating indebtedness", as used in this article, includes all obligations of the county to pay money, of whatever kind or character, except indebtedness evidenced by the outstanding, negotiable interest-bearing bonds of the county.

Source: L. 81: Entire article added, p. 1475, § 1, effective June 8.

30-35-603. Bond election - judgments. (1) Whenever the governing body deems it expedient to issue funding bonds under the provisions of this article, it shall direct, by ordinance, that the question be submitted, at a regular election, in the manner provided for authorization of other bonded indebtedness in section 30-35-201 (6). At any election held under the provisions of this part 6, the question of authorizing the funding of all or any part of the floating indebtedness of the county may be submitted as one question of determination, irrespective of the form or date of such indebtedness. The election shall be conducted as nearly as may be in conformity with the provisions of the general election laws. The election notice shall specify, in addition to the time and places for holding said election, the qualifications for persons to vote on such question, the amount of the indebtedness to be funded, and the amount of funding bonds proposed to be issued at the rate of interest they shall bear. At such election, the ballots or voting machine tabs shall contain the words "For the Funding Bonds" and "Against the Funding Bonds".

(2) No election shall be necessary to authorize the governing body of a home rule county to issue bonds for the purpose of funding indebtedness in the form of a valid subsisting judgment against the county.

Source: L. 81: Entire article added, p. 1475, § 1, effective June 8.

30-35-604. Ordinance - form and maturity of bonds. (1) If the governing body determines to issue funding bonds for the purpose of paying and discharging any valid and subsisting judgment against the county or if, upon canvassing the vote cast at any election held under the provisions of this part 6, it is determined by the governing body that a majority of the legal votes cast upon the question submitted are in favor of funding, the governing body shall make such determination a part of the official records of the county, and the governing body shall immediately thereafter adopt an ordinance, which shall not be subject to the referendum provisions of any law, providing for the issue of said funding bonds in accordance with the provisions of this article. Such ordinance shall fix the date of said funding bonds; shall designate the denominations thereof, the rate of interest, the maturity date which shall not be more than twenty-five years from the date of said funding

bonds, and the place of payment, within or without the state of Colorado, of both principal and interest; and shall prescribe the form of said funding bonds.

(2) Such funding bonds shall be negotiable in form, shall recite the title of the act under which they are issued, shall be executed in the name of the county and signed by the executive officer, countersigned by the treasurer, and attested by the county clerk and recorder and shall have the seal of the county affixed thereto. The interest accruing on such funding bonds shall be evidenced by interest coupons thereto attached, bearing the engraved facsimile signature of the treasurer of the county. When so executed such coupons shall be the binding obligations of the county, according to their import. In the adoption of said ordinance providing for the issue of such funding bonds, the governing body shall make the principal of the debt payable in substantially equal annual installments during the period, not exceeding twenty-five years, within which the debt is to be discharged. The date of the maturity of the first installment of the debt shall be not more than five years from the date of said funding bonds.

Source: L. 81: Entire article added, p. 1476, § 1, effective June 8.

30-35-605. Disposition of bonds. All such funding bonds may be exchanged, dollar for dollar, in satisfaction of the indebtedness to be funded, or they may be sold at not less than their par value, as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which such funding bonds were issued.

Source: L. 81: Entire article added, p. 1476, § 1, effective June 8.

30-35-606. Taxes for interest and redemption. The interest accruing on such funding bonds issued pursuant to the provisions of this part 6 prior to the time when tax levies are available therefor shall be paid out of the general revenues of the county. For the purpose of reimbursing such general revenues and for the payment of subsequently accruing interest, the governing body issuing such funding bonds, or the proper tax assessing and collecting officers upon whom shall devolve the duty of levying and collecting county taxes, shall levy annually a sufficient tax upon all of the taxable property in the county fully to discharge such interest. For the ultimate redemption of such funding bonds, they shall levy annually such a tax upon all the taxable property in the county as will create a fund sufficient to discharge each annual installment of such funding bonds at the maturity thereof, which fund shall be called the redemption fund. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the county treasurer as a special fund to be used only in payment of the interest upon and for the redemption of such bonds. Such tax shall be levied and collected as other county taxes are levied and collected. The tax provisions for the ultimate redemption of such bonds shall be set forth in the ordinance authorizing their issue and shall set forth the years in which such taxes shall be levied for the creation of said redemption fund.

Source: L. 81: Entire article added, p. 1477, § 1, effective June 8.

30-35-607. Ordinance irrepealable. Any ordinance authorizing an issue of funding bonds under the provisions of this part 6 and providing for the levy of taxes for the payment of the interest upon the principal of such funding bonds shall not be altered or repealed until the indebtedness thereby authorized has been fully paid.

Source: L. 81: Entire article added, p. 1477, § 1, effective June 8.

PART 7

BONDS - REFUNDING BONDED DEBT

30-35-701. Refunding bonds - amount. The governing body of a home rule county may issue negotiable coupon bonds, to be denominated refunding bonds, for the purpose of

refunding any of the bonded indebtedness of the county whether due or not, or which has or may become payable at the option of the county or by consent of the bondholders, or by any lawful means, whether such bonded indebtedness is existing on or is created on or after June 8, 1981. The amount of such refunding bonds to be issued under the provisions of this part 7 shall first be determined by the governing body, and a certificate of such determination shall be made and entered in and upon the records of the county prior to the issuance of said refunding bonds.

Source: L. 81: Entire article added, p. 1477, § 1, effective June 8.

30-35-702. Vote of electors - when not required. Whenever such governing body deems it expedient to issue refunding bonds under the provisions of this part 7 and the net interest cost and the net effective interest rate of the proposed issue of refunding bonds does not exceed the net interest cost and net effective interest rate of the issue of bonds to be refunded, such refunding bonds may be issued without the submission of the question of issuing such refunding bonds to a vote of the qualified electors of the county. The issuance of bonds under this part 7 for the purpose of refunding bonds which were originally issued to supply water to the county shall not require approval of such electors.

Source: L. 81: Entire article added, p. 1477, § 1, effective June 8.

30-35-703. Vote of electors - when required - procedures. (1) Whenever such governing body deems it expedient to issue refunding bonds under the provisions of this part 7 and either the net interest cost or the net effective interest rate of the proposed issue of refunding bonds exceeds the net interest cost or the net effective interest rate, respectively, of the issue of bonds to be refunded, the governing body, by ordinance or resolution, shall submit the question of issuing said refunding bonds at a special election called and held for that purpose or at a regular election of county officers; but bonds issued under this part 7 for the purpose of refunding bonds which were originally issued to supply water to the county shall not require such approval of the electors. An election held under this section shall be held in the manner provided for the authorization of an original bonded indebtedness in section 30-35-201 (6).

(2) At any election held under the provisions of this part 7, the question of authorizing the refunding of all or any part of the then outstanding bonded indebtedness of the county may be submitted as one question for determination, whether such bonds are of the same or of different issues.

(3) The election shall be conducted as nearly as may be in conformity with the provisions of the general election laws.

(4) The election notice shall specify, in addition to the time and places for holding said election, the qualifications for persons to vote on such question, the amount and date of the bonds to be refunded, the amount of refunding bonds proposed to be issued, and the maximum net effective rate of interest at which they may be issued.

(5) At such election the ballots or voting machine tabs shall contain the words "For the Refunding Bonds" and "Against the Refunding Bonds".

Source: L. 81: Entire article added, p. 1478, § 1, effective June 8.

30-35-704. Ordinance for bond issue - bonds. (1) If the governing body determines to issue refunding bonds without an election by meeting the requirements set forth in sections 30-35-701 to 30-35-703, or if, upon canvassing the vote cast at any election held under the provisions of this part 7, it is determined by the governing body that a majority of the legal votes cast upon the question submitted are in favor of refunding, the governing body shall make such determination a part of the official records of the county and shall immediately thereafter adopt an ordinance providing for the issuance of said refunding bonds in accordance with the provisions of this part 7.

(2) Such ordinance shall fix the date of said refunding bonds, shall designate the denominations thereof, shall designate the maximum net effective interest rate, the rate or rates of interest of individual bonds, the maturity dates, and the place or alternate places of payment within or without the state of Colorado, of both principal and interest, and shall prescribe the form of said refunding bonds.

(3) Such refunding bonds shall be negotiable in form, shall recite the title of the ordinance under which they are issued, and shall be executed in the name of the county and signed by the executive officer, countersigned by the treasurer, with the seal of the county affixed thereto, and attested by the county clerk and recorder. The interest accruing on such refunding bonds shall be evidenced by interest coupons thereto attached, bearing the engraved facsimile signature of the treasurer of the county. When so executed, such coupons shall be the binding obligations of the county, according to their import.

(4) In the adoption of said ordinance providing for the issuance of said refunding bonds, the governing body shall make the principal of the debt payable in annual or semiannual installments commencing not later than five years after the date of such bonds and maturing during a period not exceeding thirty-five years from the date thereof. The amounts of such maturities shall be fixed by the governing body. The right to redeem all or any part of said issue of bonds prior to the respective maturities thereof and the order of any such redemption may be reserved in said ordinance, and, if so reserved, shall be set forth on the face of said bonds.

(5) Outstanding bonds, which are secured by a pledge of specific special funds or revenues of the county in addition to the general ad valorem tax revenues of said county, may be refunded under the provisions of this part 7, and substantial compliance with the provisions of this article shall be deemed and taken to be sufficient to legally authorize such refunding and the issuance of refunding bonds for such purpose, without further actions being taken by the county. Such a pledge of specific special funds or revenues need not be made to additionally secure the refunding bonds so issued, but such funds or revenues may be so pledged if it is deemed advisable by the governing body of the county.

Source: L. 81: Entire article added, p. 1478, § 1, effective June 8.

30-35-705. Exchange - sale - proceeds - amounts. Such refunding bonds may be exchanged dollar for dollar for the bonds to be refunded, or they may be sold at, above, or below their par value at a price or prices such that the net effective interest rate of the issue of refunding bonds does not exceed the maximum net effective interest rate authorized. Such refunding bonds shall be in a principal amount not exceeding the principal amount of the bonds to be refunded, as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which such refunding bonds were issued. The principal amount of said refunding bonds may be the same as or less than the principal amount of the bonds to be refunded, if due, adequate, and sufficient provision has been made for the payment, or redemption, and retirement of said bonds to be refunded and the payment of the interest accruing and having accrued thereon in accordance with this article.

Source: L. 81: Entire article added, p. 1479, § 1, effective June 8.

30-35-706. Tax for payment of refunding bonds. The interest accruing on such refunding bonds issued pursuant to the provisions of this part 7 prior to the time when the proceeds of tax levies are available therefor shall be paid out of the general revenues or any other revenues of the county available therefor. For the purpose of reimbursing such general revenues or other revenues and for the payment of subsequently accruing interest, the governing body shall levy annually a sufficient tax upon all the taxable property in the county fully to discharge such interest. For the ultimate payment or redemption of such refunding bonds there shall be certified and levied annually such a tax upon all the taxable property in such county as will create a fund sufficient to pay or redeem and discharge such refunding bonds at or prior to their respective maturities; but in the event the bonds to be redeemed and the interest thereon accruing would have been paid from taxes levied upon

only part of the taxable property in the county, the taxes levied for payment or redemption of the refunding bonds, and the interest accruing thereon, shall be levied in the same manner and upon only the same taxable property as would have been levied for payment of the bonds to be refunded if no refunding of said bonds had been made and accomplished. As collected, all taxes levied for payment of interest on and for the payment or redemption of the principal of such bonds shall be kept by the treasurer of the county in a special fund, to be used only in the payment of the interest upon and for the payment or redemption of the principal of such bonds. Such tax shall be levied and collected in the same manner as other county taxes are levied and collected. The ordinance authorizing the issuance of said bonds shall set forth the years in which such taxes shall be levied for the creation of said fund.

Source: L. 81: Entire article added, p. 1479, § 1, effective June 8.

30-35-707. Ordinance not to be altered. Any ordinance authorizing an issue of refunding bonds under the provisions of this part 7 and providing for the levy of taxes for the payment of the interest upon and the principal of such refunding bonds shall not be altered or repealed until the indebtedness thereby authorized shall have been fully paid.

Source: L. 81: Entire article added, p. 1480, § 1, effective June 8.

30-35-708. Combined issues - procedures. Any such refunding bonds may be issued to refund one or more issues of outstanding bonds of a county; but no two or more issues of outstanding bonds may be refunded by a single issue of refunding bonds unless the taxable property upon which tax levies are being made for payment of each such outstanding issue of bonds is identical to the taxable property on which such levies are being made for the payment of all other outstanding bonds proposed to be refunded by such single issue of refunding bonds. In the event that two or more issues of outstanding bonds of a county are to be refunded by the issuance of a single issue of refunding bonds, as provided in this section, the net interest cost and net effective interest rate on the bonds to be refunded shall be computed as if all of said bonds had originally been combined as a single issue aggregating the total of the smaller issues, and the results of this computation shall be compared with the net interest cost and net effective interest rate on the whole of the single refunding issue for purposes of determining the necessity of submitting the question of issuing such refunding bonds to a vote of the registered electors of the county.

Source: L. 81: Entire article added, p. 1480, § 1, effective June 8.

30-35-709. Application of refunding bond proceeds - procedures - limitations.

- (1) The proceeds derived from the issuance of any refunding bonds under the provisions of this part 7 shall either be immediately applied to the payment, or redemption, and retirement of the bonds to be refunded and the cost and expense incident to such procedures, or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation therefor and the costs and expenses incident to such proceedings and for no other purpose or purposes whatsoever until the bonds being refunded have been paid in full and discharged, and all accrued interest thereon has also been paid in full, upon which occurrences the escrow shall terminate, and any funds remaining therein shall be returned to the county and may be used to pay other bonds of the county.
- (2) The costs and expenses incident to the refunding of outstanding bonded indebtedness, the issuance of refunding bonds, and the establishment and maintenance of escrow accounts, pursuant to the provisions of this part 7, may be paid from any moneys or funds of the county which are legally available therefor. Any moneys or funds of the county legally available therefor may be placed in any escrow account established under the provisions of this article and may be used and expended for the purposes specified in the escrow agreement if such procedure is deemed by the governing body to be in the best interests of the county.

(3) Any escrowed funds, pending such use, may be invested or, if necessary, reinvested only in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., maturing at such times as to insure the prompt payment of the bonds refunded under the provisions of this article and the interest accruing thereon.

(4) Escrowed funds and investments, together with any interest to be derived from such investments, shall be in an amount which at all times shall be sufficient to pay the bonds refunded as they become due at their respective maturities or as they are called for redemption and payment on prior redemption dates, as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom. The computations made in determining such sufficiency shall be verified by a certified public accountant.

(5) For the purpose of implementing the provisions of this part 7, the governing body of any county shall have the power to enter into escrow agreements and to establish escrow accounts with any commercial bank having full trust powers located within this state which is a member of the federal deposit insurance corporation under protective covenants and agreements whereby such accounts shall be fully secured by direct obligations of the United States, or shall be invested in such direct obligations only, in such amounts as will be sufficient and maturing at such times so as to insure the prompt payment of the bonds refunded, and the interest accruing thereon, under the provisions of this part 7.

(6) In no event shall the aggregate amount of bonded indebtedness of any county exceed the maximum allowable amount as determined pursuant to the provisions of the state constitution, statutes, and charter applicable to such county. In determining and computing such aggregate amount of bonded indebtedness of any home rule county, bonds which have been refunded, as provided in this part 7, either by immediate payment, or redemption and retirement, or by the placement of the proceeds of refunding bonds in escrow shall not be deemed outstanding indebtedness from and after the date on which sufficient moneys are placed with the paying agent of such outstanding bonds for the purpose of immediately paying, or redeeming, and retiring such bonds, or from and after the date on which the proceeds of said refunding bonds are placed in such an escrow.

(7) The issuance of refunding bonds by any home rule county for the purposes and in the manner authorized by this article, or under the provisions of any other enabling law, shall never be interpreted or taken to be the creation of an indebtedness which would require the approval of the qualified electors of the county, and no such approval shall be required for the issuance of such refunding bonds except as is specifically required by this part 7 or such other law under which said refunding bonds are sought to be issued or have been issued.

(8) No bonds may be refunded under the provisions of this part 7 unless the holders thereof voluntarily surrender said bonds for immediate exchange or immediate payment or unless said bonds either mature or are callable for redemption prior to their maturity under their terms within ten years from the date of issuance of the refunding bonds, and provisions shall be made for paying, or redeeming, and discharging all of the bonds refunded within said period of time.

Source: L. 81: Entire article added, p. 1480, § 1, effective June 8. L. 89: (3) amended, p. 1114, § 24, effective July 1.

30-35-710. Registration of refunding bonds. Whenever any home rule county issues refunding bonds under the provisions of this part 7, the governing body shall direct that the county clerk and recorder, as a part of said county clerk and recorder's duties, register said bonds in a book to be kept by him for that purpose, and when so registered, the legality thereof shall not be open to contest by the county or by any other person or corporation in behalf of the county for any reason whatever. It is the duty of the county clerk and recorder to register said bonds, noting the principal amount, the date of issuance and maturity, and rate or rates of interest of said bonds.

Source: L. 81: Entire article added, p. 1482, § 1, effective June 8.

30-35-711. Redemption of refunding bonds prior to maturity - procedures. (1) In the event that any bonds of a home rule county, either bonds issued for refunding purposes or bonds issued for other purposes as set forth in section 30-35-201 (6), have been or are made redeemable prior to their respective maturities and the governing body determines that all or any part of such bonds should be called for redemption, according to their terms, it is the duty of the county clerk and recorder, as soon as the governing body has authorized the redemption, to cause notice to be given of such action.

(2) Such notice shall be given by publication at least one time in a newspaper customarily used by said county for legal notices at least thirty days prior to the date on which said bonds are to be redeemed and paid. Such notice shall contain the place or places and date on which said bonds shall be redeemed and paid, shall describe the bonds by their legal designation, date, number, and amount, and shall state that after the date so fixed for redemption and payment the interest on said bonds shall cease.

(3) After the date so fixed for redemption and payment, the bonds so called for redemption and payment shall cease to draw interest.

Source: L. 81: Entire article added, p. 1482, § 1, effective June 8.

30-35-712. “Net interest cost” - “net effective interest rate”. For the purposes of this part 7, the terms “net interest cost” and “net effective interest rate” have the meanings set forth in section 30-35-201 (6).

Source: L. 81: Entire article added, p. 1482, § 1, effective June 8.

PART 8

BONDS - TO PAY MATURED SPECIAL ASSESSMENT

30-35-801. Power to issue bonds - purpose. Subject to the provisions of this part 8, any home rule county shall have power and authority to issue its negotiable coupon bonds for the purpose of paying any special assessment bonds or obligations which it has issued or may issue, together with interest thereon, when it appears that there is not, or will not be, sufficient money for the payment of the same at maturity in the particular fund out of which payment should be made.

Source: L. 81: Entire article added, p. 1482, § 1, effective June 8.

30-35-802. Question submitted. No bonds shall be issued under this part 8 until the question of issuing the same has been submitted, at a regular election of a home rule county, to a vote of those persons qualified to vote on authorization of other bonded indebtedness and approved as required by section 30-35-201 (6).

Source: L. 81: Entire article added, p. 1483, § 1, effective June 8.

30-35-803. Ordinance - taxes - interest - disposition. The issuance of any bonds voted on in accordance with this part 8 shall be authorized by an ordinance, which shall be irrevocable until the bonds therein provided for shall have been fully paid or discharged, specifying the purpose to which the funds to be raised shall be applied and providing for the levy of a tax sufficient to pay the annual interest and extinguish the principal of such bonds within fifteen but not less than ten years from the creation thereof. Such tax, when collected, shall be applied only to the purpose specified in such ordinance until such bonds shall be paid or discharged. Such bonds shall bear interest at a rate or rates and shall be exchanged or sold at a price or prices so that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized. Interest shall be paid semiannually and shall be payable at such place, be in such denominations, and be executed by such officers as may be prescribed in such ordinance. Such bonds may be exchanged for

outstanding matured and overdue special assessment bonds or obligations and interest thereon or they may be sold and the proceeds thereof used for the purpose specified in this part 8.

Source: L. 81: Entire article added, p. 1483, § 1, effective June 8.

30-35-804. Construction - disposition of delinquent assessment. Nothing in this part 8 shall be construed to release or discharge any special assessment which is now, or may become, a lien on or against any property. Any home rule county issuing bonds under this part 8 shall be subrogated to the rights of the holders or owners of the outstanding special assessment bonds or obligations paid. If, after the issuance of bonds authorized by this part 8, the delinquent or defaulted special assessments, or any part thereof, are collected and the special assessment bonds or obligations payable out of the particular special assessment fund have been redeemed by means of bonds issued under this part 8, the amounts so collected shall be used to pay the principal of and the interest on the bonds authorized and the tax levies therefor shall be reduced in a like manner.

Source: L. 81: Entire article added, p. 1483, § 1, effective June 8.

PART 9

SPECIAL TAXING DISTRICTS

30-35-901. Special taxing districts authorized. In accordance with the provisions of section 18 of article XIV of the state constitution, the governing body of a home rule county may establish special taxing districts within the county to facilitate the furnishing of services and the collection of ad valorem taxes or charges for such services, or both such taxes and charges.

Source: L. 81: Entire article added, p. 1483, § 1, effective June 8.

30-35-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Registered elector" or "elector" means an individual who resides within a home rule county and is registered and otherwise qualified to vote in county elections in such county.

(2) "Special taxing district" or "district" means a geographic area within a home rule county designated and delineated by the governing body of a home rule county to facilitate the furnishing of services and improvements and the collection of ad valorem taxes or charges for such services, or both such taxes and charges; however, such collection of taxes or charges, or both, shall not be in addition to or in lieu of any taxes or charges, or both, specifically provided for and limited by any statute for the same purpose, including, but not limited to, taxes for law enforcement authorities, roads and bridges, and the like.

Source: L. 81: Entire article added, p. 1483, § 1, effective June 8.

30-35-903. Use of districts. (1) Such special taxing districts shall be used when a service or level of service which a county is authorized to provide is to be provided in substantially less than the entire area included within the county and where resulting ad valorem taxes or charges may vary from those imposed in other areas within the county.

(2) As long as the service is provided to the included territory, a special taxing district may include, subject to the limitations of section 30-35-103 (2), any territory within a county. The included territory need not be contiguous if the noncontiguous territory is essential to the provision of such services or improvements, and the same territory may lie within more than one special taxing district so long as there is no duplication of services or improvements.

(3) No tract or parcel of real estate used for manufacturing, mining, railroad, agricultural, or industrial purposes, together with the buildings, improvements, machinery, or equipment or other personal property thereon, for which no direct benefit is provided by the services or improvements of the special taxing district, shall be included therein without the written consent of the owner thereof. If, contrary to the provisions of this subsection (3), any such tract, parcel, or other property thereon is included in any special taxing district, the owner thereof, upon petition to the governing body of the home rule county, shall be entitled to have the same excluded from the special taxing district free and clear of any contract, obligation, lien, or charge to which it might have been liable as a part of the special taxing district.

Source: L. 81: Entire article added, p. 1484, § 1, effective June 8.

30-35-904. Formation of districts. (1) Special taxing districts may be established pursuant to the provisions of this section.

(2) (a) The governing body of a home rule county may by resolution propose the formation of such district which resolution shall designate the proposed boundaries thereof, specify the proposed service or services, and set forth the methods of financing proposed for such district.

(b) The governing body shall present the proposal at a public hearing to be held within sixty days after introduction of such resolution, with notice thereof to be published not less than fifteen days before the date set for hearing.

(c) At such hearing any registered elector of the county may be heard on the proposal, including questions of inclusion in or exclusion from the district, and all such objections shall be determined by the governing body on the basis of the public interest, taking into consideration the needs of the people and the availability of the service to the territory which is the subject of any such objection.

(d) The governing body may continue the hearing as necessary and may, after the conclusion thereof, enact the proposed resolution, with or without amendments, or may reject the proposed resolution.

(e) Decisions of the governing body concerning the formation of a special taxing district are not subject to review unless action is instituted by a registered elector to review such proceedings within forty-five days after passage of the resolution. Any such review shall extend only to the question of whether the governing body exceeded its jurisdiction or abused its discretion. If the court so finds, it shall remand the matter to the governing body for further proceedings, consistent with such findings.

(3) (a) A petition, signed by at least eight percent of the registered electors in the proposed district, shall be sufficient to require the governing body of a home rule county to pass a resolution creating the proposed special taxing district.

(b) At the top of each page of the petition shall be printed, in plain red letters no smaller than the impression of ten-point, bold-faced type, the following:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign this petition with any name other than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when not a registered elector.

**DO NOT SIGN THIS PETITION UNLESS
YOU ARE A REGISTERED ELECTOR**

TO BE A REGISTERED ELECTOR, YOU MUST BE:

1. At least eighteen years of age.
2. A citizen of the United States.

3. A resident of the state of Colorado for at least thirty-two days.
4. A resident of the precinct in which you live for at least thirty-two days.
5. Registered to vote in the county.

Do not sign this petition unless you have read or had read to you the proposal in its entirety and understand its meaning.

(c) The petition shall only be signed by registered electors of the proposed district with their own signatures, after which shall be written their residence addresses, including street and number, if any, city or town, and the date of signing.

(d) To each petition there shall be attached an affidavit of the person who circulated the petition, which shall state the person's address, that he or she is a resident of the state, a citizen of the United States, and at least eighteen years of age, that each signature thereon was affixed in his or her presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of his or her knowledge and belief each of the persons signing the petition was at the time of signing a registered elector of the proposed district, and that he or she has not or will not in the future pay any money or thing of value to any signer for the purpose of inducing the signer to affix his or her signature to the petition.

(e) The petition shall contain all the information required by subsection (2) (a) of this section.

(f) The petition shall be on pages eight and one-half inches wide by fourteen inches long with a margin of two inches at the top for binding. The signature sheets shall have ruled lines and be numbered consecutively.

(4) No restraining order or temporary injunction pending final judgment of the district court and enjoining the formation of, the inclusion or exclusion of territory in, or the operation of the special taxing district may be issued. Any final judgment which has the effect of enjoining the formation of, the inclusion or exclusion of territory in, or the operation of a special taxing district shall automatically be stayed upon the filing of any appeal of such decision, and no application for supersedeas shall be necessary. Such stay shall continue in full force and effect pending final disposition of the proceedings.

(5) Changes in the boundaries or major changes in the basic or essential nature of services or financing of a special taxing district may be initiated by resolution of the governing body or by petition signed by five percent of the registered electors of the district, and such proposals shall be considered in the same manner as provided in this section for proposals for the original formation of a district.

(6) Upon adoption of a resolution forming a district, the governing body of the home rule county shall function as the governing board of such district.

Source: L. 81: Entire article added, p. 1484, § 1, effective June 8. L. 82: (3)(b) amended, p. 626, § 33, effective April 2. L. 2007: (3)(d) amended, p. 1984, § 40, effective August 3.

30-35-905. Powers of board. When acting as the governing board of a special taxing district, the governing body of a home rule county shall have all the powers otherwise provided in this article.

Source: L. 81: Entire article added, p. 1486, § 1, effective June 8.

30-35-906. Exclusion. Real property excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of such exclusion.

Source: L. 81: Entire article added, p. 1486, § 1, effective June 8.

TITLE 31

GOVERNMENT - MUNICIPAL

THE
HARVARD-YENCHING INSTITUTE
OF CHINESE STUDIES

Established in 1928
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Harvard University
Cambridge, Massachusetts, U.S.A.

TITLE 31

GOVERNMENT - MUNICIPAL

Editor's note: This title was primarily numbered as articles within chapter 139, C.R.S. 1963; however, a few sections were located in article 1 of chapter 140, C.R.S. 1963. The provisions of this title were repealed and reenacted in 1975, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Cross references: For local government generally, see title 29; for special districts, see title 32; for garnishment of public servants, see article 61 of title 13; for cooperation with federal government in housing, see article 55 of title 24; for local boards of health, see part 6 of article 1 of title 25; for municipal employees' retirement system, see part 2 of article 51 of title 24; for eminent domain proceedings by a municipality, see article 6 of title 38; for municipal highways, see article 2 of title 43; for the power of a city council or the board of trustees of town to establish airports, see part 2 of article 4 of title 41; for municipal courts, see article 10 of title 13.

CORPORATE CLASS - ORGANIZATION AND TERRITORY

- Art. 1. General Provisions and Classification, 31-1-101 to 31-1-207.
- Art. 2. Formation and Reorganization, 31-2-101 to 31-2-407.
- Art. 3. Discontinuance of Incorporation, 31-3-101 to 31-3-202.
- Art. 4. Organizational Structure and Officers, 31-4-101 to 31-4-507.

MUNICIPAL ELECTIONS

- Art. 10. Municipal Election Code, 31-10-101 to 31-10-1540.
- Art. 11. Municipal Initiatives, Referenda, and Referred Measures, 31-11-101 to 31-11-118.

ANNEXATION - CONSOLIDATION - DISCONNECTION

- Art. 12. Annexation - Consolidation - Disconnection, 31-12-101 to 31-12-707.

POWERS AND FUNCTIONS OF CITIES AND TOWNS

- Art. 15. Exercise of Municipal Powers, 31-15-101 to 31-15-1004.
- Art. 16. Ordinances - Penalties, 31-16-101 to 31-16-208.
- Art. 20. Taxation and Finance, 31-20-101 to 31-20-407.
- Art. 21. Bonds, 31-21-101 to 31-21-407.
- Art. 23. Planning and Zoning, 31-23-101 to 31-23-314.
- Art. 25. Public Improvements, 31-25-101 to 31-25-1307.
- Art. 30. Fire - Police - Sanitation, 31-30-101 to 31-30-1303.
- Art. 30.5. Fire - Police - Old Hire Pension Plans, 31-30.5-101 to 31-30.5-803.
- Art. 31. Fire - Police - New Hire Pension Plans, 31-31-101 to 31-31-1203.
- Art. 32. Utilities, 31-32-101 to 31-32-201.
- Art. 35. Water and Sewage, 31-35-101 to 31-35-712.

CORPORATE CLASS - ORGANIZATION AND TERRITORY

ARTICLE 1

General Provisions and Classification

PART 1		31-1-203.	Classification of statutory cities and towns.
GENERAL PROVISIONS		31-1-204.	Change of classification - towns - notice - effect on officeholders - options prior to reorganization - terms of office - election dates.
31-1-101.	Definitions.		
31-1-102.	Application - legislative intent.		
PART 2		31-1-205.	Organization after change.
CLASSIFICATION OF MUNICIPALITIES		31-1-206.	Change in classification - cities - notice - effect on officeholders - terms of office - election dates.
31-1-201.	Classification of municipalities.		
31-1-202.	Cities or towns retaining prior status.	31-1-207.	Ordinances to reorganize - existing ordinances.

PART 1

GENERAL PROVISIONS

31-1-101. Definitions. As used in this title, except where specifically defined, unless the context otherwise requires:

(1) "Ad valorem tax" means only the general property tax levied annually on real or personal property listed with the county assessor.

(2) "City" means a municipal corporation having a population of more than two thousand incorporated pursuant to the provisions of part 1 of article 2 of this title or reorganized pursuant to the provisions of part 3 of article 2 of this title or pursuant to the provisions of any other general law on or after July 3, 1877, and a municipal corporation, regardless of population, organized as a city on December 31, 1980, and choosing not to reorganize as a town pursuant to part 2 of this article, but does not include any city incorporated prior to July 3, 1877, which has chosen not to reorganize nor any city or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

(3) "City clerk", "clerk", or "town clerk" means the clerk of the municipality who is the custodian of the official records of the municipality or any person delegated by the clerk to exercise any of his powers, duties, or functions.

(4) "Governing body" means the city council of a city organized pursuant to part 1 of article 4 of this title, the city council of a city organized pursuant to part 2 of article 4 of this title, the board of trustees of a town, or any other body, by whatever name known, given lawful authority to adopt ordinances for a specific municipality. For purposes of determining a quorum or the required number of votes for any matter, "governing body" includes the total number of seats on the governing body but does not include the seat held by a nonvoting city manager under section 31-4-214.

(5) "Mayor" means the mayor of the municipality; except that in a municipality having a city manager form of government, "mayor" means the presiding officer of the governing body of the municipality.

(6) "Municipality" means a city or town and, in addition, means a city or town incorporated prior to July 3, 1877, whether or not reorganized, and any city, town, or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

(7) "Qualified elector" means a person who is qualified under the provisions of the "Colorado Municipal Election Code of 1965" to register to vote in elections of the municipality or who, with respect to a proposed city or town or the creation of an

improvement district, is qualified to register to vote in the territory involved in the proposed incorporation or district.

(8) “Qualified taxpaying elector” means a qualified elector who, during the twelve months next preceding the election, has paid an ad valorem tax on property owned by him and situated within the municipality or within the territory involved in the proposed incorporation or improvement district.

(9) “Registered elector” means a qualified elector who has registered to vote in the manner required by law.

(10) “Regular election” means:

(a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place;

(b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109 (1), in which case “regular election” means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

(11) “Special election” means any election called by the governing body of any municipality or initiated by petition to be held at a time other than the regular election for the purpose of submitting public questions or proposals to the registered electors of the municipality.

(12) “Street” means any street, avenue, boulevard, road, land, alley, viaduct, right-of-way, courtway, or other public thoroughfare or place of any nature open to the use of the municipality or of the public, whether the same was acquired in fee or by grant of dedication or easement or by adverse use.

(13) “Town” means a municipal corporation having a population of two thousand or less incorporated pursuant to the provisions of part 1 of article 2 of this title or reorganized pursuant to the provisions of part 3 of article 2 of this title or pursuant to the provisions of any other general law on or after July 3, 1877, and a municipal corporation, regardless of population, organized as a town on December 31, 1980, and choosing not to reorganize as a city pursuant to part 2 of this article, but does not include any town incorporated prior to July 3, 1877, which has chosen not to reorganize nor any town which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

(14) “Ward” means a district, the boundaries of which have been established pursuant to section 31-2-104 or 31-4-104, from which a member of the governing body of the city or town is elected.

Source: **L. 75:** Entire title R&RE, p. 1004, § 1, effective July 1. **L. 79:** (10) and (11) amended, p. 1170, § 1, effective July 1. **L. 81:** (4) amended, p. 1493, § 1, effective May 28; (2) and (13) amended, p. 1488, § 1, effective June 5. **L. 85:** (10) amended, p. 273, § 6, effective April 30. **L. 89:** (4) amended, p. 1287, § 2, effective April 6. **L. 2000:** (10) amended, p. 791, § 3, effective August 2. **L. 2004:** (10) amended, p. 1522, § 2, effective May 28; (10) amended, p. 808, § 1, effective July 1. **L. 2005:** (2) and (13) amended, p. 774, § 57, effective June 1.

Editor’s note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to subsection (10) by House Bill 04-1072 and House Bill 04-1430 were harmonized.

31-1-102. Application - legislative intent. (1) In the recodification of this title, certain provisions which previously applied or may have been interpreted to apply to limited categories of municipalities have been applied to all municipalities, whether statutory, home

rule, or special territorial charter. Except for those provisions which expressly apply only to limited categories of municipalities, it is the intent of the general assembly that the provisions of this title shall apply to home rule municipalities except insofar as superseded by charter or ordinance passed pursuant to such charter and to all statutory cities and towns and shall be available to special territorial charter cities and towns unless in conflict with the charters thereof. The general assembly further declares that in the recodification of this title and in the use of the term "municipality" in this title there is no legislative intent to affect or modify the application of the provisions of this title with respect to preemption of home rule or special territorial charter powers, which preemption may or may not have existed on the effective date of this recodification (July 1, 1975). The use of the term "municipality" in future additions or amendments to this title shall not in and of itself create a presumption for or against preemption of home rule or special territorial charter powers.

(2) Where any power is granted in this title to a specific municipal official or group of officials, that power may be exercised within any home rule municipality by the officials, to the extent and in the manner, designated in the particular home rule charter or ordinance passed pursuant to such charter.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1.

ANNOTATION

The general intent expressed in this section that all of title 31 should apply to home rule municipalities cannot be construed to apply to disconnection pursuant to § 31-12-601. The general intent of this section excepts "those

provisions which expressly apply only to limited categories of municipalities", and the disconnection statute applies only to statutory cities. *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005).

PART 2

CLASSIFICATION OF MUNICIPALITIES

31-1-201. Classification of municipalities. (1) With respect to the exercise of corporate and municipal powers, the municipalities of this state are divided into the following classifications:

- (a) Cities or towns incorporated prior to July 3, 1877, which have retained such organization;
- (b) Cities or towns organized pursuant to the provisions of article XX of the state constitution;
- (c) Cities and towns organized pursuant to the provisions of this title or of any other general law on or after July 3, 1877, which have not chosen to adopt a home rule charter under the provisions of article XX of the state constitution.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1.

31-1-202. Cities or towns retaining prior status. Every city or town incorporated prior to July 3, 1877, which chooses to retain such organization, in the enforcement of the powers or the exercise of the duties conferred by the special charter or general law under which the same is incorporated, shall proceed in all respects as provided by such special charter or general law and shall not be affected nor the powers or duties thereof in any manner changed or abridged by any provisions of this title.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-1-101 and 31-1-102 as they existed prior to 1975.

ANNOTATION

Law reviews. For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959).

Annotator's note. Since § 31-1-202 is similar to former §§ 31-1-101 and 31-1-102 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The object of the saving clause inserted in this section is to preserve the existence of cities and towns which had been incorporated under general laws enacted prior to, and repealed by, the act of 1877; had the saving clause not been added, such cities and towns might have gone out of existence, as legal entities. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

A saving clause "should be strictly construed so as not to include anything not fairly within its terms". *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

However, this section does not freeze in perpetuity the powers and duties of that city as such existed in 1876. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

General laws applicable to municipalities repealed. In addition to spelling out the manner in which a city or town could be organized and incorporated, the general assembly in 1877 repealed all general laws providing for the organization and government of incorporated cities and towns. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

But the existence of cities and towns incorporated before 1877 which chose to retain their then existing organizations should not be affected by this title and further, the powers and duties of such a town or city are not to be changed or abridged in any manner by any provision of this act. In other words, the injunction is that the powers and duties of a town or city which chose to retain its existence under its territorial charter are not to be altered by any

provision of this act. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

But not exempt from classification of municipalities. This section, while permitting towns which were incorporated prior to 1877 to retain their organization, and to proceed under the law under which they were incorporated in the enforcement of the powers or the exercise of the duties conferred by such general law, does not have the effect of exempting such towns from the operation of statutes relating to the classification of municipal corporations. *Kirkpatrick v. People*, 66 Colo. 100, 179 P. 338 (1919).

There is nothing in this section which shows an intent on the part of the general assembly to exempt such cities and towns from the operation of any statute relating to the classification of municipal corporations. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

All cities and towns incorporated under general laws were subject to that part of the act of 1877 which relates to the election of municipal officers, notwithstanding this section. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

General statute on removal of local officer inapplicable. Even if there were no ordinance dealing with the appointment or removal of a town clerk in a special charter town which never elected to become subject to the general laws governing municipal corporations, the general statute on the local matter of removal of municipal officers does not apply. *Glenn v. Town of Georgetown*, 36 Colo. App. 431, 543 P.2d 726 (1975).

Denver not limited by title. In the area of local legislative jurisdiction, Denver is not limited by the statutes pertaining to powers of towns and cities, § 31-1-101 et seq. *Lehman v. City & County of Denver*, 144 Colo. 109, 355 P.2d 309 (1960).

Applied in *Bernheimer v. City of Leadville*, 14 Colo. 518, 24 P. 332 (1890).

31-1-203. Classification of statutory cities and towns. (1) With respect to the exercises of certain municipal and corporate powers, granted by the provisions of this title, and to the duties of certain municipal officers, set forth in this title, all municipal corporations organized pursuant to the provisions of this title or of any other general law on or after July 3, 1877, which have not chosen to adopt a home rule charter under the provisions of article XX of the state constitution, are divided into cities and towns.

(2) Repealed.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1. L. 81: (2) repealed, p. 1492, § 9, effective June 5.

Editor's note: This section is similar to former §§ 31-1-201 and 31-1-202 as they existed prior to 1975. For a detailed comparison, see the comparative tables at the back of the index.

ANNOTATION

Annotator's note. Since § 31-1-203 is similar to former §§ 31-1-201 and 31-1-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Intent of this and following sections is to prevent a multiplication of classes of municipalities, the giving to one within the same class different powers or functions, and imposing upon any one restrictions different from those in the same class or division. In short, it is to secure absolute uniformity, by general law, ap-

plicable to all the given classes, respecting the faculties with which they might be endowed and the limitations placed upon their functions by the general assembly so that any person, anywhere, desiring to ascertain what are the powers and restrictions of any one city of a given class in the state could be advised thereof by looking at the "general law" defining such powers and restrictions. *Kirkpatrick v. People*, 66 Colo. 101, 179 P. 338 (1919).

Applied in *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

31-1-204. Change of classification - towns - notice - effect on officeholders - options prior to reorganization - terms of office - election dates. (1) The governor and secretary of state, within six months after the returns of any United States census have been filed in the office of the secretary of state, or within thirty days after the returns of the enumeration of the inhabitants of any town taken under and by authority of any town ordinance or resolution adopted by the board of trustees of such town have been filed in the office of the secretary of state, shall ascertain which towns are entitled to become cities. The governor shall cause a statement thereof to be prepared by the secretary of state, which statement shall be published in some newspaper published at the state capital and also in some newspaper, if there is one, printed in each of the towns entitled to such change in classification. A copy of such statement shall be transmitted by the secretary of state to the mayors of said towns and to the next general assembly.

(2) Every such town may proceed at any subsequent regular town election held not sooner than ninety days after the date of the statement's receipt by the mayor, to organize according to the new classification available to it by the election of officers properly belonging thereto. No change of classification, nor the organization of the town into a city in accordance with this section, shall cause the removal from office of any member of the governing body of such town whose term of office has not expired.

(3) Notwithstanding the provisions of sections 31-4-105 and 31-4-107 (4), prior to any election to reorganize to a statutory city under part 1 of article 4 of this title, the governing body of the town may adopt an ordinance providing for the continued appointment of the clerk and treasurer by the governing body. If such an ordinance is repealed, the clerk and treasurer positions shall then be elective offices until changed pursuant to section 31-4-107 (4).

(4) Notwithstanding the provisions of part 2 of article 4 of this title, prior to any election to reorganize, the governing body may conduct an election under the provisions of part 2 of article 4 of this title to determine whether the town should reorganize directly into a city council-city manager form of government. If the voters vote to reorganize in such a manner, the town's form of government shall remain unchanged until the reorganization election at which time the town shall reorganize into a city council-city manager form of government. For the purpose of section 31-4-204 (1), laws of the state applicable to cities and not inconsistent with this part 2 or with part 2 of article 4 of this title shall apply to and govern the town after its reorganization into a city council-city manager form of government.

(5) Notwithstanding the provisions of sections 31-4-104, 31-4-105, 31-4-106, and 31-4-205, prior to any reorganization election, the governing body of the town may adopt an ordinance establishing the number of members to be on the city council after reorganization, which number shall not be less than six, and providing that all members shall be elected from the city at large. If such an ordinance is repealed, the members of the council shall be elected according to the provisions of part 1 or part 2 of article 4 of this title, whichever is applicable.

(6) Notwithstanding the provisions of sections 31-4-105 and 31-4-205 (1), if four-year overlapping terms for the mayor and trustees or any other elective officer were established

prior to the reorganization election, such terms shall continue after reorganization for the mayor and council members and any other elective city office until changed pursuant to section 31-4-107 (3) or 31-4-205 (3).

(7) In conformity with the provisions of section 31-1-101 (10), the regular election date for towns reorganizing into cities shall remain, after reorganization, the first Tuesday of April in each even-numbered year unless a majority of the registered electors of the city voting on the question have voted to hold the regular election of the city on a different date pursuant to section 31-10-109 (1), in which case the regular election date of the city shall mean, for such city, the date on which the regular election of officers takes place as determined by the registered electors of the city. Notwithstanding the provisions of section 31-10-109 (1), after reorganization, the governing body of the city may by ordinance establish its regular election date on the Tuesday succeeding the first Monday of November in each odd-numbered year, and may include in such ordinance any alteration in the term of office of officials subsequently elected which may be necessary to accomplish the change in election dates in an orderly manner. In no event shall such ordinance shorten the term of any elected official in office at the time of its adoption.

Source: **L. 75:** Entire title R&RE, p. 1007, § 1, effective July 1. **L. 81:** (2) amended and (3) to (7) added, p. 1489, § 2, June 5. **L. 86:** (7) amended, p. 1220, § 29, effective May 30. **L. 2004:** (7) amended, p. 809, § 2, effective July 1.

Editor's note: This section is similar to former § 31-1-203 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-1-204 is similar to former § 31-1-203 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This and the following section are applicable to, and govern, all existing towns and cities which have been incorporated under general laws, whether of the territory or of the state. *Kirkpatrick v. People*, 66 Colo. 100, 179 P. 338 (1919).

Ordinary intent of language. The most reasonable construction of this section is that the language was intended to mean exactly what it says according to the ordinary meaning of the words used. *Harris v. Chambers*, 16 Colo. App. 250, 64 P. 688 (1901).

Mandatory provisions as to organization. This section is mandatory in its requirement

that, when an incorporated town becomes a city, it shall organize by the election of such officials as are necessary and provided by statute for the municipality in its new class. *Harris v. Chambers*, 16 Colo. App. 250, 64 P. 688 (1901); *Kirkpatrick v. People*, 66 Colo. 100, 179 P. 338 (1919).

As to no removal from office. This section is explicit and mandatory in its provision that the change of class shall not work the removal from office of aldermen of the incorporated town whose terms had not expired, and that they should continue to serve as aldermen of the city in its new class until the expiration of the term for which they had been originally elected. *Harris v. Chambers*, 16 Colo. App. 250, 64 P. 688 (1901).

31-1-205. Organization after change. As soon as the statement is published, as provided in section 31-1-204, showing that any town is entitled to be organized into a city, the proper authorities of such town may adopt and publish such ordinances as may be necessary to perfect such organization with respect to the election, duties, and compensation of officers and with respect to all other necessary matters. All previously adopted ordinances of any town shall remain in force after its organization as a city so far as such ordinances may be applicable.

Source: **L. 75:** Entire title R&RE, p. 1007, § 1, effective July 1. **L. 81:** Entire section amended, p. 1490, § 3, effective June 5.

Editor's note: This section is similar to former § 31-1-204 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-1-205 is similar to former § 31-1-204 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The language of this section makes it mandatory upon the respondents to act as therein provided. *Kirkpatrick v. People*, 66 Colo. 100, 179 P. 338 (1919).

31-1-206. Change in classification - cities - notice - effect on officeholders - terms of office - election dates. (1) The governor and the secretary of state, within six months after the returns of any United States census have been filed in the office of the secretary of state, or within thirty days after the returns of the enumeration of the inhabitants of any city taken under and by virtue of any city ordinance or resolution adopted by the city council have been filed in the office of the secretary of state, shall ascertain whether such city has a population of two thousand or less. If it appears that a city is entitled to change its classification to that of a town, the governor shall cause a statement thereof to be prepared by the secretary of state, which statement shall be published in some newspaper published at the state capital and also in some newspaper, if there is one, printed in the city involved.

(2) A copy of such statement shall be transmitted by the secretary of state to the mayor of said city and to the next general assembly; and every such city, at any subsequent city regular election held not sooner than ninety days after the date of the statement's receipt by the mayor, may proceed to organize according to the new classification available to it by the election of officers properly belonging thereto. No change of classification, nor the organization of the city into a town in accordance with this section and section 31-1-207, shall cause the removal from office of any member of the governing body of such city whose term of office has not expired; all such members shall continue to be members of the governing body of the newly classified town for their respective terms of office.

(3) Notwithstanding the provisions of section 31-4-301 (2) and (5), if four-year overlapping terms for the mayor and council members or any other elective officer were established prior to the reorganization election, such terms shall continue after reorganization for the mayor and trustees and any other elective town office until changed pursuant to section 31-4-301 (5).

(4) In conformity with the provisions of section 31-1-101 (10), the regular election date for cities reorganizing into towns shall remain, after reorganization as a town, the Tuesday succeeding the first Monday of November in each odd-numbered year unless a majority of the registered electors of the town voting on the question have voted to hold the regular election of the town on a different date pursuant to section 31-10-109 (1), in which case the regular election date of the city shall mean, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

Source: **L. 75:** Entire title R&RE, p. 1007, § 1, effective July 1. **L. 81:** (1) and (2) amended and (3) and (4) added, p. 1490, §§ 4, 5, effective June 5. **L. 86:** (4) amended, p. 1221, § 30, effective May 30. **L. 2004:** (4) amended, p. 809, § 3, effective July 1.

Editor's note: This section is similar to former § 31-1-205 as it existed prior to 1975.

31-1-207. Ordinances to reorganize - existing ordinances. As soon as the statement is published, as provided in section 31-1-206, showing that any city may change in classification to a town, the governing body of such city may adopt and publish such ordinances as may be necessary to perfect such organization in respect to the election, duties, and compensation of officers and with respect to all other necessary matters. All ordinances of any city shall remain in force after its organization as a town so far as such ordinances may be applicable to such town.

Source: L. 75: Entire title R&RE, p. 1008, § 1, effective July 1. **L. 81:** Entire section amended, p. 1491, § 6, effective June 5.

Editor's note: This section is similar to former § 31-1-206 as it existed prior to 1975.

ARTICLE 2

Formation and Reorganization

PART 1

INCORPORATION

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PART 2

MUNICIPAL HOME RULE

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PART 3

REORGANIZATION OF CITIES AND TOWNS FORMED UNDER PRIOR LAW

PART 4

CHANGE OF NAME

PART 1

INCORPORATION

31-2-101. Petition to district court. (1) Whenever the inhabitants of any territory not embraced within the limits of any existing municipality desire to be organized into a city or town, they shall file a petition for incorporation of such city or town with the district court of the county within which such territory, or any part thereof, is situate. The petition shall be signed by not less than one hundred fifty of the registered electors who are landowners and residents within the territory or, in cases where the territory involved is wholly situate in a county having a population of twenty-five thousand or less, signed by forty such registered electors who are landowners and residents and shall:

(a) Describe the territory proposed to be embraced in such city or town, which description shall determine the boundaries thereof;

(b) Have attached thereto an accurate map or plat thereof on a scale no less than one inch to one thousand feet;

(c) State the name proposed for such city or town;

(d) Be accompanied with satisfactory proofs of the number of inhabitants within the territory embraced within the limits of the proposed city or town, which proofs shall be based upon the last preceding federal census, as adjusted according to the records of the county planning office or other county records. At the time of the filing of said petition, the petitioners shall file a bond, in an amount to be determined and approved by the court, to cover the expenses connected with the proceedings in case the incorporation is not effected. In no case shall there be incorporated in such city or town any undivided tract of land consisting of forty or more acres lying within the proposed limits of such city or town without the consent of the owners thereof.

(1.5) The petition may include a request for submission to the electors of the proposed municipality at the incorporation election of any matter permitted to be submitted at the election pursuant to section 31-2-102 (1.5).

(2) No such petition shall be filed where any portion of the boundaries of the proposed city or town is within one mile from the boundaries of any existing municipality, unless the territory proposed to be included within such city or town is composed of three hundred twenty acres or more.

(2.5) (a) In addition to any other notice that may be required under this part 1, whenever the number of registered electors within the area that is the subject of a petition filed pursuant to subsection (1) of this section is less than two thousand five hundred persons, notice of the filing of the petition shall be sent by first-class mail to each person owning real property within the area at the address shown for such owner in the records of the county assessor's office. The cost of mailing the notice required by this paragraph (a) shall be borne by the petitioners.

(b) The notice required by paragraph (a) of this subsection (2.5) shall include the name, address, and telephone number of a contact person who is able to provide information on the petition to the public, the case number of the civil action concerning the petition, and the district court in which the petition is filed. The notice shall also inform the property owner that, if he or she would like to obtain a copy of the petition, the property owner shall submit to the contact person a request for a copy of the petition along with the payment of a fee. The notice shall specify the amount of the fee and instructions as to the manner in which payment shall be made. The fee charged pursuant to this paragraph (b) shall conform to the requirements of section 24-72-205 (5) (a), C.R.S. Upon receipt of payment, the contact person shall mail a copy of the petition to the property owner.

(c) The notice required by paragraph (a) of this subsection (2.5) shall be sent prior to the date on which the district court makes its findings and determination pursuant to section 31-2-102 (1).

(3) (a) No incorporation election shall be held pursuant to section 31-2-102 unless the court finds that the proposed area of incorporation is urban in character and unless the court additionally finds that:

(I) The proposed area of incorporation has an average of at least fifty registered electors residing within the boundaries of the proposed area of incorporation for each square mile of area.

(II) Repealed.

(III) (Repeal provision deleted by revision.)

(b) (I) If the proposed area of incorporation has fewer than five hundred registered electors residing therein, a public hearing shall be held before the board of county commissioners to consider whether the petitioners may hold an incorporation election. Thirty days' notice of the time and place of such hearing shall be given by one publication thereof in a newspaper of general circulation in the county.

(II) After public hearing, the board of county commissioners may refuse to permit the incorporation election to be held if the board finds upon satisfactory evidence that:

(A) Any of the criteria set forth for special districts in section 32-1-203 (2), C.R.S., exist with respect to the area proposed for incorporation;

(B) Annexation to a nearby municipality would avoid unnecessary duplication of the services referred to in sub-subparagraph (A) of this subparagraph (II); and

(C) The proposed incorporation is inconsistent with any applicable county or regional comprehensive plan.

(III) If the proposed area of incorporation includes more than one county, the board of county commissioners of each county included may meet and devise a procedure for a joint hearing to determine whether the petitioners may hold an incorporation election.

(4) If, at any time between the filing of a petition pursuant to this section and not less than ten days prior to the date of the election thereon, there is filed with the court any subsequent petition which meets the requirements of this part 1 and which embraces any of the territory embraced in the initial petition calling for such election, the court may order that all such proposals contained in the said petitions filed with the court be submitted to the registered electors of the territories embraced by such petitions, to be voted on at one election, in the alternative. The court may order the rescission of any prior call of an election, discharge any commissioners previously appointed, and order the appointment of a new commission to call the election on all such proposals, or the court may order the inclusion of the subsequent proposals in the call of an election by the originally appointed commissioners.

Source: **L. 75:** Entire title R&RE, p. 1008, § 1, effective July 1. **L. 79:** (3)(a) amended, p. 1183, § 1, effective June 21. **L. 81:** (3)(a)(III) amended, p. 1497, § 1, effective May 27; (3)(b)(II)(A) amended, p. 1614, § 14, effective July 1. **L. 87:** IP(1) amended, p. 325, § 73, effective July 1. **L. 94:** (1.5) added, p. 1190, § 86, effective July 1. **L. 2008:** (2.5) added, p. 49, § 1, effective September 1.

Editor's note: (1) This section is similar to former § 31-1-103 as it existed prior to 1975.

(2) Subsection (3)(a)(III) provided for the repeal of subsection (3)(a)(II), effective July 1, 1983, and is therefore deleted by revision as obsolete. (See L. 81, p. 1497.)

ANNOTATION

Annotator's note. Since § 31-2-101 is similar to former § 31-1-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Constitutionality of power to determine extent and boundaries. The fact that under this and the following section the power to determine the extent and boundaries of municipal corporations is conferred upon individuals does not make the sections unconstitutional. People

ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

Comprehensive act. The act of 1877 appears to be a comprehensive act upon the subject of municipal corporations, and appears to cover the whole subject matter, and plainly shows an unmistakable intention on the part of the general assembly to make the act of 1877 a substitute for the law of 1868. *City of Leadville v. Colo. Mining Co.*, 29 Colo. 17, 67 P. 289 (1901).

Petitioners must be landowners. *Velasquez v. Zimmerman*, 30 Colo. 355, 70 P. 419 (1902).

Or else incorporation void. A petition for the incorporation of a town, signed by the requisite number of names, a part of whom were not bona fide electors and landowners so that the number of bona fide electors and landowners signing the petition was less than the number required by this section, would not give the district court jurisdiction, and the incorporation of a town based upon such petition is void. *People ex rel. Saunier v. Stratton*, 33 Colo. 464, 81 P. 245 (1905).

“Embraced” defined. The familiar and generally accepted meaning of the word “embraced” in the first sentence is: “encircled, enclosed, encompassed”. Therefore, an area completely encircled by and enclosed and encompassed within the exterior limits of a city cannot be incorporated. In re *Incorporation of Town of Eastridge v. City of Aurora*, 41 Colo. App. 299, 590 P.2d 72 (1978), *aff’d*, 198 Colo. 440, 601 P.2d 1374 (1979).

A petition for incorporation must recite that petitioners are inhabitants of the territory proposed to be incorporated, so where petition filed merely recited that the signatories were “all inhabitants of a part of the county of Boulder, State of Colorado, which is not embraced within the limits of any city or incorporated town”, while registered, qualified electors of the territory, the district court was correct in finding that the petition was fatally defective. In re *Incorporation of North Boulder v. Sisson*, 167 Colo. 549, 448 P.2d 308 (1969).

Persons accepting deeds as gifts for signing are not landowners. Persons who accept deeds to lots from those who are interested in the incorporation of a town, as a reward for signing the petition for incorporation, are not bona fide landowners within the meaning of this section, and are not entitled to sign the petition. *People ex rel. Saunier v. Stratton*, 33 Colo. 464, 81 P. 245 (1905); *People ex rel. Taylor v. Koerner*, 92 Colo. 83, 18 P.2d 327 (1932).

Temporary residents not entitled to sign. In the incorporation of a town, persons who temporarily move into the territory proposed to be incorporated, for the sole purpose of participating in the election, are not bona fide residents within the meaning of this section, and are not entitled to sign the petition for incorporation; there must not only be a personal presence for the requisite time, but also a concurrence therewith of an intention to make the place a permanent home. *People ex rel. Saunier v. Stratton*, 33 Colo. 464, 81 P. 245 (1905).

A person who acquires land by the conveyance of a fee-simple title upon condition subsequent is a landowner within the meaning of this section. *People ex rel. Taylor v. Koerner*, 92 Colo. 83, 18 P.2d 327 (1932).

Allegations as to status of signers material. Allegations in an action in quo warranto, testing sufficiency of incorporation, that signers were

not bona fide landowners, residents, and electors are statements of ultimate fact which, if denied, tender issues that not only are material, but vital, because, if proved, the petition would be insufficient, and the incorporation based thereon would be void under this section. *Norton v. People ex rel. Rudbeck*, 102 Colo. 489, 81 P.2d 303 (1938).

Evidence of good faith admissible. Where it is contended that a petition for the organization of a town under this section is a fraudulent scheme of the signers to defeat the statute, evidence of petitioners’ conduct after signing and tending to show good faith is properly admitted. *People ex rel. Taylor v. Koerner*, 92 Colo. 83, 18 P.2d 327 (1932).

The requirement of accurate maps of the territory has been held to be jurisdictional. *Taylor v. Pile*, 154 Colo. 516, 391 P.2d 670 (1964).

The petition must contain an accurate description of the boundaries of the proposed municipal corporation, and failure of the petition for incorporation to properly set out the boundary to be incorporated has been held to make void the whole proceeding. *Taylor v. Pile*, 154 Colo. 516, 391 P.2d 670 (1964).

“Corrections” made after filing improper. Where there was an examination of the petition filed and the admitted fact was that after the petition was fully prepared and signatures affixed thereto changes were made in the description of the property and “corrections” were made in the boundary lines as shown on the map annexed to the petition, these facts lead inescapably to the conclusion that said petition was fatally defective and conferred no jurisdiction upon the court to order an election. *Taylor v. Pile*, 154 Colo. 516, 391 P.2d 670 (1964).

This statute places upon those who would incorporate territory into a municipality the burden of seeking the consent of owners of 40 acres or more. *Hiwan Ranch v. City of Lakewood*, 31 Colo. App. 471, 505 P.2d 16 (1972).

Or else tract not included in city. Absent laches, equitable estoppel, or the running of an applicable statute of limitations, city’s failure to obtain the consent of an owner of more than 40 acres of land precludes it from including this tract of land within city boundaries. *Hiwan Ranch v. City of Lakewood*, 31 Colo. App. 471, 505 P.2d 16 (1972).

Mere notice does not obviate consent requirement. Although an owner of more than 40 acres of land may have notice (actual or constructive) of proposed incorporation, notice alone is not sufficient to obviate the necessity of city’s obtaining consent from owner as required by statute. *Hiwan Ranch v. City of Lakewood*, 31 Colo. App. 471, 505 P.2d 16 (1972).

Consent provision as basis for asking a court to decree correct boundaries. Where plaintiff is not attacking incorporation proce-

dures, but is only questioning boundaries of a city, plaintiff is entitled to rely on that portion of the incorporation statute which provides that its consent must be obtained before its land is included within the city, and it may make timely application to the court to decree the correct boundaries, so the statute of limitations contained is not applicable to this action. *Hiwan Ranch v. City of Lakewood*, 31 Colo. App. 471, 505 P.2d 16 (1972).

Signatories to a petition for incorporation must be registered electors, landowners, and

residents of the territory sought to be incorporated. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

Petition for incorporation must contain allegations that signatories are landowners within the territory sought to be incorporated regardless of whether it is filed alone or with a petition for home rule charter. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

Applied in *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

31-2-102. Incorporation election. (1) If the district court finds and determines that the territory described in the petition and the petition itself meet the requirements of this part 1, it shall appoint not less than five nor more than nine commissioners, who shall be registered electors residing within the territory described in the petition. Each commissioner, within ten days after his appointment, shall signify by affidavit to the court his intent to serve as commissioner. The commissioners shall hold a meeting within ten days after their acceptance and shall elect a chairman and such other officers as they may determine advisable to assist them in the performance of their duties. A majority of the commissioners appointed shall constitute a quorum at any meeting for the purpose of carrying out their legal duties. Such commissioners, within ten days following their acceptance, by resolution setting the date and time therefor, shall call an election of all the registered electors residing within the territory embraced within said territory, such election to be held not later than ninety days after the date of the call thereof, except as provided in this section. The chairman or other officer of the commissioners shall promptly report to the court, by affidavit, the provisions of the call for election.

(1.5) At any election for the incorporation of a new municipality, the commissioners shall also place upon the ballot any local government matters arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), C.R.S., as applied to the new municipality, if the petition filed pursuant to section 31-2-101 requests that such matters be submitted at the incorporation election. Notwithstanding the provisions of subsection (5) of this section, any incorporation election at which a local government matter arising under section 20 of article X of the state constitution is submitted shall be conducted at the time and in the manner required by section 20 of article X of the state constitution.

(2) The commissioners shall establish one or more precincts within said limits and shall designate one polling place for each precinct. The precincts shall consist of one or more whole general election precincts wherever practicable. The chairman shall forthwith certify the precinct boundaries to the county clerk and recorder of the county in which such territory is located. The county clerk and recorder shall prepare a registration list for each precinct in the manner provided in the "Colorado Municipal Election Code of 1965".

(3) Registration and changes of address may be made with the county clerk and recorder up to and including the twenty-ninth day prior to the election. The county clerk and recorder, in his or her discretion, may conduct registration from time to time up to and including such twenty-ninth day prior to the election within the proposed municipal boundaries.

(4) The notice of such an election shall be given by the commissioners in the manner prescribed by the "Colorado Municipal Election Code of 1965". Such notice shall include a description of the limits of the proposed town or city and shall state that the description and plat thereof are on file in the office of the clerk of the district court.

(5) The commissioners shall conduct the election in conformity with the provisions of the "Colorado Municipal Election Code of 1965" insofar as applicable. The commissioners shall act as judges and clerks of the election, and the chairman may appoint such additional judges and clerks of election as he deems necessary. The commissioners shall report the results of the election to the court within three days following the election. The ballots or voting machine tabs used at said election shall be "For Incorporation" and "Against Incorporation".

(6) If more than one proposal is to be voted upon at the election and no proposal receives a majority of favorable votes, all the submitted proposals shall fail; and, if there is a tie in the number of favorable votes cast for any proposals, such proposals shall be voted upon in a runoff election.

Source: **L. 75:** Entire title R&RE, p. 1009, § 1, effective July 1. **L. 87:** (3) amended, p. 326, § 74, effective July 1. **L. 94:** (1.5) added, p. 1190, § 87, effective July 1; (3) amended, p. 1772, § 35, effective January 1, 1995. **L. 95:** (3) amended, p. 856, § 95, effective July 1.

Editor's note: This section is similar to former § 31-1-104 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-2-102 is similar to former § 31-1-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

If a petition is fatally defective on its face, the district court does not have jurisdiction to order an election and should dismiss the petition. In re Incorporation of North Boulder v. Sisson, 167 Colo. 549, 448 P.2d 308 (1969).

It is within the power of the district court to issue an order staying an originally scheduled election, and the district court had the power to order a new election on a date agreeable to the commissioners. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

That a petition to a district court for the appointment of commissioners to call the election is obtained secretly is immaterial, since under this section there is no requirement for publicity, in view of the fact that the question of incorporating is required to be submitted to a public vote of the citizens interested. Guebelle v. Epley, 1 Colo. App. 199, 28 P. 89 (1891).

Proceedings challenged by quo warranto. Under this section contest of validity of proceedings incorporating a town cannot be inau-

gured by filing objections thereto in the district court in which the incorporation proceedings were had, as such contest has to be made by quo warranto. Velasquez v. Zimmerman, 30 Colo. 355, 70 P. 419 (1902).

Enjoining of properly filed election improper. After the inhabitants of a part of a county sought to be incorporated into a town have complied with all the requirements of this section, and the commissioners appointed by the district court have called an election to determine the question of so incorporating by the votes of all the qualified electors residing within the territory embraced in the proposed town, a court has no jurisdiction to enjoin such election, and disobedience of such an injunction is not punishable as contempt. Guebelle v. Epley, 1 Colo. App. 199, 28 P. 89 (1891).

Proceeding first filed has priority over second proceeding. Incorporation proceedings are judicial in nature, the usual rules apply concerning the duties of a court with respect to dual actions involving the same subject matter and substantially the same parties, the action first filed has a "priority of jurisdiction", and the second action must be stayed until the first is finally determined. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

31-2-103. Approval of incorporation election. (1) Within three days after the election, the commissioners shall file a report thereof with the court, which report shall be verified upon the oath or affirmation of each commissioner and which shall contain the following:

- (a) A certification that the election was held in accordance with the law;
- (b) A copy of the notice of the election, as published;
- (c) The names of the judges of the election;
- (d) The whole number of votes cast in the election; and
- (e) The result declared on the proposal submitted as reflected by the votes cast for and against such proposal.

(2) If it appears to the court that said election was substantially regular and fair and a majority of the ballots cast at such election were for incorporation, the court shall by order adjudge said petition and election to be valid. The clerk of the court shall thereupon give notice of the result by publication in a newspaper of general circulation in the county or, if no newspaper is published in the county, by posting in five public places within the limits

of the proposed city or town. In such notice he shall designate to which classification of incorporation prescribed in section 31-1-203 the city or town belongs. Three certified copies of the notice, with proper proof of its publication, together with a certified copy of all papers and record entries relating to the matter on file in the clerk of the court's office, including a legal description and a map of the area concerned, shall be filed in the office of the county clerk and recorder of each of the counties in which the territory is situate. The county clerk and recorder shall file the second certified copy of such notice with the division of local government of the department of local affairs as provided in section 24-32-109, C.R.S., and file a third certified copy of said notice in the office of the secretary of state.

Source: L. 75: Entire title R&RE, p. 1010, § 1, effective July 1. L. 84: (2) amended, p. 829, § 1, effective March 22.

Editor's note: This section is similar to former § 31-1-105 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-2-103 is similar to former § 31-1-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Court's purely judicial role. Since the enactment of this section, the function of a district court in incorporation proceedings is clearly judicial. *People ex rel. Wilson v. Blake*, 128 Colo. 111, 260 P.2d 592 (1953).

Incorporation order mandatory when procedure fair and regular. When it appeared to the district judge that the petition for incorporation was substantially conformable to law and that said election was substantially regular and fair, and a majority of the ballots cast at such election was in favor of incorporation, it was mandatory upon the judge to order and adjudge that the incorporation be complete. *Fiant v. Town of Naturita*, 127 Colo. 571, 259 P.2d 278 (1953).

An order entered by a county court declaring the incorporation of a town is a final judgment. *People ex rel. Wilson v. Blake*, 128 Colo. 111, 260 P.2d 592 (1953).

The particular grounds on which the incorporation, organization, or annexation may be attacked by a quo warranto proceeding include fraud in obtaining the charter or in the incorporation, organization, or annexation proceedings, lack of jurisdiction of such proceedings and the invalidity, on its face, of an order establishing a district; but, except on these grounds, a quo warranto proceeding cannot be maintained for the purpose of attacking the judicial action or determination of a court or judge in the incorporation, organization, or annexation proceedings, and, in some jurisdictions, a like rule obtains as to the findings of a board or officer in such proceedings. *People ex rel. Wil-*

son v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

Restricted availability. Quo warranto being an extraordinary and highly prerogative writ, its issuance may be attained only on behalf of the state or, under closely restricted circumstances, upon relation of individuals possessing a special interest. *People ex rel. Wilson v. Blake*, 128 Colo. 111, 260 P.2d 592 (1953).

Fraud, to form the basis of a quo warranto proceeding, must be extrinsic or collateral fraud, and reliance may not be had upon those matters intrinsically connected with the hearing or proceeding itself, or which could be, or should have been, determined therein. *People ex rel. Wilson v. Blake*, 128 Colo. 111, 260 P.2d 592 (1953).

The sufficiency of the original petition for incorporation cannot be attacked after an election has been held thereon and the qualified electors have spoken. *Enos v. District Court*, 124 Colo. 335, 238 P.2d 861 (1951).

Objectors must participate in court proceeding. There is no reason why those who object to the incorporation of a town should not enter appearance in the proceeding in the district court and there present their protests. A hearing thereon in regular manner would make for orderly proceedings on direct issues and forestall round-about attacks in an effort to accomplish indirectly that which could much better be pursued by direct method and having entered appearance and protest, in event of adverse judgment, review by writ of error would be in order. Neither is this the only avenue available where it is contended that the county court was without or exceeded its jurisdiction, or abused its discretion, since C.R.C.P. 106 (a)(4) provides a "plain, speedy, and adequate remedy". *People ex rel. Wilson v. Blake*, 128 Colo. 111, 260 P.2d 592 (1953).

For history of section, see *Enos v. District Court*, 124 Colo. 335, 238 P.2d 861 (1951).

31-2-104. Organization of new city or town. (1) After the filing of the record in the proper offices by the clerk of the court, the commissioners mentioned in section 31-2-102, in the case of a city, by resolution, shall divide the city into wards in accordance with the provisions of section 31-4-104, and the commissioners may, in the case of a town, similarly divide such town into wards. Each ward shall contain at least one precinct, and no precinct or part thereof shall be located within more than one ward. Precinct boundaries shall be the same as those established pursuant to section 31-2-102. Said resolution shall be filed with the clerk of the district court; but the first governing body shall have authority by ordinance to change the boundaries and number of wards prior to the next regular election.

(2) The commissioners by their chairman, at least four weeks before the date of the first election of officers, shall give preliminary notice thereof by publication in newspapers selected in the manner prescribed by the "Colorado Municipal Election Code of 1965". Such notice shall contain the following information:

(a) The time when the election will be held and the precinct boundaries and location of the polling place for each precinct;

(b) A description of the boundaries of the wards, if there are wards;

(c) The officers then to be elected;

(d) The fact that candidates for office may be nominated and their names placed on the ballot in accordance with the petition requirements set out in the "Colorado Municipal Election Code of 1965";

(e) The last date on which nomination petitions may be filed;

(f) The last date registration and changes of address may be made with the county clerk and recorder; and

(g) The qualifications for persons to vote in the election.

(3) Registration and changes of address may be made in the office of the county clerk and recorder up to and including the twenty-ninth day prior to election day. The county clerk and recorder has authority in his or her sole discretion, from time to time up to and including the twenty-ninth day prior to the election of officers as provided in this section, to conduct registration within the proposed corporate limits. Each nomination petition shall be filed with the clerk of the district court. Nominating petitions shall be made and filed and vacancies in nomination shall be filled in accordance with the "Colorado Municipal Election Code of 1965".

(4) At least ten days before the election, the commissioners by their chairman shall give notice of the election in the manner prescribed by the "Colorado Municipal Election Code of 1965".

(5) At such election the registered electors of such city or town residing within the limits of such city or town shall choose officers therefor, to hold their offices until the first regular election. The commissioners shall act as judges and clerks of the election; but the chairman may appoint such additional judges and clerks as he deems necessary for the proper conduct of the election. The election shall be conducted by the commissioners in the manner prescribed by the "Colorado Municipal Election Code of 1965", insofar as applicable.

(6) Candidates for election and elected officers shall bear the same qualifications for office as required of candidates and officers of a city or town as the case may be.

(7) All costs and expenses connected with such incorporation proceedings, including all election expenses and fees for necessary legal expenses, shall be paid by the governing body of the newly incorporated city or town within one year from the date of incorporation.

Source: L. 75: Entire title R&RE, p. 1011, § 1, effective July 1. L. 87: (3) amended, p. 326, § 75, effective July 1. L. 94: (3) amended, p. 1772, § 36, effective January 1, 1995. L. 95: (3) amended, p. 856, § 26, effective July 1.

Editor's note: This section is similar to former § 31-1-106 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-2-105. Incorporation complete - first ordinances - when effective. (1) When certified copies of the papers and record entries are made and filed, as required by section 31-2-103, and officers are elected and qualified for such city or town, as provided in section 31-2-104, the incorporation thereof shall be complete, and all courts thereafter shall take due notice of the fact of such corporate status in all judicial proceedings.

(2) No ordinance enacted by the governing body of such city or town at the first meeting of such body shall take effect until thirty days after passage and publication, as provided in section 31-16-105.

Source: L. 75: Entire title R&RE, p. 1012, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-107 as it existed prior to 1975.

ANNOTATION

Applied in *Norton v. People ex rel. Rudbeck*, 102 Colo. 489, 81 P.2d 393 (1938).

31-2-106. Legal incorporation - validation - dedication of public property. (1) Any city or town which is formed, organized, or incorporated and which exercises the rights and powers of a city or town and has in office a governing body exercising its duties is deemed legally incorporated. The legality of such formation or organization shall not be legally denied or questioned after six months from the date thereof; it is deemed a legally incorporated city or town; and its formation, organization, or incorporation shall not thereafter be questioned.

(2) All cities and towns organized pursuant to the general laws of this state prior to July 1, 1975, are hereby validated, and the proceedings adopted therein, and obligations incurred by such cities and towns are hereby validated and confirmed.

(3) All streets, parks, and other places designated or described as for public use on the map or plat of any city or town are public property, and the fee title thereto is vested in such city or town.

Source: L. 75: Entire title R&RE, p. 1012, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-1-108 and 31-1-109 as they existed prior to 1975.

ANNOTATION

- I. General Consideration.
- II. Public Dedication.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 31-2-106 is similar to former §§ 31-1-108 and 31-1-109 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Legal existence conclusively presumed. The legal existence of a municipal corporation will be conclusively presumed under this section when, without question, a board of municipal officers exercising their official duties has been maintained for more than one year (now six months). *People v. Curley*, 5 Colo. 412 (1880).

Where it appears that a town, acting as such, has, for more than 12 years, exercised the powers of a municipal corporation, and for more than two years has had a full complement of officials, exercising their offices, the regularity of its organization is conclusively presumed. *Lavelle v. Town of Julesburg*, 49 Colo. 290, 112 P. 774 (1910).

Compliance with § 31-2-105 prerequisite to application of this section. Where a decree rendered under § 31-1-105 (now § 31-2-103) recited that a town was adjudged incorporated "upon the further compliance with the law in such cases made and provided", the quoted phrase had reference to § 31-3-107 (now § 31-2-105) and a compliance with the provisions thereof was necessary before the limitation prescribed by this section would begin to run. *Nor-*

ton v. People ex rel. Rudbeck, 102 Colo. 489, 81 P.2d 393 (1938).

II. PUBLIC DEDICATION.

Law reviews. For article, "Resubdividing and Replatting", see 28 Rocky Mt. L. Rev. 529 (1956). For note, "Ownership of Streets and Rights of Abutting Land — Owners in Colorado", see 40 Den. L. Ctr. J. 26 (1963).

Annotator's note. For additional annotations concerning the dedication of public property, see § 31-23-107.

The intent and purpose of subsection (3) is to clothe the city in its governmental capacity with the entire title to the streets, as such, for public use, and not for the "profit or emolument of the city". *City of Leadville v. Bohn Mining Co.*, 37 Colo. 248, 86 P. 1038 (1906).

Upon the incorporation of a town, all avenues, streets, and alleys appearing on the map annexed to the petition for incorporation became public property and the fee thereof became vested in the town. *Brell v. Ovid*, 88 Colo. 198, 293 P. 961 (1930).

Subsection (3) applies only to cities and towns and does not apply to county or state highways. *Buell v. Redding Miller, Inc.*, 163 Colo. 286, 430 P.2d 471 (1967).

Term "fee" means a "complete" title in city. Because under subsection (3) the general assembly intended, by the use of the term "street", to vest in the city such estate or interest as is reasonable necessary to enable it to utilize the surface and so much of the ground underneath as might be required for laying gas pipes, building sewers, and other municipal purposes. In other words, the general assembly used the term "fee", not according to its technical legal meaning, but as vesting in the city a com-

plete, perpetual, and continuous title to the space designated as streets, so long as it used them for the purpose intended. *City of Leadville v. Bohn Mining Co.*, 37 Colo. 248, 86 P. 1038 (1906).

The fee passes by statutory dedication, unburden of a trust. *City of Leadville v. Colo. Mining Co.*, 29 Colo. 17, 67 P. 289 (1901).

But a city has no interest in the ores that may exist under a street. *City of Leadville v. Bohn Mining Co.*, 37 Colo. 248, 86 P. 1038 (1906).

Where, in an action to recover lands formerly included in certain streets alleged to have reverted to the original grantor, it appears from the complaint that the map or plat of the town was duly recorded in the office of the recorder of the county and that the plats of the streets in controversy were also duly recorded, it will be presumed as against the pleader that all the plats mentioned were made, certified, acknowledged, and recorded as required by law; and from a further allegation that this town was later included in another town duly incorporated, it will be presumed that the limits of the latter town were extended in the manner recognized by law, and that the title to said streets dedicated by the plats became vested therein by statutory dedication, which divests the original grantor of title without acceptance by the town, in accordance with this section. *Bothwell v. Denver Union Stockyards Co.*, 39 Colo. 221, 90 P. 1127 (1907).

No statutory dedication. When a plat plan specifically excludes an avenue from the dedication of other streets and avenues to public use, no statutory dedication of the excluded avenue has taken place. *State Dept. of Highways v. Town of Silverthorne*, 707 P.2d 1017 (Colo. App. 1985), cert. dismissed, 736 P.2d 411 (1987).

31-2-107. Adoption of home rule charter upon incorporation. A city or town may be organized as a home rule city or town upon incorporation, in which event the form of the petition and the proceedings attendant upon the election of commissioners and other matters relating thereto shall be governed by the provisions of section 31-2-209.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-111 as it existed prior to 1975.

31-2-108. Continued county services. (1) The county within which any newly incorporated city or town, or any part thereof, lies and the officers thereof shall continue to perform all duties and responsibilities within such territory as required by law and shall:

(a) Continue to apply all zoning, subdivision, and other regulations within the municipal limits of such city or town for a period of ninety days after the election of officers in accordance with section 31-2-104 or until superseded by ordinance, whichever is sooner; and

(b) Continue to provide to such territory and its inhabitants, upon request by the governing body of such city or town, the same services it was providing, which services shall be continued to be rendered until the ad valorem taxes levied by such city or town for

the rendering of such services are collected and become available, but in no event for a period longer than one year subsequent to the date of the city's or town's incorporation.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-1-107 and 31-1-110 as they existed prior to 1975.

ANNOTATION

For validity of extension of county zoning regulations to newly incorporated municipal

territory, see Allred v. City of Lakewood, 40 Colo. App. 238, 576 P.2d 186 (1977).

31-2-109. Assessment - taxes - collection. When any municipality incorporates under the provisions of this title or any municipality reorganizes under the provisions of part 3 of this article after the time for making the annual assessment for taxation has passed, the governing body of each such city or town may provide, by ordinance or resolution, for the assessment of taxable property within the corporate limits of said city or town. When such assessment is made and approved by the governing body, it may proceed to levy the necessary taxes for the fiscal year, which levy shall be certified by the clerk of such city or town to the county assessor, who shall extend the same upon the tax list of the current year, as required by section 31-20-104. The county treasurer shall proceed in the collection of such taxes in all respects as provided by law for the collection of taxes in cities and towns. It is not necessary for any such city or town to pass the annual appropriation ordinance or resolution required by section 29-1-108, C.R.S. This section shall apply only to the assessment and collection of taxes for the first fiscal year after such incorporation or reorganization.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1. L. 90: Entire section amended, p. 1435, § 3, effective January 1, 1991.

Editor's note: This section is similar to former § 31-4-109 as it existed prior to 1975.

PART 2

MUNICIPAL HOME RULE

Cross references: For home rule cities and towns, see article XX of the state constitution; for home rule counties, see article 35 of title 30.

31-2-201. Short title. This part 2 shall be known and may be cited as the "Municipal Home Rule Act of 1971".

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-101 as it existed prior to 1975.

31-2-202. Legislative declaration. The general assembly declares that the policies and procedures contained in this part 2 are enacted to implement section 9 of article XX of the state constitution, adopted at the 1970 general election, by providing statutory procedures to facilitate adoption and amendment of municipal home rule charters, and, to this end, this part 2 shall be liberally construed. The provisions of this part 2 shall supersede the requirements of article XX of the state constitution, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, as provided in section 9 (3) of article XX of the state constitution.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1. **L. 94:** Entire section amended, p. 1191, § 88, effective July 1.

Editor's note: This section is similar to former § 31-2-102 as it existed prior to 1975.

31-2-203. Definitions. As used in this part 2, unless the context otherwise requires:

- (1) "Ballot title" means a ballot title as defined in section 31-11-103 (1).
- (2) "Publication" means one publication in one newspaper of general circulation within the municipality. If there is no such newspaper, publication shall be by posting in at least three public places within the municipality.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. **L. 2000:** Entire section amended, p. 791, § 4, effective August 2.

Editor's note: This section is similar to former § 31-1-103 (2) as it existed prior to 1975.

31-2-204. Initiation of home rule. (1) Proceedings to adopt a home rule charter for a municipality may be initiated:

- (a) By the submission of a petition, signed by at least five percent of the registered electors of the municipality, to the governing body thereof; or
- (b) By the adoption of an ordinance by the governing body of the municipality, without the prior submission of a petition therefor.

(2) Within thirty days after the initiation of the proceedings, in accordance with either paragraph (a) or (b) of subsection (1) of this section, the governing body of the municipality shall call an election for the purpose of forming a charter commission and of electing members thereof to frame a charter for the municipality, which election shall be held within one hundred twenty days after the date of the call of the election. The governing body shall cause notice of the election to be published not less than sixty days prior to the election.

(3) Candidates for the charter commission shall be nominated by filing with the clerk, on forms supplied by the clerk, a nomination petition signed by at least twenty-five registered electors and a statement by the candidate of consent to serve if elected. Said petition and statement shall be filed within thirty days after publication of the election notice. A second notice of the election, as soon as possible after the completion of filings, shall be published by the governing body and shall include the names of candidates for the charter commission.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. **L. 84:** (1)(a) amended, p. 831, § 1, effective April 25. **L. 85:** (1)(a) amended, p. 1346, § 13, effective April 30.

Editor's note: This section is similar to former § 31-2-104 as it existed prior to 1975.

31-2-205. Election on formation of charter commission and designation of members. (1) At the election voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-105 as it existed prior to 1975.

31-2-206. Charter commission. (1) The charter commission shall be comprised as follows:

- (a) In municipalities having a population of less than two thousand, nine members; and
- (b) In municipalities having a population of at least two thousand, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed twenty-one members.

(c) (Deleted by amendment, L. 94, p. 1191, § 89, effective July 1, 1994.)

(2) If the petition or ordinance initiating home rule proceedings pursuant to section 31-2-204 (1) or initiating proceedings for forming a new charter commission pursuant to section 31-2-210 (2) specifies that the members of the charter commission shall be elected by and from single- or multi-member districts or by a combination of such districts and at-large representation, the governing body, prior to publishing the notice provided for in section 31-2-204 (2) or 31-2-210 (4), shall divide the municipality into compact districts of approximately equal population. In such event the members of said charter commission shall be elected by and from districts, or partly by and from districts and partly at large, as specified in said petition or ordinance.

(3) Eligibility to serve on the charter commission shall extend to all registered electors of the municipality. Any vacancy on the charter commission shall be filled by appointment of the governing body.

(4) The charter commission shall meet at a time and date set by the governing body, which shall be not more than twenty days subsequent to the certification of the election, for the purpose of organizing itself. At such meeting, the commission members shall elect a chairman, a secretary, and such other officers as they deem necessary, all of which officers shall be members of the commission. The commission may adopt rules of procedure for its operations and proceedings. A majority of the commission members shall constitute a quorum for transacting business. Further meetings of the commission shall be held upon call of the chairman or a majority of the members. All meetings shall be open to the public.

(5) The commission may employ a staff; consult and retain experts; and purchase, lease, or otherwise provide for such supplies, materials, and equipment as it deems necessary. Upon completion of its work, the commission shall be dissolved, and all property of the commission shall become the property of the municipality.

(6) The governing body may accept funds, grants, gifts, and services for the commission from the state of Colorado, or the United States government, or any agencies or departments thereof, or from any other public or private source.

(7) Reasonable expenses of the charter commission shall be paid out of the general funds of the municipality, upon written verification made by the commission chairman and secretary, and the governing body shall adopt such supplemental appropriation ordinances as may be necessary to support such expenditures. Members of the commission shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The charter commission may conduct interviews and make investigations in the preparation of a charter, and, to the fullest extent practicable, municipal officials and employees shall cooperate with the commission by providing information, advice, and assistance.

(9) The charter commission shall hold at least one public hearing in preparation of a proposed charter.

(10) Within one hundred eighty days after its election, the charter commission shall submit to the governing body a proposed charter.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. L. 81: (1)(b) amended and (1)(c) added, p. 1491, § 7, effective June 5. L. 94: (1) amended, p. 1191, § 89, effective July 1. L. 2009: (2) amended, (SB 09-292), ch. 369, p. 1977, § 106, effective August 5. L. 2011: (4) and (10) amended, (HB 11-1122), ch. 63, p. 164, § 1, effective September 1.

31-2-207. Charter election - notice. (1) Within thirty days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved, which election shall be held not less than thirty nor more than one hundred eighty-five days after publication of the election thereof. Such notice of the election shall contain the full text of the proposed charter.

(1.5) The governing body shall set the ballot title for the proposed charter within sixty days after the date that the proposed charter is submitted pursuant to subsection (1) of this section.

(2) If a majority of the registered electors voting thereon vote to adopt the proposed charter, the charter shall be deemed approved and it shall become effective at such time as the charter provides.

(3) If a majority of the registered electors voting thereon vote to reject the proposed charter, the charter commission shall proceed to prepare a revised proposed charter, utilizing the procedures set forth in section 31-2-206, and the governing body shall submit the revised proposed charter to an election in the manner set forth in subsection (1) of this section. If a majority of the registered electors voting on such revised proposed charter vote to adopt the revised proposed charter, it shall be deemed approved and it shall become effective at such time as the revised charter provides. If a majority of the registered voters voting thereon vote to reject the revised proposed charter, the charter commission shall forthwith be dissolved.

Source: L. 75: Entire title R&RE, p. 1016, § 1, effective July 1. L. 2000: (1.5) added, p. 791, § 5, effective August 2. L. 2011: (1) amended, (HB 11-1122), ch. 63, p. 164, § 2, effective September 1.

Editor's note: This section is similar to former § 31-2-107 as it existed prior to 1975.

31-2-208. Filings - effect. (1) Within twenty days after its approval, a certified copy of the charter shall be filed with the secretary of state and with the clerk.

(2) Upon such filings all courts shall take judicial notice of the charter.

(3) This section shall also apply to any amendment or repeal of a charter.

Source: L. 75: Entire title R&RE, p. 1016, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-108 as it existed prior to 1975.

31-2-209. Special procedure for adopting a charter upon incorporation. (1) Proceedings to adopt a home rule charter may be initiated at the time of incorporation.

(2) In order to initiate home rule at the time of incorporation, the petition for incorporation shall be in the form and meet the requirements required by the provisions of section 31-2-101, except that:

(a) The petition shall be signed by at least five percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality, notwithstanding any provision of section 31-2-101; and

(b) The petition for incorporation shall request the initiation of proceedings for the adoption of a home rule charter pursuant to the provisions of this part 2.

(3) The election commissioners appointed by the court pursuant to section 31-2-102 shall exercise, to the extent practicable, the powers, functions, and responsibilities otherwise assigned by this part 2 to the governing body or clerk, and the procedures for incorporation and adoption of a home rule charter shall be modified as necessary to effectuate concurrent consideration.

(4) At the incorporation election, conducted under the provisions of section 31-2-102, the registered electors shall vote upon:

(a) The question of incorporation, as set forth in section 31-2-102 (5);

(b) The question of whether a charter commission should be formed, as set forth in section 31-2-205 (1); and

(c) The election of charter commission members, as set forth in section 31-2-205 (2).

(5) If a majority of the registered electors voting thereon vote for incorporation and for formation of a charter commission, the first election of officers shall be stayed pending drafting and approval of the charter pursuant to sections 31-2-206 and 31-2-207. Upon ratification of the charter or after rejection of a charter and revised charter pursuant to section 31-2-207, the election commissioners shall proceed to the first election of officers and to completion of incorporation pursuant to part 1 of this article.

(6) If a majority of the registered electors voting thereon vote for incorporation but against the formation of a charter commission, the procedures set forth in part 1 of this article shall be followed as if the petition for incorporation had not included a request for the adoption of home rule at the time of incorporation.

Source: **L. 75:** Entire title R&RE, p. 1016, § 1, effective July 1. **L. 84:** (2)(a) amended, p. 831, § 2, effective April 15. **L. 85:** (2)(a) amended, p. 1346, § 14, effective April 30.

Editor's note: This section is similar to former § 31-2-109 as it existed prior to 1975.

ANNOTATION

General Assembly's purpose in enacting subsection (2) was to ensure that request for initiation of home rule proceedings filed at same time as petition for incorporation does not ignore the independent statutory requirements for obtaining home rule status. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

A proceeding to obtain a home rule charter may be initiated at the same time a petition for incorporation is filed. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

The requirements for obtaining a home rule charter are the same regardless of whether a charter is sought after incorporation or at the same time a petition for incor-

poration is filed. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

Unlike the signatories to a petition for incorporation, signatories to a petition for home rule charter need not demonstrate that they are landowners. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

Petition for incorporation must contain allegations that signatories are landowners within the territory sought to be incorporated regardless of whether it is filed alone or with a petition for home rule charter. *Malmgren v. Copper Mountain, Inc.*, 873 P.2d 44 (Colo. App. 1994).

31-2-210. Procedure to amend or repeal charter. (1) Proceedings to amend a home rule charter may be initiated by either of the following methods:

(a) Filing of a petition meeting the following requirements, in the following manner:

(I) The petition process shall be commenced by filing with the clerk a statement of intent to circulate a petition, signed by at least five registered electors of the municipality. The petition shall be circulated for a period not to exceed ninety days from the date of filing of the statement of intent and shall be filed with the clerk before the close of business on the ninetieth day from said date of filing or on the next business day when said ninetieth day is a Saturday, Sunday, or legal holiday.

(II) The petition shall contain the text of the proposed amendment and shall state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the amendment is sought to be submitted at a special election, the petition shall state an approximate date for such special election, subject to the provisions of subparagraph (IV) of this paragraph (a) and subsection (4) of this section.

(III) A petition to submit an amendment at the next regular election must be signed by at least five percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the date of said regular election.

(IV) A petition to submit an amendment at a special election must be signed by at least ten percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the approximate date of the special election stated in the petition.

(b) An ordinance adopted by the governing body submitting the proposed amendment to a vote of the registered electors of the municipality. Such ordinance shall also adopt a ballot title for the proposed amendment.

(2) Proceedings to repeal a home rule charter or to form a new charter commission may be initiated by either of the following methods:

(a) Filing of a petition in the manner prescribed by, and meeting the requirements of, paragraph (a) of subsection (1) of this section; except that:

(I) The petition shall state the proposal to repeal the charter or to form a new charter commission;

(II) The petition must be signed by at least fifteen percent of the registered electors of the municipality, regardless of whether the petition seeks submission of the proposal at a regular or special election; and

(III) If the proposal is for formation of a charter commission, the petition must be filed with the clerk at least ninety days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.

(b) An ordinance adopted by a two-thirds vote of the governing body submitting the proposed repeal or formation of a charter commission to a vote of the registered electors of the municipality.

(3) The clerk shall, within fifteen working days after the filing of a petition pursuant to paragraph (a) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, certify to the governing body as to the validity and sufficiency of such petition. If the petition is sufficient, the governing body shall set a ballot title for the proposed amendment at its next meeting. If the petition is declared insufficient, such petition may be withdrawn by a majority of the persons representing the registered electors who signed such petition, may be amended or signed by additional registered electors of the municipality in accordance with paragraph (a) of subsection (1) of this section and paragraph (a) of subsection (2) of this section within fifteen days after such insufficiency is declared, and may be refiled as an original petition.

(3.5) If the subject matter of the petition is proposed for submission at a regular or special election that will be coordinated by the county clerk pursuant to section 1-7-116, C.R.S., and the municipal clerk has certified to the governing body that the petition is valid and sufficient, the clerk shall certify the proposed ballot question to the county clerk and recorder sixty days prior to the coordinated election as provided in section 1-5-203 (3), C.R.S., unless the petition has by the sixtieth day been determined to be insufficient pursuant to section 31-2-223. Should the petition be found to be insufficient pursuant to section 31-2-223 following certification to the county clerk and recorder, the election on such question shall be deemed cancelled, and any votes cast on the question shall not be counted.

(4) The governing body shall, within thirty days of the date of adoption of the ordinance or the date of filing of the petition (if the same is certified by the clerk to be valid and sufficient), publish notice of an election upon the amendment or proposal, which notice shall contain the full text of the amendment or statement of the proposal as contained in the ordinance or petition. The election shall be held not less than thirty nor more than one hundred twenty days after publication of such notice; except that, if the proposal is for formation of a charter commission, the election shall be held not less than sixty days after publication of such notice. If the amendment or proposal is initiated by petition and is sought to be submitted at a special election, the election shall be held as near as possible to the approximate date stated in the petition but in any event shall be held within the time limits stated in this subsection (4).

(5) The procedure for the forming and functioning of a new charter commission shall comply as nearly as practicable with sections 31-2-204 to 31-2-207, relating to formation and functioning of an initial charter commission.

(6) If a majority of the registered electors voting thereon vote for a proposed amendment, the amendment shall be deemed approved. If a majority of the registered electors voting thereon vote for repeal of the charter, the charter shall be deemed repealed and the municipality shall proceed to organize and operate pursuant to the statutes applicable to a municipality of its size.

Source: **L. 75:** Entire title R&RE, p. 1017, § 1, effective July 1. **L. 79:** Entire section R&RE, p. 1170, § 2, effective July 1. **L. 85:** (1)(a)(I), (1)(a)(II), (1)(a)(IV), and (2)(a)(II) amended, p. 1346, § 15, effective July 1. **L. 96:** (1)(a)(III) and (1)(a)(IV) amended and (3.5) added, p. 1767, § 61, effective July 1. **L. 2000:** (1)(b) and (3) amended, p. 791, § 6, effective August 2. **L. 2007:** (3.5) amended, p. 2046, § 84, effective June 1.

Editor's note: This section is similar to former § 31-2-110 as it existed prior to 1975.

ANNOTATION

The governing body of a home rule city may initiate proceedings to amend the home rule charter by adopting an ordinance to submit the proposed amendment to the voters of the municipality. *Wilde v. City of Wheat Ridge*, 967 P.2d 213 (Colo. App. 1998).

"To submit" means to present and leave to the judgment of the qualified voters. *Wilde v. City of Wheat Ridge*, 967 P.2d 213 (Colo. App. 1998).

Expiration of emergency ordinance did not invalidate the results of the election since defendants had submitted the proposed charter amendment to the voters prior to the expiration of the emergency ordinance by fulfilling all of the election duties that could be performed before the day of the election. *Wilde v. City of Wheat Ridge*, 967 P.2d 213 (Colo. App. 1998).

31-2-211. Elections - general. (1) Except as otherwise specifically provided, all elections held pursuant to this part 2 shall be conducted as nearly as practicable in conformity with the provisions of the "Colorado Municipal Election Code of 1965".

(2) All necessary expenses for elections conducted pursuant to this part 2 for existing municipalities or for municipalities incorporated pursuant to part 1 of this article shall be paid out of the treasury of the municipality.

(3) A special election shall be called for any election held pursuant to this part 2 when a regular election is not scheduled within the time period provided for such election.

Source: **L. 75:** Entire title R&RE, p. 1017, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-111 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Charter provision granting the right to vote to nonresident property owners does not violate the municipal home rule act. *May v.*

Town of Mountain Vill., 969 P.2d 790 (Colo. App. 1998).

31-2-212. Initiative, referendum, and recall. Every charter shall contain procedures for the initiative and referendum of measures and for the recall of officers.

Source: **L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-112 as it existed prior to 1975.

31-2-213. Determination of population. When a determination of the population or number of registered electors of the municipality is required under this part 2, said determination shall be made upon the best readily available information by the governing body, clerk, election commissioners, or court, as the case may be. Such determination shall be final in the absence of fraud or gross abuse of discretion.

Source: **L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1. **L. 84:** Entire section amended, p. 831, § 3, effective April 25. **L. 85:** Entire section amended, p. 1346, § 16, effective April 30.

Editor's note: This section is similar to former § 31-2-113 as it existed prior to 1975.

31-2-214. Time limit on submission of similar proposals. No proposal for a charter commission, charter amendment, or repeal of a charter shall be initiated within twelve months after rejection of a substantially similar proposal.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-114 as it existed prior to 1975.

31-2-215. Conflicting or alternative charter proposals. (1) In submitting any charter or charter amendment, any alternative provision may be submitted for the choice of the voters and may be voted on separately without prejudice to others. The alternative provision receiving the highest number of votes, if approved by a majority of the registered electors voting thereon, shall be deemed approved.

(2) In case of adoption of conflicting provisions which are not submitted as alternatives, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1. **L. 84:** Entire section amended, p. 832, § 4, effective April 25.

Editor's note: This section is similar to former § 31-2-115 as it existed prior to 1975.

31-2-216. Change in classification of municipalities. Notwithstanding the provisions of part 2 of article 1 of this title, a town having a population exceeding two thousand may reclassify itself as a city, and a city having a population of two thousand or less may reclassify itself as a town, upon adoption of a home rule charter without otherwise complying with the procedures in said part 2.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1. **L. 81:** Entire section amended, p. 1491, § 8, effective June 5.

Editor's note: This section is similar to former § 31-2-116 as it existed prior to 1975.

31-2-217. Vested rights saved. The adoption of any charter, charter amendment, or repeal thereof shall not be construed to destroy any property right, contract right, or right of action of any nature or kind, civil or criminal, vested in or against the municipality under and by virtue of any provision of law theretofore existing or otherwise accruing to the municipality; but all such rights shall vest in and inure to the municipality or to any persons asserting any such claims against the municipality as fully and as completely as though the charter, amendment, or repeal thereof had not been adopted. Such adoption shall never be construed to affect any such right existing between the municipality and any person.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-117 as it existed prior to 1975.

31-2-218. Finality. No proceeding contesting the adoption of a charter, charter amendment, or repeal thereof shall be brought unless commenced within forty-five days after the election adopting the measure.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-118 as it existed prior to 1975.

ANNOTATION

The 45-day provision refers to the contest of a charter amendment which allegedly had been adopted with procedural defects. *City of Aurora v. Aurora Firefighters' Protective Ass'n*, 193 Colo. 437, 566 P.2d 1356 (1977).

constitutionality of the substance of an amendment. *City of Aurora v. Aurora Firefighters' Protective Ass'n*, 193 Colo. 437, 566 P.2d 1356 (1977).

And the courts are not thereby ousted of jurisdiction to subsequently determine the

31-2-219. Additional petition requirements. Any petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be subject to the provisions of sections 31-2-220 to 31-2-225, in addition to any other requirements imposed by this part 2. Any such petition which fails to conform to the requirements of this part 2 or is circulated in a manner other than that permitted in this part 2 is invalid.

Source: L. 84: Entire section added, p. 832, § 5, effective April 25.

31-2-220. Warning on petition - signatures - affidavits - circulators. (1) At the top of each page of a petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be printed, in plain red letters no smaller than the impression of ten-point, bold-faced type, the following:

**“WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A
REGISTERED ELECTOR:**

TO BE A REGISTERED ELECTOR, YOU MUST BE:

1. At least eighteen years of age.
2. A citizen of the United States.
3. A resident of the state of Colorado and have resided in the state at least thirty days.
4. A resident of the municipal election precinct in which you live for at least thirty days.
5. Registered to vote pursuant to part 2 of article 2 of title 1, Colorado Revised Statutes.

Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.”

(2) Any such petition shall be signed only by registered electors by their own signatures to which shall be attached the residence addresses of such persons, including street and number, if any, city or town, and the date of signing the same. To each such petition shall be attached an affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the said petition, that each signature thereon was affixed in the affiant's presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has so paid or will pay, directly or

indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to such petition. No petition shall be accepted for filing that does not have attached thereto the affidavit required by this section.

(3) (Deleted by amendment, L. 2000, p. 792, § 7, effective August 2, 2000.)

(4) The clerk shall inspect timely filed petitions and attached affidavits to ensure compliance with subsection (2) of this section. Such inspection may consist of an examination of the information on the signature lines for patent defects, a comparison of the information on the signature lines with a list of registered electors provided by the county, or any other method of inspection reasonably expected to ensure compliance with subsection (2) of this section.

Source: L. 84: Entire section added, p. 832, § 5, effective April 25. **L. 85:** (1) and (2) amended, p. 1347, § 17, effective April 30. **L. 92:** (1) amended, p. 2177, § 38, effective June 2. **L. 94:** (1) amended, p. 1772, § 37, effective January 1, 1995. **L. 96:** (2) amended, p. 1768, § 62, effective July 1. **L. 2000:** (2) and (3) amended and (4) added, p. 792, § 7, effective August 2.

31-2-221. Form of petition - representatives of signers. (1) Petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall be printed on pages eight and one-half inches wide by eleven inches long, with a margin of two inches at the top for binding; the sheets for signature shall have their ruled lines numbered consecutively and shall be attached to a complete copy of what is proposed, printed in plain block letters no smaller than the impression of eight-point type. Petitions may consist of any number of sections composed of sheets arranged as provided in this section. Each petition shall designate by name and address not less than three nor more than five registered electors who shall represent the signers thereof in all matters affecting the same. No such petition shall be printed, published, or otherwise circulated in a municipality until the clerk has approved it as to form only, and the clerk shall assure that the petition contains only the matters required by this part 2 and contains no extraneous material. The clerk shall approve or disapprove such form within five working days of submission. All such petitions shall be prenumbered serially, and the circulation of any petition described by this part 2 by any medium other than personally by a circulator is prohibited.

(2) Any disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect. Prior to the time of filing, the persons designated in the petition to represent the signers shall attach the sheets containing the signatures and affidavits together, which shall be bound in convenient volumes together with the sheets containing the signatures accompanying the same.

Source: L. 84: Entire section added, p. 833, § 5, effective April 25.

31-2-222. Ballot. Proposals to adopt, amend, or repeal home rule charters, including the formation of a new charter commission, shall appear upon the official ballot by ballot title only and, if more than one, shall be numbered consecutively in such order as the governing body may provide and shall be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title shall appear once on the official ballot and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" as follows:

(HERE SHALL APPEAR THE
BALLOT TITLE IN FULL)

YES
NO

Source: L. 84: Entire section added, p. 834, § 5, effective April 25.

31-2-223. Affidavit - evidence - protest procedure. (1) All petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall have attached thereto an affidavit of the circulator of the petition stating that each signature on the petition is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing such petition was at the time of signing a registered elector. A protest in writing, under oath, may be filed in the office in which such petition has been filed by some registered elector of the municipality or territory proposed to be incorporated within thirty days after such petition is filed, setting forth with particularity the grounds of such protest and the names protested. In such event the officer with whom such petition is filed shall mail a copy of the protest to the persons named in such petition as representing the signers thereof at the addresses therein given, together with a notice fixing a time for hearing the protest not less than five nor more than twenty days after such notice is mailed. If, at such hearing, such protest is denied in whole or in part, the person filing the same, within ten days after such denial, may file an amended protest, a copy of which shall be mailed to the persons named in the petition and on which a hearing shall be held as in the case of the original protest; but no person shall be entitled to amend an amended protest.

(2) All records and hearings shall be public, and all testimony shall be under oath. The officer with whom such petition is filed shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. Upon failure of any witness to obey the subpoena, the officer may petition the district court, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court. Hearings shall be had as soon as is conveniently possible and must be concluded within thirty days after the commencement thereof, and the result of such hearings shall be certified to the persons representing the signers of such petition. In case the petition is declared insufficient in form or number of signatures of registered electors, it may be withdrawn by a majority in number of the persons representing the signers of such petition and, within fifteen days after the insufficiency is declared, may be amended or additional names signed thereto as in the first instance and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by the district court of the county in which such petition is filed, but any such review shall be timely made, and, upon application, the decision of such court thereon shall be reviewed by the supreme court.

Source: **L. 84:** Entire section added, p. 834, § 5, effective April 25. **L. 85:** Entire section amended, p. 1348, § 18, effective April 30. **L. 2000:** (1) amended, p. 792, § 8, effective August 2.

31-2-224. Receiving money to circulate petition - penalty. (Repealed)

Source: **L. 84:** Entire section added, p. 835, § 5, effective April 25. **L. 89:** Entire section repealed, p. 861, § 156, effective July 1.

31-2-225. Unlawful acts - penalty. (1) With respect to any petition to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, it is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of such person, organization, association, league, or political party;

(b) For any person to sign any name other than his own to any such petition or knowingly to sign his name more than once for the same measure at one election;

(c) For any person to sign any such petition who is not a registered elector of the municipality or of the territory proposed to be incorporated at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in such affidavit to be true;

(e) For any person to certify that an affidavit attached to such petition was subscribed or sworn to before him unless it was so subscribed and sworn to before him and unless such person so certifying is duly qualified under the laws of this state to administer an oath; or

(f) For any person to do willfully any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election held under this part 2 or to refuse to submit any such petition in the form presented for submission at any election held under this part 2.

(2) Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 84:** Entire section added, p. 835, § 5, effective April 25. **L. 85:** (1)(c) amended, p. 1349, § 19, effective April 30. **L. 2002:** (2) amended, p. 1543, § 289, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 3

REORGANIZATION OF CITIES AND TOWNS FORMED UNDER PRIOR LAW

Cross references: For notices required in municipal dissolution and new incorporation, see § 24-32-109.

31-2-301. Procedure. Any city or town incorporated prior to July 3, 1877, which has not previously reorganized pursuant to this part 3 may abandon its organization and organize itself under the provisions of this title, with the same territorial limits, by pursuing the course prescribed in this part 3.

Source: **L. 75:** Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-101 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-2-301 is similar to former § 31-4-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Where a town has never exercised the privilege of this section or the following sections, its original charter is the sole measure of its powers, rights, and liabilities, except insofar as

that charter has been amended or is in conflict with the constitution. *Georgetown v. Bank of Idaho Springs*, 99 Colo. 519, 64 P.2d 132 (1936).

Section does not apply unless it can be demonstrated that a city or town was incorporated prior to July 3, 1877. *Residents & Registered Electors of Town of Frankstown v. Bd. of County Comm'rs*, 214 P.3d 485 (Colo. App. 2008).

31-2-302. Petition - election. Upon the petition of the registered electors of any such town or city equal in number to ten percent of the votes cast for all candidates for mayor at the last preceding regular election, the governing body thereof shall immediately, by ordinance or resolution, call a special election on the question of organizing under this title. Such question shall be submitted to the registered electors of the city or town at a special election to be held on the date set by the governing body and conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965", insofar as possible.

Source: **L. 75:** Entire title R&RE, p. 1019, § 1, effective July 1. **L. 87:** Entire section amended, p. 326, § 76, effective July 1.

Editor's note: This section is similar to former § 31-4-102 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-2-303. Notice of election. The mayor or, if there is no mayor, the presiding officer of the governing body, immediately upon the effective date of the ordinance or resolution, shall cause notice to be given of the election, of the question to be submitted thereat, and of the time and place of the holding thereof, which notice shall be published once each week for four consecutive weeks in some newspaper of general circulation within the city or town. If there is no such newspaper, publication shall be by posting a copy of said notice in three public places within the municipal limits.

Source: **L. 75:** Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-103 as it existed prior to 1975.

31-2-304. Ballot. The form of ballot or voting machine tabs at such election shall be: "For Municipal Organization Under the General Law" and "Against Municipal Organization Under the General Law".

Source: **L. 75:** Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-104 as it existed prior to 1975.

31-2-305. Election of officers - terms. If a majority of the votes cast at such election are for organization under this title, the governing body shall immediately call a special election for the election of officers for such reorganized city or town. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". After the election and qualification of such officers, the former organization of such city or town shall be considered as abandoned, and such city or town shall be considered as organized under the provisions of this title. The officers so elected shall hold their offices only until the next regular election in such city or town.

Source: **L. 75:** Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-105 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-2-306. No similar proposal for one year. If a majority of the votes cast at such election are against organization under this title, no petition for another vote upon such question shall be accepted less than one year after such vote.

Source: **L. 75:** Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-103 as it existed prior to 1975.

31-2-307. Property remains vested - rights - cumulative remedy. All rights and property of every description vested in any city or town under its former organization shall be deemed and held to be vested in the reorganized city or town. No right or liability, either in favor of or against such city or town, existing at the time and no suit or prosecution of any kind shall be affected by such change. Where a different remedy is given by this title

which can properly be made applicable to any right existing at the time such change is made, the same shall be deemed cumulative to any other remedies available prior to such change and may be used accordingly.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-106 as it existed prior to 1975.

31-2-308. Duty of county treasurer - sale - redemption. If any city or town abandons its old organization and incorporates under this title, it is the duty of the county treasurer to collect, in the same manner as other taxes are collected, any taxes of such city or town which, at the time of such incorporation, have become due or delinquent. If property has been sold before such reorganization for taxes due any such city or town and the same has not been redeemed nor the deed executed therefor prior to incorporation, it is the duty of the county treasurer to act in all respects regarding the redemption of such property, the collection of taxes thereon, and the execution of the deed therefor as though the same had been sold subsequent to such reorganization.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-108 as it existed prior to 1975.

31-2-309. Ordinances remain effective. When any city or town incorporated prior to July 3, 1877, reorganizes under this title, the bylaws and ordinances adopted and in force in such city or town previous to such reorganization shall remain in full force and effect for all purposes until the same are changed, amended, or repealed by the governing body elected under the new organization.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-110 as it existed prior to 1975.

PART 4

CHANGE OF NAME

31-2-401. Petition to change name. Proceedings to change the name of any city or town in this state may be initiated by filing with the governing body thereof a written petition therefor, which petition shall be signed by registered electors thereof equal in number to fifty percent of the total votes cast for all candidates for mayor in the last regular election of the city or town, requesting that the name of the city or town be changed.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1. **L. 87:** Entire section amended, p. 326, § 77, effective July 1.

Editor's note: This section is similar to former § 31-1-301 as it existed prior to 1975.

31-2-402. Name filed with secretary of state. After the presentation of the petition mentioned in section 31-2-401, the name proposed to be given to such city or town shall be filed by the clerk in the office of the secretary of state, to be retained there for a period of at least thirty days, and, upon application, the secretary of state, at any time after the expiration of said thirty days from said filing, shall grant a certificate stating that such name has not been given to any other municipality in this state if such is the fact. If such name has been adopted by any other municipality, as appears from the records in his office, the secretary of state shall so notify the clerk filing such name in his office, in which event no further proceedings shall be undertaken unless another petition, setting forth a different

proposed name, is filed, which such different proposed name shall likewise be filed with the secretary of state. No further proceedings for a change of name shall be commenced until a certificate is received from the secretary of state attesting that the proposed name has not been adopted elsewhere in this state.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-302 as it existed prior to 1975.

31-2-403. Secretary to keep alphabetical list. The secretary of state shall ascertain the names of all the municipalities within this state and shall arrange such names in alphabetical order for convenient reference. Such list of names shall be kept filed in his office and shall be changed when a change of name is effected under the provisions of this part 4.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-303 as it existed prior to 1975.

31-2-404. Notice of hearing on petition. At any meeting of the governing body of any city or town after the presentation of the petition, the governing body shall fix the time when the petition shall be considered and order notice of the presentation thereof to be given by publishing such notice once each week for three successive weeks in some newspaper having a general circulation in such city or town. If there is no such newspaper, publication shall be by posting a copy of said notice in three public places within the municipal limits. Such notice shall state that a change of the name of such city or town has been petitioned for and the time when action on said petition will be had, at which time remonstrances, if any, will be heard.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-304 as it existed prior to 1975.

31-2-405. Hearing postponed. If for any reason at the time fixed in the notice provided for in section 31-2-404 action thereon is not taken, such petition for a change of name shall be heard, with all remonstrances, at any subsequent meeting of the governing body of any such city or town. If said governing body is satisfied that such change of name is necessary and proper, they shall thereupon make an order changing the name of such city or town and adopting the name petitioned for in the petition.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-305 as it existed prior to 1975.

31-2-406. Secretary to give notice. If said change of name is made or if any new city or town is incorporated, the governing body of any such city or town shall cause a copy of the order making such change or fixing the name of such new city or town to be filed in the office of the secretary of state, who shall thereupon make known such facts by publication in some newspaper of general circulation in the county in which such city or town is situated.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-306 as it existed prior to 1975.

31-2-407. Change does not affect liability. Nothing in this part 4 shall affect the rights, privileges, or liabilities of such city or town, or those of any person, as the same existed

before such change of name. All proceedings pending in any court or place in favor of or against said city or town may be continued to final consummation under the name in which the same were commenced.

Source: **L. 75:** Entire title R&RE, p. 1021, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-1-307 as it existed prior to 1975.

ARTICLE 3

Discontinuance of Incorporation

PART 1		31-3-106.	County clerk and recorder to publish - posting.
DISCONTINUANCE - CITIES AND TOWNS			
		PART 2	
31-3-101.	Petition to the district court.	ABANDONMENT - TOWNS	
31-3-102.	Form of ballots.		
31-3-103.	Return - canvass - costs.		
31-3-104.	Discontinuance - when effective - legal indebtedness - tax.	31-3-201.	Procedure for determination of abandonment.
31-3-105.	Books deposited - court records.	31-3-202.	Consequences of determination.

PART 1

DISCONTINUANCE - CITIES AND TOWNS

31-3-101. Petition to the district court. Proceedings to discontinue the incorporation of any city or town may be commenced by the filing of a petition to discontinue such incorporation, signed by twenty-five percent of the registered electors of the city or town, with the district court of the county wherein such city or town, or any part thereof, is situate. Upon satisfying itself that the petition meets the requirements of this section, the court shall cause a notice to be published once each week for at least four weeks, which notice shall state that the question of discontinuing the incorporation of such city or town shall be submitted to a vote of the registered electors thereof at its next regular election.

Source: **L. 75:** Entire title R&RE, p. 1021, § 1, effective July 1. **L. 87:** Entire section amended, p. 326, § 78, effective July 1.

Editor’s note: This section is similar to former § 31-9-101 as it existed prior to 1975.

31-3-102. Form of ballots. The form of ballots shall be “For the incorporation” and “Against the incorporation”.

Source: **L. 75:** Entire title R&RE, p. 1021, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-9-102 as it existed prior to 1975.

31-3-103. Return - canvass - costs. The vote for this purpose shall be taken, canvassed, and returned in the same manner as in other municipal elections. All expenses of the

same shall be paid by the city or town when the result of the vote is "Against the incorporation" but by the petitioners when the result is "For incorporation".

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-104 as it existed prior to 1975.

Cross references: For municipal elections, see article 10 of this title.

31-3-104. Discontinuance - when effective - legal indebtedness - tax. If two-thirds of the total votes cast upon such question are cast "Against incorporation", the incorporation of the city or town shall be discontinued; except that no such discontinuance shall be effective until such time as the governing body of the city or town has made proper provisions for the payment of all of its indebtedness and for the faithful performance of all its contractual and other obligations, levied the requisite taxes, and appropriated the requisite funds therefor and until two certified copies of notice of such action with a legal description accompanied by a map of the area concerned are filed by the city or town with the county clerk and recorder of the county in which such action has taken place. The county clerk and recorder shall file the second certified copy of such notice with the division of local government of the department of local affairs as provided by section 24-32-109, C.R.S. For the payment of its indebtedness, the city or town shall issue warrants in cases where there is no money in the treasury. The county treasurer shall collect the tax which is levied to pay such indebtedness as he collects other taxes and shall pay the warrants. Any surplus of this fund shall be transmitted to the school fund of the district where the same is levied.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-9-103 and 31-9-107 as they existed prior to 1975.

31-3-105. Books deposited - court records. The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the county clerk and recorder of the county with which the petition was filed, for safekeeping and reference in the future.

Source: L. 75: Entire title R&RE, p. 1022, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-105 as it existed prior to 1975.

31-3-106. County clerk and recorder to publish - posting. When the incorporation of any city or town has been discontinued in accordance with the provisions of this part 1, the county clerk and recorder of each county in which the city or town, or any part thereof, was situate shall publish notice of such discontinuance of incorporation once each week for at least four weeks in some newspaper published within the county, or, if no newspaper is published within the county, said county clerk and recorder shall post notice thereof in three public places within the county for a period of not less than thirty calendar days. Said county clerk and recorder shall also certify the fact of discontinuance of incorporation to the secretary of state.

Source: L. 75: Entire title R&RE, p. 1022, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-106 as it existed prior to 1975.

PART 2

ABANDONMENT - TOWNS

31-3-201. Procedure for determination of abandonment. (1) When any town has failed, for a period of five years or longer immediately prior to the filing of the application

under this section, to hold any regular or special election or to elect officers and to maintain any town government, such town may be determined to be abandoned as follows:

(a) The county attorney of the county in which the town is located or any owner of land in such town may make application to the secretary of state to determine that the town is abandoned.

(b) The secretary of state shall forthwith cause notice of the filing of such application to be published once in some newspaper of general circulation in the county and, where possible, to be posted in at least two conspicuous locations within the town. The notice shall specify the date, time, and place where said application will be heard, which date shall be not less than twenty days after the date of such publication.

(c) The secretary of state shall hear such application and, after receiving evidence thereon, shall determine whether or not said town has been abandoned. If he determines that the town is abandoned, a copy of such determination shall be filed with the county clerk and recorder of the county in which said town was located. Thereupon, said town shall cease to exist.

(d) The books, documents, records, papers, and corporate seal of any town so abandoned shall be deposited with the county clerk and recorder of the county within which the town or any part thereof is located, for safekeeping and reference in the future.

Source: L. 75: Entire title R&RE, p. 1022, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-201 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-3-201 is similar to former § 31-9-201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

No election is provided whereby the electorate, by vote, can determine whether a town and its government has ceased to exist. *Evans v. District Court*, 182 Colo. 93, 511 P.2d 471 (1973).

31-3-202. Consequences of determination. (1) After such determination, all existing streets, avenues, and alleys previously located within an abandoned town shall be vested in the board of county commissioners of the county in which said town was located. The board of county commissioners may thereafter vacate any such streets, avenues, or alleys pursuant to part 3 of article 2 of title 43, C.R.S.

(2) Notwithstanding the provisions of section 31-3-201, any debt or other obligations of such town outstanding at the time of such determination of abandonment shall not be abrogated, nor shall any requirement be abrogated or avoided that has been imposed upon such town by the environmental protection agency, by any court, or by any other instrumentality of the state or federal government. The town shall continue in existence solely for the purpose of satisfying such outstanding debt or other obligations or other requirements, and the powers and duties of the governing body of the town and its officers shall be performed by the board of county commissioners and the county officers in such levy and collection of taxes or the imposition and collection of such fees, rates, and charges as may be required to satisfy the outstanding debt or other obligations or other requirements in accordance with their terms.

(3) Except as to streets, avenues, alleys, or reversionary interests, the right, title, and interest to all real property and the improvements thereon owned by any such town shall be vested in the county in which such property is situate, subject to any easements or rights-of-way then in use.

Source: L. 75: Entire title R&RE, p. 1023, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-202 as it existed prior to 1975.

ARTICLE 4**Organizational Structure and Officers**

Cross references: For prohibited appointments by outgoing officers, see § 24-50-402; for standards of conduct for municipal officials, see article 18 of title 24.

PART 1**ORGANIZATIONAL STRUCTURE AND OFFICERS OF STATUTORY CITIES**

- 31-4-101. Corporate authority vested.
- 31-4-102. Mayor - qualifications and duties.
- 31-4-103. Mayor - vacancy - appointment - mayor pro tem.
- 31-4-104. Wards.
- 31-4-105. Election of officers - terms.
- 31-4-106. Councilman - residence - vacancies.
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- 31-4-110. City clerk - duties - city seal.
- 31-4-111. City treasurer - powers and duties.
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- 31-4-112.1. Chief of police - permits for concealed weapons. (Repealed)
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PART 2**ORGANIZATIONAL STRUCTURE - CITIES - CITY MANAGER FORM**

- 31-4-201. Authority to reorganize - rights and powers.
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- 31-4-219. Official bonds - waiver.
- 31-4-220. Abandonment of form of government. (Repealed)
- 31-4-221. Effective date of change. (Repealed)

PART 3**ORGANIZATIONAL STRUCTURE AND OFFICERS OF STATUTORY TOWNS**

- 31-4-301. Mayor - board of trustees - election - compensation.
- 31-4-301.5. Change in number of trustees.
- 31-4-302. Mayor - powers.
- 31-4-303. Trustees to fill vacancy - mayor pro tem - clerk pro tem.
- 31-4-304. Appointment of officers - compensation.
- 31-4-305. Clerk - duties.
- 31-4-306. Marshal or chief of police - powers and duties.
- 31-4-307. Removal of officers - causes - notice.

PART 4**REQUIREMENTS AND COMPENSATION OF OFFICERS**

- 31-4-401. Oath of officers - bonds - waiver - declaring office vacant.
- 31-4-402. New bond.
- 31-4-403. Lawful pay only for governing bodies.
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PART 5**OFFICERS' RECALL**

- 31-4-501. Officers subject to recall.

31-4-502.	Procedure - petition - signatures.	31-4-504.5.	Incumbent not recalled - reimbursement.
31-4-503.	Petition in sections - signing - affidavit - review - tampering with petition.	31-4-505.	Recall after six months - second petition.
31-4-504.	Resignation - vacancy filled - election - ballot - nomination.	31-4-506.	Disclosure of contributions, contributions in kind, and expenditures. (Repealed)
		31-4-507.	Powers of clerk and deputy.

PART 1

ORGANIZATIONAL STRUCTURE AND OFFICERS
OF STATUTORY CITIES

31-4-101. Corporate authority vested. (1) The corporate and municipal authority of cities shall be vested in a governing body, to be denominated the city council, together with such officers as may be created under the authority of this title.

(2) The city council shall possess all the legislative powers granted to cities by law and other corporate powers of the city not conferred by law or by some ordinance of city council on some officer or agency of the city. The members of the city council shall have the management and control of the finances and all the property, real and personal, belonging to the corporation, and they shall determine the times and places of holding their meetings, which shall at all times be open to the public. The mayor and any three members may call special meetings by notice to each of the members of the city council personally served or left at his usual place of residence. The city council shall provide by ordinance for the appointment or for the election of such city officers, whose election or appointment has not been provided for by law, as are necessary for the good government of the city and for the due exercise of its municipal powers. All city officers whose terms of office are not prescribed in this title and whose powers and duties are not otherwise defined by law shall perform such duties, exercise such powers, and continue in office for such period, until their successors are appointed and qualified, as shall be prescribed by ordinance. All officers to be elected shall be elected at the regular election. The officers of cities shall receive such compensation and fees for their services as the city council shall by ordinance prescribe.

Source: L. 75: Entire title R&RE, p. 1023, § 1, effective July 1. L. 81: (1) amended, p. 1493, § 2, effective May 28.

Editor's note: This section is similar to former §§ 31-5-101 and 31-5-106 as they existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-101 is similar to former § 31-5-106 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Special meeting presumed legal and regularly called. Under this section when the record of a special meeting kept by the clerk shows that the meeting was called for the purpose of transacting the very business which was transacted, and that every member of the council was present and participated in the proceedings, the presumption is, in the absence of evidence to the contrary, that the meeting was a legal meeting

duly and regularly called. *City of Greeley v. Hamman*, 17 Colo. 30, 28 P. 460 (1891).

It is not required, under this section, that notice to the members or the record of service shall be preserved in any particular manner. Hence, when the record shows that a special meeting was called and held, it is to be presumed that the call was regular and that the service of notice was duly made as required by the statute, at least, until the contrary is proved. *City of Greeley v. Hamman*, 17 Colo. 30, 28 P. 460 (1891).

Applied in *Pikes Peak Power Co. v. City of Colo. Springs*, 105 F. 1 (8th Cir. 1900).

31-4-102. Mayor - qualifications and duties. (1) The mayor shall be elected at the regular election in the city. He or she shall be a registered elector who has resided within the limits of the city for a period of at least twelve consecutive months immediately preceding the date of the election; except that, in the case of annexation, any person who has resided within the annexed territory for the time prescribed in this subsection (1) shall be deemed to have met the residence requirements for the city to which the territory was annexed. The mayor shall hold the office for the term for which he or she has been elected or qualified. The mayor shall keep an office at some convenient place in the city, to be provided by the city council, and shall sign all documents which by statute or ordinance may require his or her signature.

(2) The mayor of the city shall be its chief executive officer and conservator of the peace, and it is his special duty to cause the ordinances and the regulations of the city to be faithfully and constantly obeyed. He shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause any violations or neglect of duty to be promptly corrected or reported to the proper tribunal for punishment and correction. The mayor has and shall exercise, within the city limits, the powers conferred upon the sheriffs of counties to suppress disorders and keep the peace. He shall also perform such other duties compatible with the nature of his office as the city council may from time to time require.

(3) The mayor shall be the presiding officer of the city council and shall have the same voting powers as any member of said council. The mayor shall be considered a member of the governing body and the city council. However, a city may provide by ordinance that the mayor shall not be entitled to vote on any matter before the council, except in the case of a tie vote. If such an ordinance is adopted, it shall also provide that any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract shall be subject to disapproval by the mayor as provided in section 31-16-104. Such an ordinance may provide or may be amended to provide that the mayor shall not be counted for purposes of determining a quorum or the requisite majority on any matter to be voted on by the council. Any such ordinance may be adopted, amended, or repealed only within the sixty days preceding the election of any mayor, to take effect upon such mayor's assumption of office.

Source: **L. 75:** Entire title R&RE, p. 1024, § 1, effective July 1. **L. 81:** (3) amended, p. 1493, § 3, effective May 28. **L. 83:** (1) amended, p. 1253, § 1, effective July 1. **L. 89:** (3) amended, p. 1287, § 3, effective April 6. **L. 2008:** (1) amended, p. 1252, § 3, effective August 5.

Editor's note: This section is similar to former §§ 31-5-102 and 31-5-103 as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-4-103. Mayor - vacancy - appointment - mayor pro tem. (1) In case of the mayor's death, disability, resignation, or other vacation of his office, the city council may order a special election as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced, as provided in section 31-4-105, and the city council may appoint some registered elector to act as mayor until such special election. Such special election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". If the city council does not call a special election, it shall fill the vacancy by appointment until the term of office of a successor elected at the next regular election has commenced, as provided in section 31-4-105.

(2) The city council may appoint one of their own number acting mayor or mayor pro tem who is entitled to act as mayor in case the mayor is absent from the city or is for any reason temporarily unable to perform the duties of his office.

Source: **L. 75:** Entire title R&RE, p. 1024, § 1, effective July 1. **L. 79:** (1) amended, p. 1172, § 3, effective July 1. **L. 81:** (2) amended, p. 1494, § 4, effective May 28.

Editor's note: This section is similar to former §§ 31-5-103 and 31-5-106 as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-4-103 is similar to former § 31-5-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A tie vote between candidates for the office of mayor did not create a vacancy in such office as to permit the city council to fill the vacancy under this section. *People ex rel. Dick v. Mosco*, 114 Colo. 464, 167 P.2d 949 (1946).

Lack of funds does not preclude special election. Where a vacancy occurs in the office of mayor of a city, the fact that the last annual

appropriation for election expenses was exhausted by the general election which followed it is no valid reason for the city council refusing to order a special election to fill the vacancy. *Rizer v. People*, 18 Colo. App. 40, 69 P. 315 (1902).

Mandamus lies. Under this section it is the duty of the city council to order such special election at its first regular session after a vacancy occurs, and in case of a failure or refusal to do so mandamus will lie to compel them to order such election. *Rizer v. People*, 18 Colo. App. 40, 69 P. 315 (1902).

31-4-104. Wards. Every city shall be divided by the city council into wards, and such wards shall be numbered consecutively beginning with the number one. The boundaries of said wards shall not be changed more often than once in six years, unless change is necessary to conform to constitutional apportionment requirements. Territory added to the city shall become a part of such ward or wards as may be determined by ordinance; but this shall not prevent apportionment to conform to constitutional requirements. The boundaries and number of wards shall be changed only by majority vote of all members elected to the governing body.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-104 as it existed prior to 1975.

31-4-105. Election of officers - terms. The registered electors of each city shall elect, at the regular election, a mayor, a clerk, and a city treasurer from the city at large. At the same election, the registered electors of each ward of the city shall elect two members of the city council. The election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The officers shall hold their respective offices for terms of two years, commencing at the first meeting of the governing body following the survey of election returns, unless the governing body provides by ordinance or resolution that terms shall commence on the first Monday after the first Tuesday in January following their election.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1. L. 94: Entire section amended, p. 1191, § 90, effective July 1.

Editor's note: This section is similar to former § 31-3-101 (1) as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-4-105 is similar to former § 31-3-101 (1) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a

prior provision has been included in the annotations to this section.

Previous council continues in effect till official date. When the individuals elected to

membership in the city council on November 3, assumed to act as council members on November 12, they were not qualified to act officially, their term of office did not begin until the first Monday after the first Tuesday in January, and

the only city council authorized to act prior to that date was the city council as it was constituted at the time the ordinance was introduced and passed upon first reading. *Marshall v. City of Golden*, 147 Colo. 521, 363 P.2d 650 (1961).

31-4-106. Councilman - residence - vacancies. Each councilman shall have resided in the ward in which he is a candidate for a period of at least twelve consecutive months immediately preceding the date of the election and shall be a registered elector therein; except that, in case the boundaries of the ward are changed pursuant to section 31-2-104 or 31-4-104 or as a result of annexation, any person who has resided within territory added to the ward for the time prescribed in this section shall be deemed to have met the residence requirements for the ward to which the territory was added. If any councilman, during the term of his office, removes from or becomes a nonresident of the ward in which he was elected, he shall be deemed thereby to vacate his office, effective upon the adoption by the city council of a resolution declaring such vacancy to exist. If any vacancy occurs in the office of councilman because of death, resignation, or removal or for any other reason, the same shall be filled by appointment by a majority vote of the city council or by election as provided in section 31-4-108 (2) (b). A successor to the person so appointed or elected shall be elected at the next regular election.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1. L. 79: Entire section amended, p. 1172, § 4, effective July 1. L. 83: Entire section amended, p. 1253, § 2, effective July 1.

Editor's note: This section is similar to former § 31-3-104 as it existed prior to 1975.

31-4-107. Appointment of officers - terms. (1) The members of the city council elected for each city at the meeting at which their terms commence, as provided in section 31-4-105, shall organize the city council. A majority of the total number of members is necessary to constitute a quorum for the transaction of business. They shall be judges of the election returns and qualification of their own members, and they shall determine the rules of their own proceedings. The city clerk shall keep a record of the proceedings, in such form as determined by the city council, which shall be open to the inspection and examination of any citizen. The councilmen may compel the attendance of absent members in such manner and under such penalties as they think fit to prescribe and shall elect from their own body a temporary president.

(2) (a) Upon taking office, or at such other time as may be provided by ordinance or resolution, the city council shall appoint a city attorney and shall appoint or provide for the appointment of such other officers as may be required by statute or ordinance and may appoint such other officers, including a city administrator, as may be necessary or desirable. One or more municipal judges shall be appointed in accordance with section 13-10-105 (1), C.R.S.

(b) One person may hold two or more appointive offices if provided by ordinance and if compatible with the interest of the city government as determined by the council. All officers of the city are subject to the control and direction of the mayor and may be removed by a vote of a majority of all members elected to the city council if appointed to serve at the pleasure of the city council or by such a vote on charges of incompetence, unfitness, neglect of duty, or insubordination, duly made and sustained, if appointed to serve for a term prescribed by ordinance; except that a municipal judge may be removed during his term of office only for cause, as set forth in section 13-10-105 (2), C.R.S. The council may provide by ordinance for the removal or suspension of any officer or employee, except the mayor, councilmen, clerk, treasurer, city administrator, city attorney, and municipal judge, by administrative proceeding presided over by a city officer or employee.

(3) The city council may provide by ordinance for four-year overlapping terms of office for council members. The ordinance may also provide for four-year terms for the mayor and other elective officers. The city council may reinstate the two-year terms provided in this

section by ordinance. Any ordinance passed pursuant to this subsection (3) shall be enacted at least one hundred eighty days before the next regular election and shall be subject, notwithstanding an emergency declaration, to referendum if the referendum is brought pursuant to section 31-11-105 or pursuant to an applicable municipal ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (3) shall extend or reduce the term for which any person was elected. If any vacancy occurs in an office for which a four-year term is in effect pursuant to this subsection (3), such vacancy shall be filled as provided in sections 31-4-106 and 31-4-108 (2) (b). If the office in which the vacancy occurs is not an office for which a successor would otherwise have been elected at the next regular election, the term of office of the successor elected at that regular election shall be shortened so that the following regular election for said office is held at the time at which it would have been held if no vacancy had occurred.

(4) (a) The city council may submit, by ordinance or resolution, for the approval of the registered electors at a regular or special election a proposal that the position of city clerk or city treasurer, or both such positions, be made appointive rather than elective, the appointments to be made by the city council. Such measure shall be made to take effect in such manner as to avoid shortening or extending the terms of any persons elected to such offices. If approved, appointments to either of such offices shall be in the manner provided for other appointive offices.

(b) The city council may also, by ordinance or resolution, submit for the approval of the registered electors a proposal for returning the office of clerk or treasurer, or both, from appointive to elective status. No such proposal, if approved, shall extend or reduce the term for which any person holds office.

Source: **L. 75:** Entire title R&RE, p. 1025, § 1, effective July 1. **L. 77:** (2)(b) amended, p. 794, § 5, effective May 28. **L. 79:** (3) amended, p. 1173, § 5, effective July 1. **L. 81:** (2)(b) amended, p. 1494, § 5, effective May 28. **L. 83:** (3) amended, p. 1254, § 3, effective July 1. **L. 93:** (3) amended, p. 698, § 5, effective May 4. **L. 94:** (1) and (2)(a) amended, p. 1192, § 91, effective July 1. **L. 95:** (3) amended, p. 440, § 26, effective May 8.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located at the back of the index.

ANNOTATION

Annotator's note. Since § 31-4-107 is similar to former §§ 31-3-101 and 31-5-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Council intended as election tribunal. The general assembly intended, by the language used in this section, to designate the council in cities as the tribunal to try election contests between its members. *Booth v. County Court*, 18 Colo. 561, 33 P. 581 (1893).

Number of council votes required. Since this section contains no provision concerning the number of council votes required to elect city officials, a vote of a majority of the members present, there being a quorum, is sufficient to elect, and the weight of authority is to the effect that a majority vote need not be a majority of those voting and a quorum is in fact present. *People ex rel. Sanders v. Hendrick*, 93 Colo. 512, 27 P.2d 493 (1933).

Mayor's election cognizable. Since the power to try election contests between its members is by this section plainly lodged with the common council, and since the mayor, by the express terms of § 31-4-102, is designated a member thereof, the contest of his election is expressly made cognizable by that body. *Booth v. County Court*, 18 Colo. 561, 33 P. 581 (1893).

Concurrent judicial jurisdiction. Where the statute provides that the city council shall be the judge of the qualifications, election, and returns of its own members, the power given is declared to be simply cumulative, and the concurrent jurisdiction of the courts is maintained. *Wells v. People ex rel. Dolan*, 78 Colo. 77, 239 P. 726 (1925).

Suspension of rules by unanimous consent. Such rules as the council itself may adopt, and which it is authorized to adopt to govern its own proceedings, may properly be suspended by unanimous consent. *City of Greeley v. Hamman*, 17 Colo. 30, 28 P. 460 (1891).

Additional duties may be imposed on clerk. Under this section the council may, if they see fit so to do, impose upon the clerk, as clerk, in addition to those specified by statute, such other duties as, in their judgment, may be deemed appropriate. *Orman v. City of Pueblo*, 8 Colo. 292, 6 P. 931 (1885).

Such as receipt of license moneys. There is nothing in the statute directly imposing upon the city clerk the duty of receiving moneys paid for licenses authorized to be issued, but under this section the council are clearly empowered thereby to require of him the performance of

such duty. *Orman v. City of Pueblo*, 8 Colo. 292, 6 P. 931 (1885).

For a case discussing the qualifications of members of the city council as to their right to vote for the officers elected by the city council, see *People ex rel. Ralston v. Herring*, 30 Colo. 445, 71 P. 413 (1902).

For a case, under the former law, discussing the question of voting for aldermen by voters of their own wards or by voters of the entire city, see *Dunton v. People ex rel. Akin*, 36 Colo. 128, 87 P. 540 (1906).

31-4-108. Expulsion from city council - vacancies in other offices. (1) Any member of the city council may be expelled or removed from office, for good cause shown, by a vote of two-thirds of all the members elected to the city council, but he may not be removed a second time for the same offense.

(2) (a) In case any office of an appointive officer becomes vacant before the regular expiration of the term thereof, the vacancy shall be filled by the city council by appointment.

(b) In case any office of an elective officer becomes vacant before the regular expiration of the term thereof, the vacancy may be filled by the city council by appointment or by election until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105. If the city council does not fill the vacancy by appointment or order an election within sixty days after the vacancy occurs, it shall order an election, subject to the municipal election code, as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105.

Source: **L. 75:** Entire title R&RE, p. 1026, § 1, effective July 1. **L. 83:** Entire section amended, p. 1254, § 4, effective July 1. **L. 88:** (2)(b) amended, p. 1125, § 4, effective April 4.

Editor's note: This section is similar to former § 31-5-108 as it existed prior to 1975.

31-4-109. Compensation and fees of officers. The mayor shall receive such compensation for his services as the city council, prior to his election, may fix as provided in this section. The city council, at least as early as the last monthly meeting before such regular municipal election, shall fix by ordinance the compensation and fees of members of the city council, including the compensation of the mayor and councilmen, for the period for which they will be elected or appointed if any change in said compensation is desirable. The city council shall neither increase nor diminish the compensation of any councilman or mayor during his term of office. Each person appointed to fill a vacancy in the office of mayor or councilman shall receive the same compensation as was established for the office when the vacancy occurred. All other officers of the city, together with all other employees of the city, shall receive such compensation as the city council may fix from time to time by ordinance or as may be established in a pay plan adopted by ordinance. The city council may from time to time contract for professional services and for such services pay such fees and charges as may be agreed upon.

Source: **L. 75:** Entire title R&RE, p. 1026, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-102 as it existed prior to 1975.

31-4-110. City clerk - duties - city seal. (1) The city clerk shall have the custody of all the laws and ordinances of the city council, shall keep a regular record of the proceedings of the city council, in such form as determined by the council, and shall perform such other

duties as may be required by statute or by the ordinances of the city. The clerk shall continue in office until a successor is appointed or elected and has complied with section 31-4-401.

(2) Each city council shall provide for the clerk's office a seal, which shall be the seal of the city, in the center of which shall be the word "Seal" and such other device as may be directed by ordinance and around the margin the name of the city and the state. Said seal shall be affixed to all transcripts, orders, or certificates which may be necessary or proper to authenticate under law or any ordinance of the city. For all attested certificates and transcripts other than those ordered by the city council, the same fees shall be paid to the clerk as are allowed to county officers for similar services.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1. L. 83: (1) amended, p. 1255, § 5, effective July 1.

Editor's note: This section is similar to former §§ 31-5-105 and 31-5-107 as they existed prior to 1975. For a detailed comparison, see the comparative tables in the back of the index.

31-4-111. City treasurer - powers and duties. The city treasurer has such powers and shall perform such duties as are prescribed by the statutes of this state and by the ordinances of the city council not inconsistent therewith.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-103 as it existed prior to 1975.

31-4-112. Marshal or chief of police - duties. The marshal or chief of police shall execute and return, by himself or by any member of the police force, all writs and processes directed to him by the municipal judge in any case arising under a city ordinance. In criminal cases, quasi-criminal cases, or cases in violation of city ordinances, he may serve the same in any part of the county in which such city is situate. The marshal, chief of police, or any member of the police force shall suppress all riots, disturbances, and breaches of the peace, shall apprehend all disorderly persons in the city, and shall pursue and arrest any person fleeing from justice in any part of the state. He shall apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city and, forthwith and without any warrant, bring such person before a municipal judge, county judge, or other competent authority for examination and trial pursuant to law. He has, in the discharge of his proper duties, powers and responsibilities similar to those which sheriffs have in like cases.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-105 as it existed prior to 1975.

31-4-112.1. Chief of police - permits for concealed weapons. (Repealed)

Source: L. 81: Entire section added, p. 1437, § 2, effective June 8. L. 2003: Entire section repealed, p. 650, § 9, effective May 17.

31-4-113. Terms of officers end upon adoption of charter. If any city adopts a charter pursuant to the provisions of article XX of the state constitution, the term of office of every officer of such city who has been elected or appointed pursuant to the general laws of this state or under the ordinances of such city shall terminate immediately upon the election and qualification of the elective officers provided for by such charter.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-109 as it existed prior to 1975.

PART 2

ORGANIZATIONAL STRUCTURE -
CITIES - CITY MANAGER FORM

31-4-201. Authority to reorganize - rights and powers. Any city may reorganize into a city council-city manager form of municipal government in accordance with the provisions of this part 2. However, no such city shall have conferred upon it by such reorganization any rights and powers except those rights and powers conferred upon cities by the general laws of this state.

Source: L. 75: Entire title R&RE, p. 1028, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-201 as it existed prior to 1975.

31-4-202. Petition - election. (1) When a petition, signed by five percent of the registered electors of the municipality, requesting an election on the question of adopting the city council-city manager form of government is presented to the city council, the city council shall adopt an ordinance calling for an election upon such question to be held within four calendar months from the date of the presentation of such petition. The petition shall state whether the mayor under such form of government shall be elected by and from among the members of the city council or from the city at large by a plurality of the votes cast for that office at the regular election. The question of adopting such form of government shall be submitted to the registered electors of the city at a special or regular election to be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(2) The mayor or, in case of the disability of the mayor, the mayor pro tem, immediately following the effective date of such ordinance, shall cause notice to be given of such election, which notice shall be given in the manner prescribed by the "Colorado Municipal Election Code of 1965".

(3) (a) If the petition requests that the mayor be elected by and from among the members of the city council, the question to be submitted at such election shall be: "Shall the City of _____ (name of city) reorganize by adopting the City Council-City Manager form of government as provided in part 2 of article 4 of title 31, Colorado Revised Statutes, with the mayor to be elected by and from among the members of the city council?". The form of ballot or voting machine tabs shall be: "For City Council-City Manager Form - Mayor elected by Council" and "Against City Council-City Manager Form - Mayor elected by Council".

(b) If the petition requests that the mayor be elected from the city at large by a plurality of the votes cast for that office at the regular election, the question to be submitted at such election shall be: "Shall the city of _____ (name of city) reorganize by adopting the City Council-City Manager form of government, as provided in part 2 of article 4 of title 31, Colorado Revised Statutes, with the mayor to be elected by a plurality of the votes cast for that office at the regular election?". The form of ballot or voting machine tabs shall be: "For City Council-City Manager Form - Mayor elected by Popular Vote" and "Against City Council-City Manager Form - Mayor elected by Popular Vote".

(4) The registered electors of any city which has previously reorganized into the city council-city manager form of government under this part 2 may, at any time, petition in the manner set forth in subsection (1) of this section for an election on:

(a) Returning to the original mayor-council form of government;

(b) Retaining the city council-city manager form of government but with the mayor to be elected by a plurality of the votes cast for that office at the regular election rather than elected by and from among the members of the city council; or

(c) Retaining the city council-city manager form of government but with the mayor to be elected by and from among the members of the city council.

Source: **L. 75:** Entire title R&RE, p. 1028, § 1, effective July 1. **L. 87:** (1) amended, p. 327, § 79, effective July 1. **L. 89:** (1) and (3) amended and (4) added, p. 1288, § 4, effective April 6.

Editor's note: This section is similar to former § 31-3-202 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-4-203. Majority vote carries - when effective. (1) If a majority of the votes cast are for the proposition, it shall be carried. The form of government existing in such city at the time of such election shall continue unchanged until the next regular election. Except as provided in subsection (2) of this section, the next regular election shall be held for the purpose of electing the officers required by that form of government. Upon the taking of office and compliance with section 31-4-401 by the new officers, the terms of office of existing officers shall terminate, the prior form of government shall cease, and the new form of government shall commence.

(2) If the proposition carried is to return to the original mayor-council form of government, the offices of mayor and other elected offices other than city council members shall be filled at a special election to be held according to the provisions of section 31-4-103; except that such offices shall be filled at the next regular election if such regular election is held less than four months following the adoption of the proposition. Upon the taking of office and compliance with section 31-4-401 by the mayor and other elected officers, the terms of office of existing officers shall terminate, the prior form of government shall cease, and the new form of government shall commence.

Source: **L. 75:** Entire title R&RE, p. 1028, § 1, effective July 1. **L. 89:** Entire section amended, p. 1289, § 5, effective April 6. **L. 93:** Entire section amended, p. 1438, § 138, effective July 1.

Editor's note: This section is similar to former § 31-3-203 as it existed prior to 1975.

31-4-204. Prior laws applicable - rights and liabilities continue. (1) All laws of the state applicable to the city before the adoption of the city council-city manager form of government and not inconsistent with the provisions of this part 2 shall apply to and govern such reorganized city.

(2) Any bylaw, ordinance, or resolution lawfully passed and in force in such city at the time of its reorganization shall remain in force and continue to be in effect until duly amended or repealed.

(3) The territorial limits of such city shall remain the same as under its former organization.

(4) All rights of whatever description which were vested in such city under its former organization shall be vested in the city after reorganization.

(5) No valid and legally subsisting right or liability either in favor of or against the city and no judicial proceedings, civil or criminal, shall be affected by such change of government unless otherwise provided in this part 2.

(6) No change in the form of government as provided in this part 2, either by adopting or abandoning the form of government as provided in this part 2, shall release or affect any debts, bonds, warrants, or other obligations, however evidenced, which shall continue as valid obligations of the city under the succeeding form of government.

Source: **L. 75:** Entire title R&RE, p. 1028, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-3-204 and 31-3-222 as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-4-205. Council members - vacancies. (1) The legislative and corporate authority of cities organized under this part 2 shall be vested in the city council members nominated

and elected, two from each ward and one from the city at large, for a term of two years. Members of the city council shall be registered electors of the city who have resided in their respective wards for a period of at least twelve consecutive months immediately preceding the election; except that, in case the boundaries of the ward are changed pursuant to section 31-2-104 or 31-4-104 or as a result of annexation, any person who has resided within territory added to the ward for the time prescribed in this subsection (1) shall be deemed to have met the residence requirements for the ward to which the territory was added.

(2) Within sixty days after a vacancy occurs in the city council, the council shall:

(a) Appoint a person possessed of all statutory qualifications to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105; or

(b) Order an election, subject to the municipal election code, to be held as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105.

(3) The city council may provide by ordinance for four-year overlapping terms of office for its members. The city council may reinstate the two-year terms provided in this section by ordinance. Any ordinance passed pursuant to this subsection (3) shall be enacted at least one hundred eighty days before the next regular election and shall be subject, notwithstanding any emergency declaration, to referendum if such is brought pursuant to section 31-11-105 or pursuant to an applicable municipal ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (3) shall extend or reduce the term for which any person was elected. Where four-year terms have been provided for council members pursuant to section 31-4-107 (3), council members shall continue to serve four-year terms unless two-year terms are reinstated pursuant to this subsection (3). If any vacancy occurs in the office of council member for which a four-year term is in effect pursuant to this subsection (3), the vacancy shall be filled as provided in subsection (2) of this section. If the office in which the vacancy occurs is not an office for which a successor would otherwise have been elected at the next regular election, the term of office of the successor elected at that regular election shall be shortened so that the following regular election for the office is held at the time at which it would have been held if no vacancy had occurred.

Source: **L. 75:** Entire title R&RE, p. 1029, § 1, effective July 1. **L. 79:** (2) and (3) amended, p. 1173, § 6, effective July 1. **L. 83:** (1) and (3) amended and (2) R&RE, pp. 1255, 1256, §§ 6, 7, effective July 1. **L. 88:** IP(2) amended, p. 1125, § 5, effective April 4. **L. 93:** (3) amended, p. 698, § 6, effective May 4. **L. 95:** (3) amended, p. 441, § 27, effective May 8.

Editor's note: This section is similar to former § 31-3-205 as it existed prior to 1975.

31-4-206. Council members - nomination - election - compensation. (1) The nomination and election of candidates for the city council provided for by this part 2 shall be in accordance with the "Colorado Municipal Election Code of 1965".

(2) The members of the city council shall receive such compensation as may be fixed by ordinance.

Source: **L. 75:** Entire title R&RE, p. 1029, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-206 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-4-206 is similar to former § 31-3-206 prior to the 1975 repeal and reenactment of this title, and laws

antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

This section applies exclusively to that municipal election at which the question of the adoption of a new form of city government is submitted, because it was the intention of the general assembly to provide for the reorganiza-

tion of the city government immediately following the election at which the change was authorized. *Marshall v. City of Golden*, 147 Colo. 521, 363 P.2d 650 (1961).

31-4-207. Mayor - selection. (1) Except as otherwise provided in subsection (3) of this section, if the mayor is to be elected by and from among the members of the city council, then at the meeting of the city council at which their terms commence, as provided in section 31-4-105, the city council shall choose, by a majority vote, for a term of two years, one of its members as chairperson, who shall have the title of mayor, and shall also choose, by a majority vote, for a term of two years, one of its members as vice-chairperson, who shall act as mayor pro tem. In case of a vacancy in the office of the mayor, the city council shall choose a successor for the unexpired term.

(2) If the mayor is to be elected by popular vote, he or she shall be elected by a plurality of the votes cast for that office at the regular election in the city. The mayor shall be a registered elector who has resided within the limits of the city for a period of at least twelve consecutive months immediately preceding the date of the election; except that, in the case of annexation, any person who has resided within the annexed territory for the time prescribed in this subsection (2) shall be deemed to have met the residence requirements for the city to which the territory was annexed. The mayor shall assume his or her office at the next regularly scheduled meeting of the city council following his or her election or upon such earlier date as the council may specify. Except as otherwise provided in subsection (3) of this section, the mayor shall hold his or her office for a term of two years. At the same meeting of the city council, the city council shall choose, by a majority vote, one of its members to act as mayor pro tem in the temporary absence of the mayor. The city council may appoint one of its members acting mayor in the event both the mayor and the mayor pro tem are temporarily absent from the city or unable to perform the duties of the mayor. In case of a vacancy in the office of the mayor, the city council shall choose his successor for the unexpired term.

(3) The city council may provide, by ordinance, four-year terms for the office of the mayor. The city council may reinstate two-year terms provided in this section by ordinance. Any ordinance passed pursuant to this subsection (3) shall be enacted at least one hundred eighty days before the next regular election and shall be subject, notwithstanding any emergency declaration, to referendum brought pursuant to section 31-11-105 or pursuant to an applicable ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (3) shall extend or reduce the term for which any person was elected. If a vacancy occurs in the office of the mayor for which a four-year term is in effect pursuant to this subsection (3), the vacancy shall be filled as provided in subsections (1) and (2) of this section.

Source: **L. 75:** Entire title R&RE, p. 1030, § 1, effective July 1. **L. 83:** Entire section amended, p. 1256, § 8, effective July 1. **L. 89:** Entire section amended, p. 1289, § 6, effective April 6. **L. 91:** (2) amended, p. 745, § 12, effective April 4. **L. 94:** (1) amended, p. 1192, § 92, effective July 1. **L. 98:** Entire section amended, p. 308, § 1, effective August 5.

Editor's note: This section is similar to former § 31-3-207 as it existed prior to 1975.

31-4-207.5. Mayor - powers and duties. The mayor shall be the presiding officer of the city council and shall have the same voting powers as any member of said council. The mayor shall be considered a member of the governing body and the city council and shall be recognized as the head of the city government for all ceremonial purposes, by the courts for serving civil processes, and by the government for purposes of military law. In addition, the mayor shall exercise such other powers and perform such other duties as are conferred and imposed upon him by this part 2 or the ordinances of the city.

Source: L. 89: Entire section added, p. 1290, § 7, effective April 6.

31-4-208. City attorney - municipal judge. The city council shall appoint a city attorney, who, upon taking office, shall be an attorney-at-law licensed to practice in the state of Colorado. The city council shall also appoint a municipal judge in accordance with section 13-10-105 (1), C.R.S. The city attorney shall serve at the pleasure of the city council. A municipal judge may be removed during his term of office only for cause, as provided in section 13-10-105 (2), C.R.S.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1. **L. 77:** Entire section amended, p. 794, § 6, effective June 3.

Editor's note: This section is similar to former § 31-3-208 as it existed prior to 1975.

ANNOTATION

There was no violation of due process clause in trial before nontenured judge. See People ex rel. People of City of Thornton v.

Horan, 192 Colo. 144, 556 P.2d 1217 (1976), cert. denied, 431 U.S. 966, 97 S. Ct. 2922, 53 L. Ed.2d 1061 (1977).

31-4-209. Rules - business - journal. The city council shall determine its own rules, procedure, and order of business and shall keep a journal of its proceedings. It may compel attendance of members and may punish members for misconduct.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1. **L. 79:** Entire section amended, p. 1174, § 7, effective July 1.

Editor's note: This section is similar to former § 31-3-209 as it existed prior to 1975.

31-4-210. City manager - qualifications - removal. The city council shall appoint a city manager who shall be the chief administrative officer of the city. The city manager shall be chosen solely on the basis of his executive and administrative qualifications and need not, when appointed, be a resident of the city or of the state. No member of the city council shall be chosen as city manager during his term of office. The city manager shall be appointed for an indefinite term, but he may be removed at the pleasure of the city council for cause. Before the city manager may be removed, he shall be given, if he so demands, a written statement of the reasons alleged for his removal and he has the right to be heard thereon at a public meeting of the council prior to the final vote on the question of his removal. Pending and during such hearing, the city council may suspend him from office. The action of the city council in suspending or removing the city manager shall be final. It is the intent of this part 2 to vest all authority and to fix all responsibility for such suspension or removal in the city council. In case of the absence or disability of the city manager, the city council may designate some qualified person to perform the duties of the office during such absence or disability.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-210 as it existed prior to 1975.

31-4-211. City manager - powers and responsibility. (1) The city manager is responsible to the city council for the proper administration of all affairs of the city placed in his charge and, to that end and except as otherwise provided in this part 2, he shall have the power to appoint and remove all officers and employees in the administrative service of the city except the city attorney and the municipal judge. Appointments made by the city manager shall be on the basis of executive and administrative ability, training, and

experience of such appointees in the work which they are to perform. All such appointments shall be without definite term.

(2) Officers and employees appointed by the city manager may be removed by him at any time for cause. The decision of the city manager in any such case shall be final.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-211 as it existed prior to 1975.

ANNOTATION

Denial of hearing not violation of due process. This section does not give rise to the type of expectancy to continued employment that serves as a ground for the existence of a property right protected by the fourteenth amendment. Therefore, no due process violation occurs in denying an employee a hearing on the city manager's decision to suspend or dismiss him. This is true regardless of whether the employee was gratuitously afforded an administrative hearing by the city manager, the procedural aspects of which were objected to by the employee. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

This section clearly indicates that an employee holds his position subject to the final decision of the city manager. The general assembly thereby specifically excluded the necessity of providing any procedure for an administrative hearing either before or after the city manager's decision. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

This section does not restrict the city manager's power to remove employees for particular causes. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

The addition of the words "for cause" does not automatically create a constitutionally protected property right. The entire statutory purpose must be considered in making such a determination. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

And public employment is generally not such right. Except in certain situations, as where an employee has formal tenure rights,

public employment is generally not a constitutionally protected property interest. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

An allegation that the city and city manager infringed a constitutionally protected liberty interest when they terminated plaintiff's employment for reasons that affected his reputation and ability to obtain other employment opportunities was *prima facie* insufficient to state a claim that defendants violated a liberty interest protected by the fourteenth amendment since every suspension or dismissal will necessarily affect one's community reputation and will make it more difficult to obtain future employment. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

The "for cause" language in this section requires only that the city manager's decision not be arbitrary. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

The power to remove employees included the power to suspend employees. *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

It is unclear whether the general assembly intended subsection (2) to confer on employees a protected property interest in continued employment. The statute's title and its language suggest that the legislature did not intend this particular statute to confer upon city employees an interest in their jobs. Rather, the legislature may have intended to clarify the powers of the city manager. *Derda v. Brighton, Colo., City of*, 53 F.3d 1162 (10th Cir. 1995).

Applied in *Clouser v. City of Thornton*, 676 F. Supp. 228 (D. Colo. 1987).

31-4-212. Council not to interfere. Except as otherwise provided in this part 2, neither the city council nor any of its committees or members shall direct or request the appointment of any person to or his removal from office by the city manager or in any other manner take part in the appointment or removal of officers and employees in the administrative service of the city. The city council and its members shall deal with that portion of the administrative service for which the city manager is responsible solely through the city manager, and neither the city council nor any member thereof shall give orders to any subordinate of the city, either publicly or privately. Any violation of the provisions of this section by a member of the city council constitutes misconduct and is punishable in such manner as may be determined by the other members of the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-212 as it existed prior to 1975.

31-4-213. Duties of city manager. It is the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that the ordinances of the city and the applicable laws of the state are enforced; to make such recommendations to the city council concerning the affairs of the city as seem desirable to him; to keep the city council advised of the financial conditions and future needs of the city; to prepare and submit to the city council the annual budget estimate; to prepare and submit to the city council such reports as are required by that body; to prepare and submit each month to the city council a detailed report covering all activities of the city, including a summary statement of revenues and expenditures for the preceding month, detailed as to appropriations and funds in such a manner as to show the exact financial condition of the city and of each department and division thereof as of the last day of the previous month; and to perform such other duties as may be prescribed by this part 2 or required of him by ordinance or resolution of the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-213 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-213 is similar to former § 31-3-213 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

In a council-manager form of government, the manager was responsible to council for the administration of all affairs of the city, and his duties required him to supervise the carrying out of policies previously set by the council. *Franks v. City of Aurora*, 147 Colo. 25, 362 P.2d 561 (1961).

Detrimental reliance and estoppel applicable. Where the conduct of the city in allowing its manager and engineer to exercise authority with respect to the carrying out of the project was such as to lead the defendants as reasonable men to believe that the officials were acting within the scope of the power granted to them, and the defendants relied, to their detriment, on the appearance thus created, it would be unjust to allow the city to renege; thus, the principles of estoppel relieve the defendants. *Franks v. City of Aurora*, 147 Colo. 25, 362 P.2d 561 (1961).

31-4-214. City manager sits in council - no vote. The city manager is entitled to a seat in the city council but shall have no vote therein. The city manager has the right to take part in the discussion of all matters coming before the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-214 as it existed prior to 1975.

31-4-215. Administrative plan. (1) The city council, upon the report and recommendation of the city manager, has the power to create and establish by ordinance administrative departments of city administration. It is the duty of the city manager to propose a plan of administrative organization to the city council within sixty days after his appointment which, if approved by the city council, shall be adopted by ordinance. The administrative plan shall provide for the establishment of the office of city clerk. The city clerk shall be ex officio city treasurer and clerk of the city council. Subject to the supervision and control of the city manager in all matters, the city clerk shall keep and supervise all accounts and have custody of all public moneys of the city; apportion and collect special assessments; issue licenses; collect license fees; make and keep a journal of proceedings of the city council; have custody of all public records of the city not specifically entrusted to any other office; and perform such other duties pertaining to such offices as are by ordinance required or assigned to him by the city manager. The administrative plan shall also provide for a chief of police, a fire chief, a health officer, and such other officers as are

deemed necessary for the efficient administration of the city, and such plan may or may not include, in the discretion of the city council, all of the officers named in sections 31-4-105 and 31-4-107. All such officers shall be appointed by the city manager as provided in section 31-4-211. This plan of the city manager shall be placed on file and shall be a matter of public record open to the examination and inspection of the public at all reasonable times. The city council, upon recommendation of the city manager, may change or abolish, by ordinance, any department or office established by ordinance, prescribe, distribute, or discontinue the functions and duties of departments and offices so established, or assign additional functions and duties to departments and offices.

(2) All administrative boards, departments, or offices existing in any city prior to its reorganization shall continue to exist after its reorganization under this part 2 until abolished, altered, or reorganized by ordinance of the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-215 as it existed prior to 1975.

31-4-216. Accounts of utilities. Accounts shall be kept for each public utility owned or operated by the city, distinct from other city accounts, and in such manner as to show the true and complete financial result of such city ownership and operation including all assets, liabilities, revenues, and expenses, and in accordance with the uniform classification of accounts as may be prescribed by the public utilities commission of this state.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-216 as it existed prior to 1975.

31-4-217. Publicity of records. Records of the city shall be open to inspection at reasonable times and under reasonable regulations established by the city as provided by article 72 of title 24, C.R.S.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1. L. 91: Entire section amended, p. 745, § 13, effective April 4.

Editor's note: This section is similar to former § 31-3-217 as it existed prior to 1975.

31-4-218. Pay of officers and employees. The salary or compensation of officers and employees shall be established by ordinance, which shall provide uniform compensation for like services. Such schedules of compensation may fix the minimum and maximum for any grade. An increase in compensation, within the limits provided for the grade, may be granted at any time by the city manager or other appointing authority upon the basis of efficiency and seniority.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-218 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "The Fair Labor Standards Act: Criminal and Civil Liability", see 14 Colo. Law. 1802 (1985).

31-4-219. Official bonds - waiver. The city manager, the city clerk, and such other officers and employees as the city council may require so to do shall give bonds in such

amounts and with such sureties as may be approved by the city council. The premiums on such bonds shall be paid by the city. The city council may waive the requirement of such bonds.

Source: **L. 75:** Entire title R&RE, p. 1032, § 1, effective July 1. **L. 89:** Entire section amended, p. 1290, § 8, effective April 6.

Editor's note: This section is similar to former § 31-3-219 as it existed prior to 1975.

31-4-220. Abandonment of form of government. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1032, § 1, effective July 1. **L. 87:** (1) amended, p. 327, § 80, effective July 1. **L. 89:** Entire section repealed, p. 1293, § 18, effective April 6.

Editor's note: Before its repeal, this section was similar to former § 31-3-220 as it existed prior to 1975.

31-4-221. Effective date of change. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1033, § 1, effective July 1. **L. 83:** Entire section amended, p. 1256, § 9, effective July 1. **L. 89:** Entire section repealed, p. 1293, § 18, effective April 6.

Editor's note: Before its repeal, this section was similar to former § 31-3-221 as it existed prior to 1975.

PART 3

ORGANIZATIONAL STRUCTURE AND OFFICERS OF STATUTORY TOWNS

31-4-301. Mayor - board of trustees - election - compensation. (1) The legislative and corporate authority of towns shall be vested in a board of trustees, consisting of one mayor and six trustees, who shall be registered electors who have resided within the limits of the town for a period of at least twelve consecutive months immediately preceding the date of the election; except that, in case of annexation, any person who has resided within the annexed territory for the time prescribed in this subsection (1) shall be deemed to have met the residence requirements for the town to which the territory was annexed.

(2) At the regular election, there shall be elected a mayor for a term of two years and six trustees for terms of two years. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(3) All officers elected under this section shall hold their offices until their successors are elected and have complied with section 31-4-401, and four members of said board of trustees shall constitute a quorum for the transaction of business.

(4) The mayor and members of the board of trustees shall receive such compensation as fixed by ordinance.

(5) The board of trustees may provide by ordinance for four-year overlapping terms of office for trustees. The ordinance may also provide for four-year terms for the mayor and any officers elected pursuant to section 31-4-304. The board of trustees may reinstate the two-year terms provided for in subsection (2) of this section by ordinance. Any ordinance passed pursuant to this subsection (5) shall be enacted at least one hundred eighty days before the next regular election and is subject, notwithstanding an emergency declaration, to referendum if the referendum is brought pursuant to section 31-11-105 or pursuant to an applicable municipal ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (5) shall extend or reduce the

term for which any person was elected. If any vacancy occurs in an office for which a four-year term is in effect pursuant to this subsection (5), the board of trustees shall fill such vacancy, as provided in section 31-4-303. If the office in which the vacancy occurs is not an office for which a successor would otherwise have been elected at the next regular election, the term of office of the successor elected at that regular election shall be shortened so that the following regular election for the office is held at the time at which it would have been held if no vacancy had occurred.

Source: **L. 75:** Entire title R&RE, p. 1033, § 1, effective July 1. **L. 77:** (3) amended, p. 286, § 58, effective June 29. **L. 79:** (5) amended, p. 1174, § 8, effective July 1. **L. 83:** (1), (3), and (5) amended, p. 1257, § 10, effective July 1. **L. 93:** (5) amended, p. 699, § 7, effective May 4. **L. 95:** (5) amended, p. 441, § 28, effective May 8.

Editor's note: This section is similar to former § 31-3-301 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Applied in *City of Denver v. Webber*, 15 Colo. App. 511, 63 P. 804 (1900); *Goerke v. Bd. of Trustees*, 89 Colo. 510, 4 P.2d 909 (1931).

31-4-301.5. Change in number of trustees. (1) The trustees of any statutory town may be reduced in number from six to four or again increased from four to six in the manner provided in this section.

(2) When a petition signed by five percent of the registered electors of the town requesting an election for the purpose of reducing the number of trustees from six to four is presented to the board of trustees of the town or when the board determines by majority vote of the entire board that such a reduction in the size of the board would be in the interest of the town, the board shall adopt an ordinance calling for such an election, to be held within four calendar months from the date of presentation of the petition.

(3) Such election may be held in connection with any regular or special election. In the event that the issue is approved at the election, three members of the board of trustees shall constitute a quorum for the transaction of business, and the legislative and corporate authority of the town shall be vested in the board of trustees consisting of one mayor and four trustees. The approval of a change reducing the number of trustees from six to four shall not have the effect of reducing the term for which any member of the board of trustees was previously elected.

(4) Where the number of trustees has been reduced from six to four, an election on the issue of increasing the number of trustees from four to six may be held at any time subsequent to two years following the election reducing the number of trustees from six to four. No new petition requesting an election to reduce or increase the number of trustees on the board of trustees may be filed or accepted by the board, nor may the board refer any such issue to the voters, for a period of two years following an election for the purpose of increasing or reducing the number of trustees.

Source: **L. 89:** Entire section added, p. 1290, § 9, effective April 6.

31-4-302. Mayor - powers. The mayor or, in his absence, one of the trustees, who may be elected mayor pro tem, shall preside at all meetings of the board of trustees and shall have the same voting powers as any member of said board. The mayor shall be considered a member of the governing body and the board of trustees. However, a town may provide by ordinance that the mayor shall not be entitled to vote on any matter before the board, except in the case of a tie vote. If such an ordinance is adopted, it shall also provide that any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract shall be subject to disapproval by the mayor as provided in

section 31-16-104. Such an ordinance may provide or may be amended to provide that the mayor shall not be counted for purposes of determining a quorum or for the requisite majority on any matter to be voted on by the board of trustees. Any such ordinance may be adopted, amended, or repealed only within the sixty days preceding any election of a mayor, to take effect upon such mayor's assumption of office.

Source: **L. 75:** Entire title R&RE, p. 1034, § 1, effective July 1. **L. 81:** Entire section amended, p. 1494, § 6, effective June 8. **L. 89:** Entire section amended, p. 1291, § 10, effective April 6.

Editor's note: This section is similar to former § 31-3-302 as it existed prior to 1975.

ANNOTATION

Applied in *Hayden v. Town of Aurora*, 57 Colo. 389, 142 P. 183 (1914).

31-4-303. Trustees to fill vacancy - mayor pro tem - clerk pro tem. The board of trustees has the power, by appointment, to fill all vacancies in the board or any other office, and the person so appointed shall hold his office until the next regular election and until his successor is elected and has complied with section 31-4-401. The board also has the power to fill a vacancy in the board or in any other elective office of the town by ordering an election to fill the vacancy until the next regular election and until a successor has been elected and has complied with section 31-4-401. If a vacancy in the board or in such other elective office is not filled by appointment or an election is not ordered within sixty days after the vacancy occurs, the board shall order an election, subject to the municipal election code, to be held as soon as practicable to fill the vacancy until the next regular election and until a successor has been elected and has complied with section 31-4-401. At its first meeting, the board shall choose one of the trustees as mayor pro tem who, in the absence of the mayor from any meeting of said board or during the mayor's absence from the town or his inability to act, shall perform the mayor's duties. The board also has the power to elect a clerk pro tem to perform the duties of the clerk during his absence or inability to act.

Source: **L. 75:** Entire title R&RE, p. 1034, § 1, effective July 1. **L. 81:** Entire section amended, p. 1495, § 7, effective June 8. **L. 83:** Entire section amended, p. 1257, § 11, effective July 1. **L. 88:** Entire section amended, p. 1125, § 6, effective April 4.

Editor's note: This section is similar to former § 31-3-303 as it existed prior to 1975.

31-4-304. Appointment of officers - compensation. The board of trustees shall appoint a clerk, treasurer, and town attorney, or shall provide by ordinance for the election of such officers, and may appoint such other officers, including a town administrator, as it deems necessary for the good government of the corporation, and it shall prescribe by ordinance their duties when the same are not defined by law and the compensation or fees they are entitled to receive for their services. The board of trustees may require of them an oath of office and a bond, with surety, for the faithful discharge of their duties. The election of officers shall be at the regular election, and no appointment of any officer shall continue beyond thirty days after compliance with section 31-4-401 by the members of the succeeding board of trustees.

Source: **L. 75:** Entire title R&RE, p. 1034, § 1, effective July 1. **L. 83:** Entire section amended, p. 1258, § 12, effective July 1. **L. 91:** Entire section amended, p. 745, § 14, effective April 4.

Editor's note: This section is similar to former § 31-3-304 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "Rights of a Hold-over Trustee Under Colorado Law of 1929", see 2 Rocky Mt. L. Rev. 254 (1930).

Annotator's note. Since § 31-4-304 is similar to former § 31-3-304 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Duties of town attorney left to board. There is no statute defining the duties of town attorneys of incorporated towns, but under the provisions of this section, it is left to the board of

trustees of such a municipality to fix and determine the character of services to be rendered and compensation to be paid to its attorneys. *Kinzie v. Haxtun*, 97 Colo. 456, 50 P.2d 545 (1935).

Decisions by town attorney and manager are discretionary as a matter of law and entitled to official immunity if such decisions are of a judgmental, planning, or policy nature and the officials are acting in their official capacities and not outside the scope of their offices. *Troxel v. Town of Basalt*, 682 P.2d 501 (Colo. App. 1984).

31-4-305. Clerk - duties. The clerk shall attend all meetings of the board of trustees and make a true and accurate record of all the proceedings, rules, and ordinances made and passed by the board of trustees. Records of the town shall be open to inspection at all reasonable times and under reasonable regulations established by the town as provided by article 72 of title 24, C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1034, § 1, effective July 1. **L. 91:** Entire section amended, p. 746, § 15, effective April 4.

Editor's note: This section is similar to former § 31-3-302 as it existed prior to 1975.

31-4-306. Marshal or chief of police - powers and duties. The marshal or chief of police shall have the same power that sheriffs have by law, coextensive with the county in cases of violation of town ordinances, for offenses committed within the limits of the town. He shall execute all writs and processes directed to him by the municipal judge in any case arising under a town ordinance and receive the same fees for his services that sheriffs are allowed in similar cases.

Source: **L. 75:** Entire title R&RE, p. 1034, § 1, effective July 1. **L. 77:** Entire section amended, p. 795, § 7, effective June 3. **L. 91:** Entire section amended, p. 746, § 16, effective April 4.

Editor's note: This section is similar to former § 31-3-305 as it existed prior to 1975.

31-4-307. Removal of officers - causes - notice. By a majority vote of all members of the board of trustees, the mayor, the clerk, the treasurer, any member of the board, or any other officer of the town may be removed from office. No such removal shall be made without a charge in writing and an opportunity of hearing being given unless the officer against whom the charge is made has moved out of the limits of the town. When any officer ceases to reside within the limits of the town, he may be removed from office pursuant to this section. A municipal judge may be removed during his term of office only for cause, as set forth in section 13-10-105 (2), C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1034, § 1, effective July 1. **L. 77:** Entire section amended, p. 795, § 8, effective June 3. **L. 81:** Entire section amended, p. 1495, § 8, effective June 8. **L. 91:** Entire section amended, p. 746, § 17, effective April 4.

Editor's note: This section is similar to former § 31-3-306 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-307 is similar to former § 31-3-306 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Constitutional grounds for removal. Under this section the holder of an elective office, duly elected by the people, should not be removed except for official misconduct, such misconduct as affects the performance of his duties as an officer, and for offenses against the corporation of a character directly affecting its rights and interests, and this conclusion is clearly sustainable on constitutional grounds. *Bd. of Trustees v. People ex rel. Keith*, 13 Colo. App. 553, 59 P. 72 (1899).

The power of removal must be exercised under the same limitations, precautions, and sanctions as in other judicial proceedings, and the regularity of the proceedings and the legality of the removal must always be open to review in the courts. *Bd. of Trustees v. People ex rel. Keith*, 13 Colo. App. 553, 59 P. 72 (1899).

Mere recital in board minutes insufficient. Upon proceedings in mandamus, to contest the

right of removal, it is incumbent upon the person or persons attempting to remove respondent to show that such charges were preferred, and that they were sustained by legal evidence, and the mere recital in the minutes of the board that there was evidence offered, and that the board found the accused guilty is not sufficient. *Bd. of Trustees v. People ex rel. Keith*, 13 Colo. App. 553, 59 P. 72 (1899).

Officer not within section. When no ordinance had ever been adopted by a town creating an office of deputy marshal and a plaintiff had never been hired or appointed other than as a deputy marshal, then he is not one of those town officers who is entitled to the protection of the removal provisions of the statute, and therefore he can be summarily discharged. *Mitchell v. Town of Eaton*, 176 Colo. 473, 491 P.2d 587 (1971).

Implicit right to discharge. Unless otherwise limited or restricted by statute or ordinance, implicit in the power of a city or town to hire is the power to discharge at any time without notice and without necessity of written charges and hearing thereon. *Mitchell v. Town of Eaton*, 176 Colo. 473, 491 P.2d 587 (1971).

PART 4

REQUIREMENTS AND COMPENSATION OF OFFICERS

31-4-401. Oath of officers - bonds - waiver - declaring office vacant. (1) All officers elected or appointed in any municipality shall take an oath or affirmation, administered by the municipal judge, clerk, or other person who is designated by the governing body or who is authorized by law to administer oaths, to support the constitution of the United States and the state constitution.

(2) The governing body of any city or town may require, from the treasurer and such other officers as it determines proper, a bond, with proper penalty and surety, for the care and disposition of municipal funds in their hands and the faithful discharge of the duties of their offices. Such governing body has the power to declare vacant the office of any person appointed or elected to any office who fails to take the oath of office or give bond when required within ten days after he has been notified of his appointment or election, and it shall proceed to appoint his successor as in other cases of vacancy.

Source: **L. 75:** Entire title R&RE, p. 1035, § 1, effective July 1. **L. 89:** (2) amended, p. 1291, § 11, effective April 6. **L. 91:** (2) amended, p. 746, § 18, effective April 4.

Editor's note: This section is similar to former § 31-5-301 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-401 is similar to § 31-5-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent

thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Officers subject to bond requirement. The treasurer is not the only officer who may be expected to collect or have in his hands corporation funds, because this section expressly pro-

vides for the council's requiring a bond, with sureties, from such other officers as may have the care or disposition of such funds. *Orman v. City of Pueblo*, 8 Colo. 292, 6 P. 931 (1885).

31-4-402. New bond. In the event that the official bond of any officer of a city or town, after the taking and approval thereof, becomes insufficient by reason of the death or insolvency of any of the sureties thereon, the governing body of such city or town may require such officer to procure additional sureties or to give a new bond and may designate the time when such additional sureties or new bond shall be furnished, which shall not be less than ten days, or may waive the requirement for such sureties or new bond. In the event that the additional sureties or new bond is not furnished within the time so designated and the requirement for such sureties or new bond is not waived, the office shall be declared vacant, and the vacancy shall be filled by election or appointment as provided by law.

Source: **L. 75:** Entire title R&RE, p. 1035, § 1, effective July 1. **L. 89:** Entire section amended, p. 1292, § 12, effective April 6.

Editor's note: This section is similar to former § 31-5-302 as it existed prior to 1975.

31-4-403. Lawful pay only for governing bodies. No member of the governing body of any city or town shall receive any compensation for his services as such member except as provided by law.

Source: **L. 75:** Entire title R&RE, p. 1035, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-303 as it existed prior to 1975.

31-4-404. Not to be appointed to office. (1) During the time for which he has been elected or for one year thereafter, no member of the governing body of any city or town shall be appointed to any municipal office which is created or the emoluments of which are increased during the term for which he has been elected except in the cases provided in this title.

(2) Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body, shall not vote thereon, and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(3) A member of the governing body of any city or town may vote notwithstanding subsection (2) of this section if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure provisions of section 24-18-110, C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1035, § 1, effective July 1. **L. 88:** Entire section amended, p. 1127, § 1, effective March 18; entire section amended, p. 907, § 2, effective July 1.

Editor's note: This section is similar to former § 31-5-304 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Conflicts of Interest in Government", see 18 Colo. Law. 595 (1989).

31-4-405. Emoluments not to be increased. The emoluments of any member of the governing body, including the mayor, trustees, and councilmen, shall not be increased or diminished during the term for which he has been elected or appointed except in the case of abolition of an office, in which case the emoluments of the office shall cease at the time of such abolishment. Any member of the governing body, including the mayor, trustees, and councilmen, who has resigned or vacated an office prior to the end of his elective or appointive term shall not be eligible to reelection or reappointment to the same during such term if during such term the emoluments have been increased.

Source: L. 75: Entire title R&RE, p. 1035, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-305 as it existed prior to 1975.

31-4-406. Territorial corporations - compensation fixed by electors. In cities and towns of not more than five thousand inhabitants incorporated prior to July 3, 1877, the mayor and members of the governing body shall not receive any compensation for services rendered by them as such mayor or members unless the question of paying such mayor or members for their services is first submitted to the registered electors of such city or town and unless a majority of those voting thereon vote in favor thereof. All ordinances, resolutions, and other acts of the governing body of any such city or town authorizing or directing the payment of any compensation to any such officer shall be and remain void. Nothing in this section shall apply to any municipal judge who acts or officiates as president of any governing body.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1. L. 87: Entire section amended, p. 327, § 81, effective July 1.

Editor's note: This section is similar to former § 31-5-306 as it existed prior to 1975.

31-4-407. Penalty for receiving illegal compensation. Any mayor or member of the governing body of any city or town who takes or receives payment for any services rendered by him contrary to the provisions of section 31-4-406 commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Said fines, when collected, shall be paid into the general fund of said city or town.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-307 as it existed prior to 1975.

PART 5

OFFICERS' RECALL

31-4-501. Officers subject to recall. Every elected officer of any municipality of the state of Colorado may be recalled from office at any time by the registered electors of the municipality in the manner provided in section 4 of article XXI of the state constitution. The provisions of this part 5 shall apply to all municipalities except to the extent that a municipality has adopted provisions pursuant to article XX or XXI of the state constitution inconsistent with this part 5.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1. L. 85: Entire section amended, p. 1349, § 20, effective April 30.

Editor's note: This section is similar to former § 31-5-201 as it existed prior to 1975.

31-4-502. Procedure - petition - signatures. (1) The procedure to effect the recall of an elective officer of a municipality shall be as follows:

(a) (I) A petition containing the requisite number of signatures under paragraph (d) of this subsection (1) shall be filed in the office of the municipal clerk, demanding an election of a successor to the officer named in the petition. Each petition shall designate by name and address not less than three nor more than five persons, referred to in this section as the "committee", who shall represent the signers thereof in all matters affecting the same. The petition shall clearly indicate the name of the municipality and the name of the officer sought to be recalled. The petition shall include the name of only one person to be recalled. The petition shall contain a general statement, in not more than two hundred words, of the grounds on which the recall is sought, which statement shall be intended for the information of the electors of the municipality. Such electors shall be the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds assigned for recall, and said grounds shall not be open to review.

(II) The signatures to a recall petition need not all be on one sheet of paper. At the top of each page shall be printed, in bold-faced type, the following:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to sign such petition when not a registered elector.

Do not sign this petition unless you are a registered elector. To be a registered elector, you must be a citizen of Colorado and registered to vote in (name of municipality).

Do not sign this petition unless you have read or have had read to you the proposed measure in its entirety and understand its meaning.

(b) Directly following the warning in paragraph (a) of this subsection (1) shall be printed in bold-faced type the following:

Petition to recall (name of person sought to be recalled) from the office of (title of office).

(c) No recall petition shall be circulated until it has been approved as meeting the requirements of this section as to form. The clerk shall approve or disapprove a petition as to form by the close of the second business day following submission of the proposed petition. The clerk shall mail written notice of such clerk's action to the officer sought to be recalled on the day that any such petition is approved.

(d) The petition shall be signed by registered electors entitled to vote for a successor of the incumbent sought to be recalled equal in number to twenty-five percent of the entire vote cast for all the candidates for that particular office at the last preceding regular election held in the municipality. If more than one person is required by law to be elected to fill the office of which the person sought to be recalled is an incumbent, then the recall petition shall be signed by registered electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent of the entire vote cast at the last preceding regular election held in the municipality for all candidates for the office to which the incumbent sought to be recalled was elected as one of the officers thereof, such entire vote being divided by the number of all officers elected to such office at the last preceding regular election held in the municipality.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1. L. 81: (1)(a) amended, p. 1509, § 37, effective July 1. L. 85: (1)(a) to (1)(c) amended, p. 1349, § 21, effective April 30. L. 91: Entire section amended, p. 747, § 19, effective April 4.

Editor's note: This section is similar to former § 31-5-202 as it existed prior to 1975.

ANNOTATION

The plain meaning of the provision of this section requiring that a warning appear “at the top of each page” of a recall petition is that the warning language must be printed at the top of each page upon which a person might sign his or her name. *Mirandette v. Pugh*, 934 P.2d 883 (Colo. App. 1997).

Requirement of subsection (1)(a)(I) that recall petition contain a demand for the election

of a successor to the officer to be recalled applicable to recall petitions in municipality at issue under express terms of city charter incorporating this statutory provision. Accordingly, trial court erred when it concluded that this requirement not applicable to recall petition affecting municipal official. *Combs v. Nowak*, 43 P.3d 743 (Colo. App. 2002).

31-4-503. Petition in sections - signing - affidavit - review - tampering with petition. (1) Any recall petition may be circulated and signed in sections, but each section shall contain a full and accurate copy of the title and text of the petition.

(2) (a) The signatures need not all be on one sheet of paper. All such recall petitions shall be filed in the office of the municipal clerk within sixty days from the date on which the municipal clerk approves the petition as to form.

(b) Any recall petition shall be signed only by registered electors using their own signatures, after which each such elector shall print or, if such elector is unable to do so, shall cause to be printed such elector's legal name; the residence address of such person, including the street and number, if any; and the date of signing the same.

(c) To each such petition or section thereof shall be attached an affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the said petition, that the affiant made no misrepresentation of the purpose of such petition to any signer of the petition, that each signature on the petition was affixed in the affiant's presence, that each signature on the petition is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the affiant neither has paid nor shall pay and that the affiant believes that no other person has so paid or shall pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to sign such petition.

(d) Any disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect.

(3) (a) The municipal clerk shall issue a written determination that a recall petition is sufficient or not sufficient by the close of business on the fifth business day after such petition is filed or, if such day is not a regular business day, on the first regular business day thereafter, unless a protest has been filed prior to that date. The clerk shall forthwith mail a copy of such written determination to the officer sought to be recalled and to the committee. Any such petition shall be deemed sufficient if the municipal clerk determines that it was timely filed, has attached thereto the required affidavits, and was signed by the requisite number of registered electors of the municipality within sixty days following the date upon which the clerk approved the form of the petition. The clerk shall not remove the signature of an elector from the petition after such petition is filed. If a petition is determined by the clerk to be not sufficient, the clerk shall identify those portions of the petition that are not sufficient and the reasons therefor.

(b) A protest in writing under oath may be filed in the office of the municipal clerk by some registered elector who resides in the municipality within fifteen days after such petition is filed setting forth specifically the grounds of such protest. Grounds for protest may include, but shall not be limited to, the failure of any portion of a petition or circulator affidavit or petition circulator to meet the requirements of this section. The municipal clerk shall mail a copy of such protest to the officer named in the petition, to the committee named in the petition as representing the signers of the petition, and to the county clerk and recorder, together with a notice fixing a time for hearing such protest not less than five nor more than ten days after such notice is mailed. The county clerk and recorder shall, upon receipt of such notice, prepare a registration list pursuant to section 31-10-205 to be utilized in determining whether such petition is sufficient. Every hearing shall be before the

municipal clerk with whom such protest is filed, who shall serve as hearing officer unless some other person is designated by the governing body as the hearing officer, and the testimony in every such hearing shall be under oath. The hearing officer shall have the power to issue subpoenas and compel the attendance of witnesses. Such a hearing shall be summary and not subject to delay and shall be concluded within thirty days after such petition is filed. No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the hearing officer shall identify those portions of the petition that are not sufficient and the reasons for the insufficiency. The result of such a hearing shall be forthwith certified to the committee and the officer sought to be recalled.

(c) In case the recall petition is not sufficient, it may be withdrawn by a majority of the committee and, within fifteen days after the municipal clerk or hearing officer issues a written determination that the petition is not sufficient, may be amended by the addition of any required information relating to the signers thereof or the attachment of proper circulator affidavits and refiled as an original petition; except that any petition amended and refiled as provided in this paragraph (c) may not again be withdrawn and refiled. The municipal clerk shall issue a written determination that such refiled petition is sufficient or not sufficient within four business days after said petition is filed. Any protest concerning the refiled petition shall be filed within five business days of the date on which such petition was refiled, and any hearing shall be conducted as provided in paragraph (b) of this subsection (3).

(d) The finding as to the sufficiency of any petition may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of either the officer sought to be recalled or the officer's representative or a majority of the committee, but such review shall be had and determined forthwith. The sufficiency or the determination of the sufficiency of the petition referred to in this section shall not be held or construed to refer to the grounds assigned in such petition for the recall of the incumbent sought to be recalled from the office thereby.

(4) When such recall petition is determined sufficient, the municipal clerk shall submit said petition, together with a certificate of its sufficiency, to the governing body of such municipality at the first meeting of such body following expiration of the period within which a protest may be filed or at the first meeting of such body following the determination of a hearing officer that a petition is sufficient, whichever is later. The governing body shall thereupon order and fix a date for the recall election to be held not less than thirty days nor more than ninety days from the date of submission of the petition to the governing body by the municipal clerk and determine whether voting in the recall election is to take place at the polling place or by mail ballot; but, if a regular election is to be held within one hundred eighty days after the date of submission of said petition, the recall election shall be held as a part of said regular election; except that, if the officer sought to be recalled is seeking reelection at said regular election, only the question of such officer's reelection shall appear on the ballot. If a successor to the officer sought to be recalled is to be selected at such regular election and the officer sought to be recalled is not seeking reelection, the question of such officer's recall shall not appear on the ballot of such regular election.

(4.5) A recall election pursuant to this part 5 may only be conducted as part of a coordinated election if the content of the recall election ballot is finally determined by the date for certification of the ballot content for the coordinated election to the county clerk pursuant to section 1-5-203 (3), C.R.S.

(5) Any person who willfully destroys, defaces, mutilates, or suppresses any recall petition or who willfully neglects to file or delays the delivery of the recall petition or who conceals or removes any recall petition from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: **L. 75:** Entire title R&RE, p. 1037, § 1, effective July 1. **L. 85:** (2) amended, p. 1349, § 22, effective April 30. **L. 88:** (5) added, p. 295, § 10, effective May 29. **L. 91:**

(1) to (4) amended, p. 749, § 20, effective April 4. **L. 2000:** (2)(c), (3)(b), and (4) amended and (4.5) added, p. 793, § 9, effective August 2. **L. 2004:** (4) amended, p. 1523, § 3, effective May 28.

Editor's note: This section is similar to former § 31-5-203 as it existed prior to 1975.

31-4-504. Resignation - vacancy filled - election - ballot - nomination. (1) If any officer resigns by submitting a written letter of resignation to the clerk at any time prior to the recall election, all recall proceedings shall be terminated, and the vacancy caused by such resignation shall be filled as provided by law. If the resignation occurs after the ballots have been prepared or at a time when it would otherwise be impracticable to remove the recall question from the ballot, no votes cast on the recall question shall be counted.

(2) At least ten days before the recall election, the clerk shall give notice of the election in accordance with section 31-10-501. Except as otherwise provided in this part 5, the recall election shall be conducted and returned and the result of such election declared in all respects as in the case of regular elections.

(3) (a) On the official ballot at such elections shall be printed, in not more than two hundred words, the reasons set forth in the petition for demanding his recall, and, in not more than three hundred words, there shall also be printed, if desired by him, the officer's justification of his course in office. Any such reasons or justification shall be submitted to the municipal clerk by the date on which a nominating petition must be filed pursuant to subsection (4) of this section. If such officer resigns at any time subsequent to the calling of the recall election, the recall election shall be held, notwithstanding such resignation.

(b) There shall be printed on the official ballot, as to every officer whose recall is to be voted on, the words, "Shall (name of person against whom recall petition is filed) be recalled from the office of (title of office)?" Following such question shall be the words "yes" and "no" on separate lines with a blank space at the right of each in which the voter shall indicate, by marking a cross mark (X), his vote for or against such recall.

(c) On such ballots, under each question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person sought to be recalled, but no vote cast shall be counted for any candidate for such office unless the voter also voted for or against the recall of such person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. All candidates on the ballot shall be listed in alphabetical order.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), candidates for the office at a recall election may be nominated by petition as provided in section 31-10-302; except that nominating petitions may be circulated beginning on the first business day after the governing body sets the date for the recall election and shall be filed no later than twenty days prior to such recall election.

(b) Where the governing body of the municipality chooses to conduct the recall election by mail ballot in accordance with the requirements of section 31-4-503 (4), candidates shall have not less than ten calendar days beginning on the first calendar day after the governing body sets the date for the recall election within which to circulate nominating petitions, and such petitions shall be filed no later than forty-five days prior to such recall election.

(5) (a) Applications for absentee ballots shall be made available by the municipal clerk no later than twenty-four hours after the governing body fixes the date for the holding of the recall election through the close of business on the fifth day before the recall election.

(b) Absentee ballots shall be available no later than ten days before the recall election.

(c) The absentee polling place in the office of the municipal clerk shall be open during regular business hours between the tenth and fifth day preceding the recall election.

(6) If a majority of those voting on said question of the recall of any incumbent from office vote "no", said incumbent shall continue in said office. If a majority vote "yes", such incumbent shall be removed from such office upon compliance with section 31-4-401 by his successor.

(7) If the vote in such recall election recalls the officer, the candidate who has received the highest number of votes for the office thereby vacated shall be declared elected for the remainder of the term, and a certificate of election shall be forthwith issued to him by the

canvassing board. In case the person who received the highest number of votes fails to comply with section 31-4-401 within fifteen days after the issuance of a certificate of election, or in the event no person sought election, the office shall be deemed vacant and shall be filled according to law.

(8) Mandatory or optional recounts of ballots cast in a recall election shall be conducted in accordance with section 31-10-1207.

Source: **L. 75:** Entire title R&RE, p. 1037, § 1, effective July 1. **L. 83:** (1), (5), and (6) amended, p. 1258, § 13, effective July 1. **L. 91:** Entire section amended, p. 752, § 21, effective April 4. **L. 96:** (3)(a) and (4) amended, p. 1768, § 63, effective July 1. **L. 2000:** (1), (2), and (5)(c) amended and (8) added, pp. 794, 795, §§ 10, 11, effective August 2. **L. 2004:** (4) amended, p. 1523, § 4, effective May 28.

Editor's note: This section is similar to former § 31-5-204 as it existed prior to 1975.

31-4-504.5. Incumbent not recalled - reimbursement. (1) If at any recall election the incumbent whose recall is sought is not recalled, or in the event of a protest, the hearing officer determines that the petitions are not sufficient based upon the conduct on the part of petition circulators, the municipality may repay the incumbent for any money actually expended as expenses of such election when such expenses are authorized by this section.

(2) (a) Authorized expenses shall include, but are not limited to, moneys spent in challenging the sufficiency of the recall petition and in presenting to the voters the official position of the incumbent, to include campaign literature and advertising and the maintaining of a campaign headquarters.

(b) Unauthorized expenses shall include, but are not limited to, moneys spent on challenges and court actions not pertaining to the sufficiency of the recall petition; personal expenses for meals, lodging, and mileage for the incumbent; costs of maintaining a campaign staff; reimbursement for expenses incurred by a campaign committee which has solicited contributions; reimbursement of any kind for employees in the incumbent's office; and all expenses incurred prior to the filing of the recall petition.

(3) The incumbent shall file a complete and detailed request for reimbursement with the governing body of the municipality holding the recall election or protest hearing, which shall then review the reimbursement request for appropriateness under subsection (2) of this section, and, in the event the municipality has determined by ordinance to repay such expenses, such municipality shall repay such expenses within forty-five days of receipt of the request.

(4) (Deleted by amendment, L. 91, p. 754, § 22, effective April 4, 1991.)

Source: **L. 75:** Entire title R&RE, p. 1175, § 1, effective July 1. **L. 84:** (3) amended, p. 837, § 1, effective July 1. **L. 91:** (1), (3), and (4) amended, p. 754, § 22, effective April 4.

ANNOTATION

Financial limitation on reimbursement unconstitutional. Statute which places a ten cent per voter limitation on reimbursement of expenses to an incumbent who prevails in a recall

election violates § 4 of article XXI, Colo. Const. *Passarelli v. Schoettler*, 742 P.2d 867 (Colo. 1987) (decided prior to deletion of subsection (4) in 1991).

31-4-505. Recall after six months - second petition. (1) No recall petition shall be circulated or filed and no pending recall proceedings shall be continued against any officer until the officer has actually held the office for at least six months following the officer's election or reelection.

(2) After one recall petition and election, no further petition shall be filed against the same officer during the term for which he was elected unless the petitioners signing said petition equal fifty percent of all ballots cast for that office at the last preceding regular election.

Source: L. 75: Entire title R&RE, p. 1038, § 1, effective July 1. **L. 2000:** (1) amended, p. 795, § 12, effective August 2.

Editor's note: This section is similar to former § 31-5-205 as it existed prior to 1975.

31-4-506. Disclosure of contributions, contributions in kind, and expenditures. (Repealed)

Source: L. 2000: Entire section added, p. 795, § 13, effective August 2. **L. 2002:** Entire section repealed, p. 199, § 3, effective April 3.

31-4-507. Powers of clerk and deputy. (1) Except as otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform the duties of the clerk's office.

Source: L. 2000: Entire section added, p. 795, § 14, effective August 2.

MUNICIPAL ELECTIONS

ARTICLE 10

Municipal Election Code

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PART 1

DEFINITIONS AND GENERAL PROVISIONS

31-10-101. Short title. This article shall be known and may be cited as the “Colorado Municipal Election Code of 1965”.

Source: L. 75: Entire title R&RE, p. 1039, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-10-101 as it existed prior to 1975.

31-10-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Clerk” means the clerk of the municipality who is the custodian of the official records of the municipality or any person delegated by the clerk to exercise any of his powers, duties, or functions.

(2) “Election official” means any clerk, election commission, judge of election, or municipal governing body engaged in the performance of election duties as required by this article.

(3) “Electronic voting system” means any ballot card electronic voting system meeting the requirements set forth in section 1-5-615, C.R.S.

(4) “Pollbook” means the list of voters to whom ballots are delivered or who are permitted to enter a voting machine booth for the purpose of casting their votes at a municipal election. Names shall be entered in the pollbook in the order in which the ballots are delivered at the polls or in the order in which voters are permitted to enter a voting machine booth for the purpose of casting their votes.

(5) “Population” means population as determined by the latest federal census.

(6) “Registration book” means all of the registration records for each general election precinct arranged alphabetically according to surnames and bound together in book form.

(7) “Registration list” means the list of registered electors of each municipal election precinct prepared by the county clerk and recorder from the county registration books in accordance with section 31-10-205.

(8) “Registration record” means the record on which is entered the official registration and identification of an individual elector and a list of the elections at which he has voted since the date of registration.

(8.5) “Residence” means the principal or primary home or place of abode of a person as set forth in section 31-10-201 (3).

(9) “Voter” means a registered elector who has presented himself at a polling place to vote in any regular or special election.

(10) “Voting machine” means any device fulfilling the requirements for voting machines set forth in part 4 of article 7 of title 1, C.R.S., regarding its use, construction, procurement, and trial.

(11) “Watcher” means a registered elector of the municipality whose name has been submitted to the clerk and then certified by the clerk to the appropriate election judges to serve at the polling place with the right to remain inside the polling place from at least fifteen minutes prior to the opening of the polls until after the completion of the count of votes cast at the election and the certification of the count by the judges. Each watcher has the right to maintain a list of voters as the names are announced by the judges and to witness each step in the conduct of the election.

Source: L. 75: Entire title R&RE, p. 1039, § 1, effective July 1. L. 79: (8.5) amended, p. 279, § 4, effective June 7. L. 80: (3) and (10) amended, p. 414, § 21, effective January 1, 1981. L. 81: (2) amended, p. 1498, § 1, effective July 1. L. 91: (6) and (8) amended, p. 640, § 83, effective May 1. L. 95: (3) amended, p. 856, § 97, effective July 1. L. 2009: (3) amended, (SB 09-292), ch. 369, p. 1978, § 107, effective August 5.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Voting rights preserved by expressing intent to return. Elector, who had moved outside city and into a rental home while he awaited building of new home within the city, preserved his right to vote in the city by expressing an intent to retain the city as his official place of residence. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

But mere intention alone may not fulfill legal residence requirements. The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of legal "residence" for voting purposes. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Test for legal residence. This section requires an objective or "principal-or-primary-home" test for legal residence. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Inquiry to be undertaken where nonresident elector wishes to retain former voting rights. The following inquiry is required to be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote there: (1) Had the party established his principal or primary home or place of abode within the election precinct? and (2) was the individual's departure taken or does his absence continue with a present intention of returning to the precinct in the future? *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

31-10-102.5. Acts and elections conducted pursuant to provisions which refer to qualified electors. Any elections, and any acts relating thereto, carried out under this article, which were conducted prior to July 1, 1987, pursuant to provisions which refer to a qualified elector rather than registered elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

Source: L. 87: Entire section added, p. 328, § 82, effective July 1.

31-10-102.7. Applicability of the "Uniform Election Code of 1992". Any municipality may provide by ordinance or resolution that it will utilize the requirements and procedures of the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., in lieu of this article, with respect to any election.

Source: L. 92: Entire section added, p. 874, § 104, effective January 1, 1993. L. 93: Entire section amended, p. 1707, § 1, effective July 1.

31-10-103. Computation of time. Calendar days shall be used in all computations of time made under the provisions of this article. In computing time for any act to be done before any municipal election, the first day shall be included, and the last, or election, day shall be excluded. Saturdays, Sundays, and legal holidays shall be included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. If the time for ending the circulation of and filing nomination petitions provided by section 31-10-302, the time for withdrawing from nomination provided by section 31-10-303 (1), the time prior to which vacancies in nominations may be filled and by which certificates of nomination or petitions to fill such vacancies may be filed as provided by section 31-10-304, or the time for filing amended or new petitions to remedy objections as provided by section 31-10-305 falls on Saturday, Sunday, or a legal holiday, such act shall be done upon the preceding day which is not a Saturday, Sunday, or legal holiday.

Source: L. 75: Entire title R&RE, p. 1039, § 1, effective July 1. L. 79: Entire section amended, p. 1175, § 10, effective July 1. L. 96: Entire section amended, p. 1769, § 64, effective July 1.

Editor's note: This section is similar to former § 31-10-104 as it existed prior to 1975.

Cross references: For computation of time under the “Uniform Election Code of 1992”, see § 1-1-106; for computation of time under the statutes generally, see § 2-4-108.

31-10-104. Powers of clerk and deputy. (1) Except where otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform his duties.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-10-105 as it existed prior to 1975.

31-10-105. Election commission. The election commission in municipalities having such commission has all the powers and jurisdiction and shall perform all the duties provided by this article with respect to clerks and governing bodies, but the election commission does not have the authority to call a special election.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-10-106 as it existed prior to 1975.

31-10-106. Copies of election laws and manual provided. At least sixty days before any regular election, the secretary of state shall provide each municipal clerk a copy of the municipal election laws of the state.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. L. 93: Entire section amended, pp. 1707, 1438, §§ 2, 132, effective July 1. L. 95: Entire section amended, p. 856, § 98, effective July 1.

Editor’s note: This section is similar to former § 31-10-107 as it existed prior to 1975.

31-10-107. Forms prescribed. (Repealed)

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. L. 96: Entire section repealed, p. 1769, § 65, effective July 1.

Editor’s note: Before its repeal, this section was similar to former § 31-10-108 as it existed prior to 1975.

31-10-108. Special elections. Special elections shall be held on any Tuesday designated by ordinance or resolution of the governing body. No special election shall be held within the ninety days preceding a regular election. No special election shall be called within thirty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of a primary, general, or congressional vacancy election. A special election may be held at the same time and place as a primary, congressional vacancy, or general election as a coordinated election pursuant to section 1-7-116, C.R.S., or may be conducted at the same time as a mail ballot election pursuant to article 7.5 of title 1, C.R.S. Special elections shall be conducted as nearly as practicable in the same manner as regular elections.

Source: **L. 75:** Entire title R&RE, p. 1040, § 1, effective July 1. **L. 81:** Entire section amended, p. 1502, § 18, effective June 19. **L. 95:** Entire section amended, p. 856, § 99, effective July 1. **L. 2000:** Entire section amended, p. 796, § 15, effective August 2. **L. 2005:** Entire section amended, p. 774, § 58, effective June 1.

Editor's note: This section is similar to former § 31-10-109 as it existed prior to 1975.

31-10-109. Submission of question on regular election date for municipalities.

(1) (a) Pursuant to section 31-11-111 (2), the governing body of each municipality, in consultation with the clerk and recorder of the county in which the municipality is located, may submit to a vote of the registered electors of the municipality for placement on the ballot the question of whether the regular election date of such municipality shall be changed to either the Tuesday succeeding the first Monday of November in each odd-numbered year or the Tuesday succeeding the first Monday of November in each even-numbered year.

(b) Where a majority of the registered electors voting on the question submitted in accordance with the requirements of paragraph (a) of this subsection (1) approve a change in the regular election date of the municipality, the governing body of the municipality shall by ordinance establish its new regular election date in accordance with the vote of the registered electors and may include in the ordinance any alteration in the terms of office of officials that may be necessary to accomplish the change in election dates in an orderly manner. In no event shall the ordinance shorten the term of any elected official in office at the time of its adoption.

(2) Procedures for submitting the question described in paragraph (a) of subsection (1) of this section to the registered electors of the municipality shall follow the procedures set forth in article 11 of this title pertaining to municipal initiatives.

(3) Any municipality that has changed its regular election date in accordance with the requirements of this section may change its regular election date pursuant to the procedures specified in subsection (1) of this section for the sole purpose of making the regular election date of the municipality the regular election date in effect prior to the change in such date commenced under this section.

Source: **L. 2004:** Entire section added, p. 809, § 4, effective July 1.

PART 2

QUALIFICATIONS AND REGISTRATION OF ELECTORS

31-10-201. Qualifications of municipal electors. (1) Every person who has attained the age of eighteen years possessing the following qualifications is entitled to register to vote at all municipal elections:

(a) He is a citizen of the United States.

(b) The person has resided in this state for thirty days and in the municipal election precinct for thirty days immediately preceding the election at which the person offers to vote. An otherwise qualified and registered elector who moves from the municipal election precinct where registered to another precinct within the same municipality within thirty days prior to any regular or special election shall be permitted to cast a ballot for such election at the polling place in the precinct where registered.

(2) No person confined in any public prison is entitled to register or to vote at any regular or special election. Every person who was a qualified elector prior to such imprisonment and who is released by pardon or by having served his full term of imprisonment shall be vested with all the rights of citizenship except as otherwise provided in the state constitution.

(3) The judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

(a) The residence of a person is the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his

habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person, the following circumstances relating to such person may be taken into account: Business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

(b) A person shall not be considered to have lost his residence if he leaves his home and goes into another state or territory or another county or municipality of this state merely for temporary purposes with an intention of returning.

(c) A person shall not be considered to have gained a residence in this state or in any municipality in this state while retaining his home or domicile elsewhere.

(d) If a person moves to any other state or territory with the intention of making it his permanent residence, he shall be considered to have lost his residence in the municipality from which he moved.

(e) If a person moves from one municipality in this state to any other municipality in this state with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the municipality from which he moved.

(4) (a) For the purpose of voting and eligibility to office, no person is deemed to have gained a residence by reason of his presence or lost it by reason of his absence while in the civil or military service of this state or of the United States, nor while a student at any institution of higher education, nor while kept at public expense in any public prison or state institution unless the person is an employee or a member of the household of an employee of such prison or institution.

(b) The provisions of paragraph (a) of this subsection (4) notwithstanding, no person otherwise qualified under the provisions of this article shall be denied the right to vote at any municipal election solely because he is a student at an institution of higher education if such student, at any time when registration is provided for by law, files with the county clerk and recorder a written affidavit under oath, in such form as may be prescribed, that he has established a domicile in this state, that he has abandoned his parental or former home as a domicile, and that he is not registered as an elector in any other municipality of this state or of any other state. The fact that such affidavit has been filed shall be noted in the registration book.

(c) No provisions of this subsection (4) shall apply to the determination of residence or nonresidence status of students for any college or university purpose.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. L. 79: (3)(a) R&RE, p. 279, § 5, effective June 7. L. 81: (3)(d) and (3)(e) amended, p. 1498, § 2, effective July 1. L. 92: (1)(b) amended, p. 2178, § 39, effective June 2. L. 94: (1)(b) amended, p. 1773, § 38, effective January 1, 1995.

Editor's note: This section is similar to former § 31-10-201 as it existed prior to 1975.

Cross references: For the classification of students for tuition purposes, see article 7 of title 23.

ANNOTATION

One does not lose voting rights by reason of departure or absence from primary home, once it has been established. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Voting rights preserved by expressing intent to return. Elector, who had moved outside city and into a rental home while he awaited building of new home within the city, preserved his right to vote in the city by expressing an intent to retain the city as his "official place of

residence". *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

But mere intention alone may not fulfill legal residence requirements. The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of "legal residence" for voting purposes. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Test for legal residence. This section requires an objective or “principal-or-primary-home” test for legal residence. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Inquiry to be undertaken where nonresident elector wishes to retain former voting rights. The following inquiry must be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote there: (1) Had the party established his principal or primary home or place of abode within the election precinct? and (2) was the individual’s departure taken or does his absence continue with a “present intention of returning” to the precinct in the future? Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Because they have sufficient evidentiary support, trial court’s findings that defendant

had satisfied residency requirements necessary to hold office in Telluride, Colorado, and had not abandoned her principal or primary home in Colorado will not be disturbed. Trial court found defendant became a resident of Colorado in May of 1998. Defendant’s return to New York was intended to be temporary and she did not lose her residency by her return to New York. Although defendant’s voting and tax returns suggested New York residency, those acts were not sufficient to abandon her residency in Colorado. Circumstances justified trial court’s conclusion that Telluride was defendant’s principal or primary home. Zivian v. Brooke-Hitching, 28 P.3d 970 (Colo. App. 2001).

31-10-202. Submission of question to qualified taxpaying electors - oath. (1) On any question which is required by law to be submitted to qualified taxpaying electors only, if the question is submitted on paper ballots, such ballots shall be deposited in a separate ballot box reserved for that purpose. If the question is submitted on voting machines, provision shall be made to assure that only registered taxpaying electors are permitted to vote on such question. If the question is to be submitted in precincts using an electronic voting system, provision shall be made to assure that only registered taxpaying electors are permitted to vote on such question.

(2) The governing body, in its discretion, may require each registered taxpaying elector desiring to vote on a question which is submitted to qualified taxpaying electors only to sign a written oath that he has, during the twelve months next preceding the election, paid an ad valorem tax upon property situated within the municipality and owned by said person. If said elector is unable to write, he may request assistance from one of the judges of election, and such judge shall sign and witness said elector’s mark.

Source: L. 75: Entire title R&RE, p. 1042, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-10-202 as it existed prior to 1975.

31-10-203. Registration required. (1) Except where a statute specifically provides otherwise, no person shall be permitted to vote at any municipal election without first having registered within the time and in the manner required by this section and sections 31-10-204 and 31-10-205.

(2) Registration requirements for municipal elections shall be the same as those governing general elections. Registration with the county clerk and recorder shall constitute registration for municipal elections.

(3) Where a statute specifically allows persons who have qualifications different from registered electors to vote on a particular measure, the governing body may require that each such person desiring to vote sign a written oath before voting that he meets each qualification required to vote on the measure.

Source: L. 75: Entire title R&RE, p. 1042, § 1, effective July 1. **L. 81:** (1) amended and (3) added, p. 1498, § 3, effective July 1.

Editor’s note: This section is similar to former § 31-10-203 as it existed prior to 1975.

Cross references: For general election registration requirements, see part 2 of article 2 of title 1.

31-10-204. Municipal clerk as deputy county clerk and recorder. Each clerk shall serve as a deputy county clerk and recorder for purposes of registration only in the county

in which the clerk's municipality is located. The clerk shall register any qualified elector residing in any precinct in such county who appears in person at the clerk's office at any time during which registration is permitted in the office of the county clerk and recorder. The clerk shall deliver the new registration records to the office of the county clerk and recorder either in person or by certified mail on or before the fifteenth day of each month and in person on the day following the last day for registration preceding any election for which registration is required.

Source: **L. 75:** Entire title R&RE, p. 1042, § 1, effective July 1. **L. 80:** Entire section amended, p. 796, § 58, effective June 5. **L. 87:** Entire section amended, p. 328, § 83, effective July 1. **L. 91:** Entire section amended, p. 640, § 84, effective May 1. **L. 94:** Entire section amended, p. 1773, § 39, effective January 1, 1995. **L. 95:** Entire section amended, p. 857, § 100, effective July 1. **L. 97:** Entire section amended, p. 477, § 22, effective July 1.

Editor's note: This section is similar to former § 31-10-204 as it existed prior to 1975.

31-10-205. Registration lists. The county clerk and recorder of each county, no later than the fifth day preceding any municipal election in his or her county or upon receipt of the notice made pursuant to section 31-4-503 (3) (b), shall prepare a complete copy of the list of the registered electors of each municipal election precinct which is located within his or her county and is involved in such municipal election; but, in any municipal election precinct consisting of one or more whole general election precincts, the county registration books for such precinct may be used in lieu of a separate registration list. The registration list for each municipal election precinct shall contain, in alphabetical order, the names and addresses of all registered electors residing within the municipal election precinct whose names appeared on the county registration records at the close of business on the twenty-ninth day preceding the municipal election or, when notice is received pursuant to section 31-4-503 (3) (b), at the close of business on the date preceding receipt of such notice. The county clerk and recorder shall certify and deliver such registration lists or registration books to the respective clerks on or before the fifth day preceding the election.

Source: **L. 75:** Entire title R&RE, p. 1042, § 1, effective July 1. **L. 87:** Entire section amended, p. 328, § 84, effective July 1. **L. 91:** Entire section amended, p. 754, § 23, effective April 4. **L. 94:** Entire section amended, p. 1773, § 40, effective January 1, 1995. **L. 95:** Entire section amended, p. 857, § 101, effective July 1.

Editor's note: This section is similar to former § 31-10-205 as it existed prior to 1975.

31-10-206. Delivery and custody of registration book or list. (1) Prior to the delivery of the registration books or registration lists to the judges of election for use on election day, the clerk shall attach to each book or list his certificate stating that such book or list contains the registration records or names of all registered electors residing in the municipal election precinct and stating the total number of registration records or names contained therein.

(2) At such time as may be set by the clerk, but at least one day prior to the election, one of the judges of election from each precinct may call in person at the office of the clerk for the purpose of receiving the registration book or list and election supplies, or the clerk may deliver the same to one of said judges. The registration book or list shall be delivered to said judge in a sealed envelope or container. Said judge shall have custody of the registration book or list and shall give his receipt therefor. After the closing of the polls on the day of election, he shall seal the registration book or list and deliver it to the election judge selected to deliver the election returns, registration book or list, ballot boxes, if any, and other election papers and supplies to the office of the clerk or to such other place as the clerk may designate as the counting center.

Source: **L. 75:** Entire title R&RE, p. 1043, § 1, effective July 1. **L. 79:** (2) amended, p. 1176, § 11, effective July 1. **L. 91:** (1) amended, p. 640, § 85, effective May 1.

Editor's note: This section is similar to former § 31-10-506 as it existed prior to 1975.

31-10-207. Questions answered by elector. It is the duty of the clerk to ask each person making application for registration, and the person shall answer correctly, the matters contained in section 1-2-204, C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1043, § 1, effective July 1. **L. 80:** Entire section amended, p. 414, § 22, effective January 1, 1981. **L. 95:** Entire section amended, p. 857, § 102, effective July 1.

Editor's note: This section is similar to former § 31-10-206 as it existed prior to 1975.

31-10-208. Change of address. For the twenty-nine days before and on the day of any municipal election, any registered elector, by appearing in person at the office of the county clerk and recorder, may complete a sworn affidavit for change of address within the county in which the elector is registered, stating that the elector has moved prior to the thirtieth day before the election and that the elector has lived at the new address in the new precinct within the municipality for at least thirty days. Upon the receipt of the request, the county clerk and recorder shall verify the registration of the elector and shall, upon verification, issue or authorize a certificate of registration, showing the information required in section 1-2-216, C.R.S., plus the change of address. The judges shall allow the registered elector to vote in the precinct where the new address is located. The judges of election shall use the certificate of registration as a substitute registration page, entering the date of the election and pollbook ballot number on the certificate and including it with the registration book when it is returned to the clerk following the election.

Source: **L. 83:** Entire section added, p. 358, § 32, effective July 1. **L. 87:** Entire section amended, p. 328, § 85, effective July 1. **L. 92:** Entire section amended, p. 2178, § 40, effective June 2. **L. 93:** Entire section amended, p. 1708, § 3, effective July 1. **L. 94:** Entire section amended, p. 1774, § 41, effective January 1, 1995. **L. 95:** Entire section amended, p. 857, § 103, effective July 1.

PART 3

NOMINATIONS

31-10-301. Electors eligible to hold municipal office. Every registered elector eighteen years of age or older on the date of the election may be a candidate and hold office in any municipality, unless another age is required by local charter or ordinance, if he has resided in the municipality or municipality and ward, as the case may be, from which he is to be elected for a period of at least twelve consecutive months immediately preceding the date of the election. In case of an annexation, any person who has resided within the territory annexed for the prescribed time shall be deemed to have met the residence requirements for the municipality and precinct to which the territory was annexed. No person may be a candidate for two municipal offices at the same election nor hold two elective municipal offices simultaneously; except that, in statutory cities, the offices of clerk and treasurer may be sought and held by the same person.

Source: **L. 75:** Entire title R&RE, p. 1043, § 1, effective July 1. **L. 83:** Entire section amended, p. 1259, § 14, effective July 1. **L. 89:** Entire section amended, p. 1292, § 13, effective April 6.

Editor's note: This section is similar to former § 31-10-301 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-10-301 is similar to former § 31-10-301 prior to the 1975 repeal and reenactment of this title, a relevant case construing that provision has been included in the annotations to this section.

Three-year durational residency requirement unconstitutional. The three-year durational residency requirement for candidates for the office of mayor and councilman of Aspen as set forth in article III, § 3.5 of Aspen's home-rule charter is unconstitutional as a violation of the equal protection clause of the fourteenth amendment of the United States constitution. *Cowan v. City of Aspen*, 181 Colo. 343, 509 P.2d 1269 (1973).

Qualification to have reasonable relation to object sought. Any prescribed qualification for

the holding of a public office must have a reasonable relation to the object sought to be accomplished by the imposition of the qualification. *Cowan v. City of Aspen*, 181 Colo. 343, 509 P.2d 1269 (1973).

There must be a present and compelling governmental interest to justify durational residency requirement because the right to hold public office, by either appointment or election, is one of the valuable and fundamental rights of citizenship, and this right may not be infringed upon by invidious discriminatory disqualifications. *Cowan v. City of Aspen*, 181 Colo. 343, 509 P.2d 1269 (1973).

31-10-302. Nomination of municipal officers. (1) Candidates for municipal offices shall be nominated, without regard to affiliation, by petition on forms supplied by the clerk. A petition of nomination may consist of one or more sheets, but it shall contain the name and address of only one candidate and shall indicate the office to which the candidate is seeking election. The petition may designate one or more persons as a committee to fill a vacancy in the nomination.

(2) Nomination petitions may be circulated and signed beginning on the fiftieth day and ending on the thirtieth day prior to the day of election. Each petition shall be signed by registered electors in the following numbers:

(a) For a candidate in a city, at least twenty-five registered electors residing within the city;

(b) For a candidate from a ward within a city, at least twenty-five registered electors residing in the candidate's ward;

(c) For a candidate in a town, at least ten registered electors residing within the town; and

(d) For a candidate from a ward within a town, at least ten registered electors residing in the candidate's ward.

(3) Each registered elector signing a petition shall sign such registered elector's own signature and shall print or, if such elector is unable to do so, shall cause to be printed such elector's legal name, the address at which such registered elector resides, including the street name and number, the city or town, the county, and the date of the signing. The registered elector, or the person printing on behalf of the registered elector, may use any abbreviations that reasonably identify the residence of the registered elector, and the date the registered elector signed the petition. The circulator of each nomination petition shall make an affidavit that each signature thereon is the signature of the person whose name it purports to be and that each signer has stated to the circulator that the signer is a registered elector of the municipality or municipality and ward, as the case may be, for which the nomination is made. The signature of each signer of a petition shall constitute prima facie evidence of his qualifications without the requirement that each signer make an affidavit as to his qualifications.

(4) No petition is valid that does not contain the requisite number of signatures of registered electors. The clerk shall inspect timely filed petitions of nomination to ensure compliance with this section. Such inspection may consist of an examination of the information on the signature lines for patent defects, a comparison of the information on the signature lines with a list of registered electors provided by the county, or any other method of inspection reasonably expected to ensure compliance with this section. Any petition may be amended to correct or replace those signatures which the clerk finds are not in apparent conformity with the requirements of this section at any time prior to twenty-two days before the day of election.

(5) No registered elector shall sign more than one nomination petition for each separate office to be filled in his municipality or municipality and ward, as the case may be. Each office of the governing body that is to be filled by the electorate shall be considered a separate office for the purpose of nomination. In municipalities in which offices of the governing body are filled both by election from wards and election at large, an elector may sign a nomination petition for each office to be filled from his ward and also for each office to be filled by election at large. If a registered elector's signature appears on more than one nomination petition for a particular office, the clerk may utilize the date of signing indicated on the nomination petitions to determine which signature was valid when affixed to the nomination petitions. If the date of signing does not clarify which signature was valid, all signatures of such registered elector shall be rejected.

(6) Each nomination petition shall be filed with the clerk no later than the thirtieth day prior to the day of election. Every petition shall have endorsed thereon or appended thereto the written affidavit of the candidate accepting the nomination and swearing that the candidate satisfies the requirements set forth in section 31-10-301 to be a candidate and hold office in the municipality. The acceptance of nomination shall contain the place of residence of the candidate and the name of the candidate in the form that the candidate wishes it to appear on the ballot. The candidate's name may be a nickname or include a nickname but shall not contain any title or degree designating the business or profession of the candidate.

(7) The clerk shall cause all nomination petitions to be preserved for a period of two years. All such petitions shall be open to public inspection under proper regulation by the clerk with whom they are filed.

(8) Nomination petitions for candidates whose name will be on the ballot at a coordinated election pursuant to articles 1 to 13 of title 1, C.R.S., shall be circulated, signed, and filed with the municipal clerk within the period set forth in section 1-4-805, C.R.S.

Source: L. 75: Entire title R&RE, p. 1043, § 1, effective July 1. L. 77: IP(2) and (6) amended, p. 1461, § 1, effective July 1. L. 81: (6) amended, p. 1499, § 4, effective July 1. L. 87: (4) amended, p. 329, § 86, effective July 1. L. 91: (3) and (4) amended, p. 755, § 24, effective April 4. L. 93: (1) and (6) amended, p. 1708, § 4, effective July 1. L. 95: (8) added, p. 858, § 104, effective July 1. L. 99: (1) amended, p. 164, § 24, effective August 4. L. 2000: (3), (4), (5), and (8) amended, p. 796, § 16, effective August 2. L. 2004: (8) amended, p. 1523, § 5, effective May 28.

Editor's note: This section is similar to former § 31-10-302 as it existed prior to 1975.

ANNOTATION

Applied in *Theobald v. Byrns*, 195 Colo. 330, 579 P.2d 609 (1978).

31-10-303. Withdrawal from nominations. (1) Any person who has been nominated and who has accepted a nomination may cause his name to be withdrawn from such nomination at any time prior to twenty-three days before election by a written affidavit withdrawing from such nomination. The affidavit stating withdrawal shall be signed by the candidate and filed with the clerk.

(2) If the nomination petition designates one or more persons as a committee to fill a vacancy, the clerk shall immediately notify such persons of their candidate's withdrawal. If there is no committee designated, the clerk shall immediately notify the three persons whose names appear at the top of the nomination petition of the withdrawal of their candidate.

Source: L. 75: Entire title R&RE, p. 1044, § 1, effective July 1. L. 79: (1) amended, p. 1176, § 12, effective July 1.

Editor's note: This section is similar to former § 31-10-303 as it existed prior to 1975.

31-10-304. Vacancies in nominations. (1) If any candidate dies or withdraws from the nomination prior to twenty-three days before the day of election, the vacancy may be filled by the vacancy committee, if any, designated on the nomination petition or, if no vacancy committee is designated, by petition in the same manner required for original nomination. If any petition of nomination is insufficient or inoperative because of failure to remedy or cure the same, the vacancy thus occasioned may be filled by petition in the same manner required for original nomination.

(2) Any certificate of nomination or petition to fill a vacancy shall be filed with the clerk not later than the twentieth day before the day of election.

Source: L. 75: Entire title R&RE, p. 1044, § 1, effective July 1. L. 79: Entire section amended, p. 1176, § 13, effective July 1.

Editor's note: This section is similar to former § 31-10-304 as it existed prior to 1975.

31-10-305. Objections to nominations. All petitions of nomination and affidavits which are in apparent conformity with the provisions of section 31-10-302, as determined by the clerk, are valid unless objection thereto is duly made in writing within three days after the filing of the same. In case objection is made, notice thereof shall be forthwith mailed to any candidate who may be affected thereby. The clerk shall decide objections within at least forty-eight hours after the same are filed, and any objections sustained may be remedied or defect cured upon the original petition, by an amendment thereto, or by filing a new petition within three days after the objection is sustained, but in no event later than the eighteenth day before the day of election. The clerk shall pass upon the validity of all objections, whether of form or substance, and the clerk's decisions upon matters of form shall be final. The clerk's decisions upon matters of substance shall be open to review if prompt application is made, as provided in section 31-10-1401, but the remedy in all cases shall be summary, and the decision of the district court shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any proceeding in a summary way.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. L. 77: Entire section amended, p. 286, § 59, effective June 29. L. 79: Entire section amended, p. 1176, § 14, effective July 1. L. 93: Entire section amended, p. 1708, § 5, effective July 1.

Editor's note: This section is similar to former § 31-10-305 as it existed prior to 1975.

ANNOTATION

Action not brought pursuant to section. Whatever conflict of jurisdiction appears to exist in this section in connection with rulings on "objections to nominating petitions", the action is not brought pursuant to it where from the face of the petition it appears that this is a controversy between the candidate and the "official charged with any duty or function" in the par-

ticular election and, also, that the petitioner seeks to correct errors in the publication of the names and descriptions of the candidates. *Birkenmayer v. Carter*, 165 Colo. 459, 439 P.2d 991 (1968).

Applied in *Theobald v. Byrns*, 195 Colo. 330, 579 P.2d 609 (1978).

31-10-306. Write-in candidate affidavit. The governing body of a municipality may provide by ordinance that no write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the clerk by the person whose name is written in prior to twenty days before the day of the election indicating that such person desires the office and is qualified to assume the duties of that office if elected.

Source: L. 81: Entire section added, p. 1499, § 5, effective July 1. L. 91: Entire section amended, p. 755, § 25, effective April 4.

PART 4

JUDGES

31-10-401. Appointment of election judges. At least fifteen days before each municipal election, the governing body shall appoint the judges of election. Each judge of election shall be an elector registered to vote in Colorado and shall be at least eighteen years of age. The clerk shall make and file in his office a list of all persons so appointed, giving their names, addresses, and precincts. Such list shall be a public record and shall be subject to inspection and examination during office hours by any qualified elector of the municipality with the right to make copies thereof. The governing body may by resolution delegate to the clerk the authority and responsibility to appoint judges of election.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. L. 81: Entire section amended, p. 1499, § 6, effective July 1. L. 87: Entire section amended, p. 329, § 87, effective July 1. L. 2000: Entire section amended, p. 797, § 17, effective August 2.

Editor's note: This section is similar to former § 31-10-401 as it existed prior to 1975.

31-10-402. Number of judges. The governing body, or the clerk if authorized pursuant to section 31-10-401, shall appoint for each municipal election precinct at least three judges of election and such additional judges as deemed necessary.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. L. 79: (1) R&RE, p. 1177, § 15, effective July 1. L. 81: Entire section R&RE, p. 1500, § 7, effective July 1.

Editor's note: This section is similar to former § 31-10-402 as it existed prior to 1975.

31-10-403. Certificates of appointment. Immediately after the appointment of the judges of election, the clerk shall issue certificates under his official seal certifying such appointments in each precinct. He shall mail one certificate to each person appointed.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. L. 81: Entire section amended, p. 1500, § 8, effective July 1.

Editor's note: This section is similar to former § 31-10-403 as it existed prior to 1975.

31-10-404. Acceptances. With each certificate of appointment transmitted by the clerk to the judges of election, there shall be enclosed a form for acceptance of the appointment. Each person appointed as an election judge shall file his acceptance in the office of the clerk within seven days after the mailing by the clerk of the certificate of appointment and the acceptance form. Failure of any person appointed as a judge of election to file an acceptance within said seven days shall result in a vacancy. Such vacancy shall be filled in the same way the original appointment was made.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. L. 81: Entire section amended, p. 1500, § 9, effective July 1.

Editor's note: This section is similar to former § 31-10-404 as it existed prior to 1975.

31-10-405. Vacancies. If for any reason any person appointed as a judge of election refuses, fails, or is unable to serve, it is the duty of the person or any other judge of election to immediately notify the clerk. The clerk shall forthwith appoint another qualified person to serve in the place of the person.

Source: **L. 75:** Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 10, effective July 1. **L. 93:** Entire section amended, p. 1709, § 6, effective July 1.

Editor's note: This section is similar to former § 31-10-405 as it existed prior to 1975.

31-10-406. Removal of judges. Any judge of election who has neglected his duty, or has committed, encouraged, or connived at any fraud in connection therewith, or has violated any of the election laws, or has knowingly permitted others to do so, or has been convicted of any felony, or has violated his oath, or has committed any act which interferes or tends to interfere with a fair and honest election shall be summarily removed by the clerk.

Source: **L. 75:** Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 11, effective July 1.

Editor's note: This section is similar to former § 31-10-406 as it existed prior to 1975.

31-10-407. Oath of judges. (1) Before any votes are taken at any municipal election, the judges of election shall severally take an oath or affirmation in the following form:

"I, ..., do solemnly swear (or affirm) that I am a citizen of the United States and the state of Colorado; that I am a registered elector in Colorado; that I will perform the duties of judge according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same; that I will not try to ascertain how any elector voted, nor will I disclose how any elector voted if, in the discharge of my duties as judge, such knowledge shall come to me, unless called upon to disclose the same before some court; and that I will not disclose the result of the votes until the polls have closed."

(2) The judges of election may administer the oaths or affirmations to each other. Each judge shall record and sign any such oaths or affirmations administered by him and shall attach the record to the pollbook.

Source: **L. 75:** Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 12, effective July 1. **L. 93:** (1) amended, p. 1709, § 7, effective July 1.

Editor's note: This section is similar to former § 31-10-407 as it existed prior to 1975.

31-10-408. Compensation of judges. The judges of election at any municipal election shall receive in full compensation for their services as judges of election not less than five dollars and not more than the maximum amount allowed by statute for payment to the judges of the general election of the state of Colorado, as determined by the governing body of the municipality.

Source: **L. 75:** Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1501, § 13, effective July 1.

Editor's note: This section is similar to former § 31-10-408 as it existed prior to 1975.

31-10-409. Compensation for delivery of election returns and other election papers. The judges of election in each precinct shall select one of their number to deliver the election returns, registration book or list, ballot boxes, if any, and other election papers and supplies to the office of the clerk or to such other place as the clerk may designate as the counting center. The judge so selected shall be paid not more than four dollars for the performance of such service.

Source: **L. 75:** Entire title R&RE, p. 1046, § 1, effective July 1. **L. 79:** Entire section amended, p. 1177, § 16, effective July 1.

Editor's note: This section is similar to former § 31-10-409 as it existed prior to 1975.

PART 5

NOTICE AND PREPARATION FOR ELECTIONS

31-10-501. Clerk to give notice. (1) The clerk, at least ten days before each municipal election, shall give written or printed notice of the election stating the date of the election and the hours during which the polls will be open, designating the polling place of each precinct, stating the qualifications of persons to vote in the election, naming the officers to be elected and the questions to be voted upon, and listing the names of those candidates whose nominations have been certified to him, which listing shall be as nearly as possible in the form in which such nominations shall appear upon the official ballot with reference to wards where applicable. A copy of such notice shall be posted until after the election in a conspicuous place in the office of the clerk.

(2) In addition, the notice shall be published in at least one newspaper having general circulation in the municipality. If the clerk finds it impracticable to make the publication on the tenth day before the election day, he shall make the same on the earliest possible day before the tenth day. The publications in any weekly newspaper shall be in the next to last issue thereof before the day of election.

(3) All polling places shall be designated by a sign conspicuously posted at least ten days before each municipal election. Such sign shall be substantially in the following form: "POLLING PLACE FOR PRECINCT NO. ...". In addition, such sign shall state the date of the next election and the hours the polling place will be open.

Source: **L. 75:** Entire title R&RE, p. 1047, § 1, effective July 1. **L. 81:** Entire section amended, p. 1501, § 14, effective July 1.

Editor's note: This section is similar to former § 31-10-501 as it existed prior to 1975.

ANNOTATION

The purpose of requiring that legal notices be published in newspapers of general circulation is not to benefit the papers but to insure that the public is aware of matters of legal

importance. *Resident Participation of Denver, Inc. v. Love*, 322 F. Supp. 1100 (D. Colo. 1971) (decided under law in effect prior to the 1975 repeal and reenactment).

31-10-501.5. Ballot issue notice. (1) Any ballot issue notice, as defined in section 1-1-104 (2.5), C.R.S., relating to a municipal ballot issue, as defined in section 1-1-104 (2.3), C.R.S., shall be prepared and distributed in a manner consistent with part 9 of article 7 of title 1, C.R.S.

(2) In addition to the requirements set forth in subsection (1) of this section, a municipality submitting a ballot issue concerning the creation of any debt or other financial obligation at an election in the municipality shall post notice in accordance with the requirements of section 1-7-908, C.R.S.

Source: **L. 94:** Entire section added, p. 1192, § 93, effective July 1. **L. 2003:** Entire section amended, p. 750, § 6, effective August 6.

31-10-502. Establishing precincts and polling places. (1) (a) The governing body of each municipality shall divide the municipality into as many election precincts for municipal elections as it deems expedient for the convenience of electors of said municipality and shall designate the location and address for each precinct at which elections are to be held. Municipal election precincts shall consist of one or more whole general election

precincts wherever practicable, and clerks and governing bodies shall cooperate with the county clerk and recorder and board of county commissioners of their county to accomplish this purpose. In municipalities having wards, no precinct or part thereof shall be located within more than one ward, and each ward shall contain at least one precinct. The precincts shall be numbered consecutively beginning with the number one. The precincts and polling places established pursuant to this section shall remain until changed by the governing body.

(b) and (c) Repealed.

(2) (a) Changes in the boundaries of election precincts or wards and the creation of new election precincts shall be completed not less than ninety days prior to any municipal election, except in cases of precinct changes resulting from annexations.

(b) All changes in precinct or ward boundaries and in municipal boundaries shall be reported by the clerk to the county clerk and recorder, and a corrected map shall be transmitted to the county clerk and recorder as soon as possible after such changes have been effected.

(3) It is the duty of the governing body to change any polling place upon petition of a majority of the registered electors residing within the precinct.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. L. 79: (1)(b) and (1)(c) repealed, p. 1182, § 28, effective July 1. L. 81: (3) amended, p. 1502, § 15, effective July 1.

Editor's note: This section is similar to former § 31-10-502 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Redistricting: A Municipal Perspective", see 31 Colo. Law. 49 (February 2002).

31-10-503. Judges may change polling places. (1) When it becomes impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after notifying the clerk and after having assembled at or as near as practicable to such place and before receiving any vote, may move to the nearest convenient place for holding the election and at such newly designated place forthwith proceed with the election.

(2) Upon moving to a new polling place, the judges shall display a proclamation of the change and shall station a police officer or some other proper person at the original polling place to notify all registered electors of the new location for holding the election.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1. L. 81: (1) amended, p. 1502, § 16, effective July 1.

Editor's note: This section is similar to former § 31-10-503 as it existed prior to 1975.

31-10-504. Number of voting booths or voting machines. (1) In municipalities which use paper ballots, the governing body shall provide in each polling place a sufficient number of voting booths. Each voting booth shall be situated so as to permit voters to prepare their ballots screened from observation and shall be furnished with such supplies and conveniences as will enable the voter to prepare his ballot for voting.

(2) In municipalities which use voting machines, the governing body shall supply each precinct with a sufficient number of voting machines.

(3) In municipalities which use an electronic voting system, the governing body shall provide adequate materials and equipment for the orderly conduct of voting.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-504 as it existed prior to 1975.

31-10-505. Arrangement of voting machines or voting booths and ballot boxes. The voting machines or the voting booths and ballot box shall be situated in the polling place so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting shall be permitted within the immediate voting area, which shall be considered as within six feet of the voting machines or the voting booths and ballot box, except by authority of the judges of election, and then only when necessary to keep order and enforce the law.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-505 as it existed prior to 1975.

31-10-506. Election expenses to be paid by municipality. The cost of conducting a municipal election, including the cost of printing and supplies, shall be paid by the municipality in which such election is held.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-513 as it existed prior to 1975.

31-10-507. Election may be cancelled - when. In any ordinance adopted by the governing body of the municipality requiring an affidavit of intent for write-in candidates as provided in section 31-10-306, the governing body may also provide that, if the only matter before the voters is the election of persons to office and if, at the close of business on the nineteenth day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent, the clerk, if instructed by resolution of the governing body either before or after such date, shall cancel the election and by resolution declare the candidates elected. If so provided by ordinance, upon such declaration the candidates shall be deemed elected. Notice of such cancellation shall be published, if possible, in order to inform the electors of the municipality, and notice of such cancellation shall be posted at each polling place and in not less than one other public place.

Source: L. 81: Entire section added, p. 1502, § 17, effective July 1. **L. 91:** Entire section amended, p. 755, § 26, effective April 4.

PART 6

CONDUCT OF ELECTIONS

31-10-601. Hours of voting. At all elections held under this article, the polls shall be opened at 7 a.m. and remain open until 7 p.m. of the same day. If a full set of judges of election do not attend at the hour of 7 a.m., an alternate election judge shall be appointed as provided in section 31-10-405. The polls shall be opened if a majority of judges are present, even though the alternate judge has not arrived. Every person, otherwise qualified to vote, who is standing in line waiting to vote at 7 p.m. shall be permitted to vote.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1. **L. 81:** Entire section amended, p. 1502, § 18, effective July 1.

Editor's note: This section is similar to former § 31-10-601 as it existed prior to 1975.

31-10-602. Watchers at municipal elections. Each candidate for office, or interested party in case of an issue, at a municipal election is entitled to appoint some person to act in his behalf in every precinct in which he is a candidate or in which the issue is on the ballot. Such candidate or interested party shall certify the names of the persons so appointed to the clerk on forms provided by the clerk. In case a watcher must leave the polling place,

he may designate an alternate to act in his behalf while he is absent, if such alternate is made known to the election judges by an affidavit of the person first named as a watcher.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-602 as it existed prior to 1975.

31-10-603. Employee entitled to vote. (1) Any registered elector entitled to vote at any municipal election held within this state is entitled to absent himself from any service or employment in which he is then engaged or employed on the day of such election for a period of two hours between the time of opening and time of closing the polls. Any such absence shall not be sufficient reason for the discharge of any such person from such service or employment. Such elector, because of so absenting himself, shall not be liable to any penalty, nor shall any deduction be made from his usual salary or wages on account of such absence. Registered electors who are employed and paid by the hour shall receive their regular hourly wage for the period of such absence, not to exceed two hours. Application shall be made for such leave of absence prior to the day of election. The employer may specify the hours during which such employee may absent himself, but such hours shall be at the beginning or ending of the work shift if the employee so requests.

(2) This section shall not apply to any person whose hours of employment on the day of the election are such that there are three or more hours between the time of opening and the time of closing of the polls during which he is not employed on the job.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1. L. 79: (2) amended, p. 1185, § 1, effective April 25.

Editor's note: This section is similar to former § 31-10-603 as it existed prior to 1975.

31-10-604. Judges open ballot box first. In precincts which use an electronic voting system or paper ballots, it is the duty of the judges of the election, immediately before the opening of the polls, to open the ballot box in the presence of the people there assembled and turn it upside down so as to empty it of everything that may be in it and then lock it securely. It shall not be reopened until the time for counting the ballots therein.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-604 as it existed prior to 1975.

31-10-605. Judge to keep pollbook. A judge of election shall keep a pollbook, which shall contain one column headed "names of voters" and one column headed "number on ballot". The name and number on the ballot of each registered elector voting shall be entered in regular succession under the headings in the pollbook.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1. L. 81: Entire section amended, p. 1502, § 19, effective July 1.

Editor's note: This section is similar to former § 31-10-605 as it existed prior to 1975.

31-10-606. Preparing to vote. (1) Any registered elector desiring to vote shall write his name and address on a form available at the polling place and shall give the form to one of the judges of election, who shall thereupon announce the same clearly and audibly. If said elector is unable to write, he may request assistance from one of the judges of election, and such judge must sign the form and witness the elector's mark. The form to be available shall be in substance: "I, ..., who reside at ..., am a registered elector of this precinct and desire to vote at this election. Date". If the name is found on the registration book or the

registration list by the election judge having charge thereof, he shall likewise repeat the name, and said elector shall be allowed to enter the immediate voting area. If the name is not found on the registration book or the registration list by the election judge, such election judge, if practicable and not unduly disruptive to the election process, shall attempt to contact the county clerk and recorder's office, by telephone or otherwise, to request oral verification of the elector's registration in that precinct; and, if such oral verification is received by such election judge from the county clerk and recorder's office, such election judge shall record such verification on a form to be provided by the clerk and shall likewise repeat the elector's name, and said elector shall be allowed to enter the immediate voting area. After it is determined that the elector is duly registered, the election official in charge of the pollbook shall write upon the pollbook the name of such elector and, in precincts using paper ballots, the number of the ballot given to such elector.

(2) Besides the election officials, not more than four voters in excess of the number of voting booths or voting machines shall be allowed within the immediate voting area at one time.

(3) The completed signature forms shall be returned with other election materials to the clerk. If no challenges have been made, the forms may be destroyed after forty-five days.

(4) If the judges are using the registration book and the registered elector's signature does not appear on his registration record, said elector shall show identification and sign his registration record before being allowed to vote. If said elector is unable to write, he may request assistance from one of the judges of election, and such judge shall sign the registration record and witness said elector's mark.

(5) In precincts using paper ballots, an election judge shall give the registered elector one, and only one, ballot, which shall be removed from the package of ballots by tearing the same along the perforated line between the stub and duplicate stub. Before delivering such ballot to said elector, the judge of election having charge of the ballots shall endorse his initials on the duplicate stub, and said judge shall enter the date and the number of said ballot on the registration book or registration list opposite the name of said elector.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1. L. 79: (1) amended, p. 1177, § 17, effective July 1. L. 81: (1) and (5) amended, p. 1503, § 20, effective July 1. L. 91: (4) amended, p. 640, § 86, effective May 1.

Editor's note: This section is similar to former § 31-10-606 as it existed prior to 1975.

31-10-607. Manner of voting in precincts which use paper ballots. (1) In precincts which use paper ballots, upon receiving his ballot, the registered elector shall immediately retire alone to one of the voting booths provided and shall prepare his ballot by marking or stamping in ink or indelible pencil, in the appropriate margin or place, a cross mark (X) opposite the name of the candidate of his choice for each office to be filled; except that no cross mark (X) shall be required opposite the name of a write-in candidate. In case of a question submitted to a vote of the people, said elector shall mark or stamp, in the appropriate margin or place, a cross mark (X) opposite the answer which he desires to give. Before leaving the voting booth, said elector shall fold his ballot without displaying the marks thereon, so that the contents of the ballot are concealed and the stub can be removed without exposing any of the contents of the ballot, and he shall keep the same so folded until he has deposited his ballot in the ballot box.

(2) Each registered elector who has prepared his ballot and is ready to cast his vote shall then leave the voting booth and approach the judge of election having charge of the ballot box. He shall give his name to that judge, who shall announce the name of such elector and the number upon the duplicate stub of his ballot, which number must correspond with the stub number previously placed on the registration book or registration list. If the stub number of the ballot corresponds and is identified by the initials of the judge of election placed thereupon, the judge of election shall then remove the duplicate stub from such ballot. Such ballot shall then be returned to the registered elector, who shall thereupon, in full view of the judges of election, cast his vote by depositing the ballot in the ballot box, with the official endorsement on said ballot uppermost.

(3) Each registered elector shall mark and deposit his ballot without undue delay and shall leave the immediate voting area as soon as he has voted. No such elector shall occupy a voting booth already occupied by another, nor remain within the immediate voting area more than ten minutes, nor occupy a voting booth for more than five minutes if all such booths are in use and other voters are waiting to occupy the same. No registered elector whose name has been entered on the pollbook shall be allowed to reenter the immediate voting area during the election except a judge of election.

Source: **L. 75:** Entire title R&RE, p. 1050, § 1, effective July 1. **L. 79:** (2) amended, p. 1178, § 18, effective July 1. **L. 81:** (2) and (3) amended, p. 1503, § 21, effective July 1.

Editor's note: This section is similar to former § 31-10-607 as it existed prior to 1975.

31-10-608. Disabled voter - assistance. (1) If, at any regular or special election, any voter declares under oath to the judges of election of the precinct where he is entitled to vote that, by reason of blindness or other physical disability or inability to read or write, he is unable to prepare his ballot or operate the voting machine without assistance, he is entitled, upon his request, to receive the assistance of any one of the judges of election or, at his option, of any qualified elector of the precinct selected by the disabled voter. No person other than a judge of election in the precinct is permitted to enter the polling booth as an assistant to more than one voter.

(2) A notation shall be made in the pollbook opposite the name of each voter thus assisted stating that the voter has been assisted.

Source: **L. 75:** Entire title R&RE, p. 1051, § 1, effective July 1. **L. 81:** (1) amended, p. 1504, § 22, effective July 1.

Editor's note: This section is similar to former § 31-10-608 as it existed prior to 1975.

31-10-609. Spoiled ballots. In precincts which use an electronic voting system or paper ballots, no person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. The spoiled ballots thus returned shall be immediately cancelled and shall be preserved and returned to the clerk along with other election records and supplies.

Source: **L. 75:** Entire title R&RE, p. 1051, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-609 as it existed prior to 1975.

31-10-610. Counting paper ballots. (1) In precincts which use paper ballots, as soon as the polls at any election have finally closed, the judges shall immediately open the ballot box and proceed to count the votes polled, and the counting thereof shall be continued until finished before the judges of election adjourn. They shall first count the number of ballots in the box. If the ballots are found to exceed the number of names entered on the pollbook, the judges of election shall then examine the official endorsements upon the outside of the ballots without opening the same, and if, in the unanimous opinion of the judges, any of the ballots in excess of the number on the pollbook do not bear the proper official endorsement, they shall be put into a separate pile by themselves, and a separate record and return of the votes in such ballots shall be made under the head of "excess ballots". When the ballots and the pollbook agree, the judges of election shall proceed to count the votes. Each ballot shall be read and counted separately, and every name separately marked as voted for on such ballot, where there is no conflict to obscure the intention of the voter, shall be read and marked upon the tally sheets before any other ballot is proceeded with. The entire number of ballots, excepting "excess ballots", shall be read and counted and placed upon the tally

sheets in like manner. When all of the ballots, excepting "excess ballots", have been counted, the judges of election shall estimate and publish the votes.

(2) When all the votes have been read and counted, the ballots, together with one of the tally lists, shall be returned to the ballot box, and the opening shall be carefully sealed, and each of the judges shall place his initials on said seal. The cover shall then be locked and the ballot box delivered to the clerk as provided in section 31-10-614.

(3) All persons, except judges of election and watchers, shall be excluded from the place where the counting is being carried on until the count has been completed.

Source: L. 75: Entire title R&RE, p. 1051, § 1, effective July 1. L. 81: (1) and (3) amended, p. 1504, § 23, effective July 1.

Editor's note: This section is similar to former § 31-10-610 as it existed prior to 1975.

31-10-611. Tally sheets. As the judges of election open and read the ballots, the votes each of the candidates have received shall be carefully marked down, upon tally sheets prepared by the clerk for that purpose, by any appropriate election official.

Source: L. 75: Entire title R&RE, p. 1052, § 1, effective July 1. L. 79: Entire section R&RE, p. 1178, § 19, effective July 1.

Editor's note: This section is similar to former § 31-10-611 as it existed prior to 1975.

31-10-612. Defective ballots. If a voter marks in ink or indelible pencil more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the choice of any voter for any office to be filled, his ballot shall not be counted for such office. A defective or an incomplete cross marked on any ballot in ink in a proper place shall be counted if there is no other mark or cross in ink or indelible pencil on such ballot indicating an intention to vote for some person other than those indicated by the first mentioned defective cross or mark. No ballot without the official endorsement, except as provided in section 31-10-805, shall be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this article shall be counted. When the judges of election in any precinct discover in the counting of votes that the name of any candidate voted for is misspelled or the initial letters of his given name are transposed or omitted in part or altogether on the ballot, the vote for such candidate shall be counted for him if the intention of the elector to vote for him is apparent. Ballots not counted shall be marked "defective" on the back thereof and shall be preserved for such time as is provided in section 31-10-616 for ballots and destroyed as therein directed.

Source: L. 75: Entire title R&RE, p. 1052, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-612 as it existed prior to 1975.

31-10-613. Judges' certificate. (1) As soon as all the votes have been read and counted, the judges of election shall make a certificate, stating the name of each candidate, designating the office for which such person received votes, and stating the number of votes he received, the number being expressed in words at full length and in numerical figures, such entry to be made as nearly as circumstances will admit, in the following form:

"At an election held at in precinct in the municipality of and state of Colorado, on the day of, in the year, the following named persons received the number of votes annexed to their respective names for the following described offices: Total number of votes cast were, A.B. had seventy-two (72) votes for mayor; C.D. had seventy-one (71) votes for mayor; N.O. had seventy-two (72) votes for councilman or trustee; P.Q. had seventy-one (71) votes for councilman or trustee (and in the same manner for any other persons voted for).

Certified by us:

E.F.)	Judges
)	
G.H.)	of
)	
I.J.)	Election"

(2) In addition, the judges of election shall make a statement in writing showing the number of ballots voted, making a separate statement of the number of unofficial and substitute ballots voted, the number of ballots delivered to voters, the number of spoiled ballots, the number of ballots not delivered to voters, and the number of ballots returned, identifying and specifying the same. All unused ballots, spoiled ballots, and stubs of ballots voted shall be returned with such statement.

Source: L. 75: Entire title R&RE, p. 1052, § 1, effective July 1. L. 79: (1) amended, p. 1178, § 20, effective July 1. L. 81: (1) amended, p. 1504, § 24, effective July 1.

Editor's note: This section is similar to former § 31-10-613 as it existed prior to 1975.

31-10-614. Delivery of election returns, ballot boxes, and other election papers. When all the votes have been read and counted, the election officials selected in accordance with section 31-10-409 shall deliver to the clerk the certificate and statement required by section 31-10-613, the ballot boxes and all keys thereto, and the registration list, pollbooks, tally sheets, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, and other election papers and supplies. Such delivery shall be made at once and with all convenient speed, and informality in such delivery shall not invalidate the vote of any precinct when delivery has been made previous to the completion of the official abstract of the votes by the canvassers. The clerk shall give his receipt for all such papers so delivered.

Source: L. 75: Entire title R&RE, p. 1053, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-614 as it existed prior to 1975.

31-10-615. Judges to post returns. In addition to all certificates otherwise required to be made of the count of votes polled at any election, the judges of election are hereby required to make out an abstract of the count of votes, which abstract shall contain the names of the offices, names of the candidates, ballot titles and submission clauses of all initiated, referred, or other measures voted upon, and the number of votes counted for or against each candidate or measure. Said abstract shall be posted in a conspicuous place upon the outside of the polling place immediately upon completion of the count. The abstract may be removed at any time after forty-eight hours following the election. Suitable blanks for the required abstract shall be prepared, printed, and furnished to all judges of election at the same time and in the same manner as other election supplies are furnished.

Source: L. 75: Entire title R&RE, p. 1053, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-615 as it existed prior to 1975.

31-10-616. Preservation of ballots and election records. (1) The ballots, when not required to be taken from the ballot box for the purpose of election contests, shall remain in the ballot box in the custody of the clerk until six months after the election at which such ballots were cast or until the time has expired for which the ballots would be needed in any contest proceedings, at which time the ballot box shall be opened by the clerk and the ballots destroyed by fire, shredding, or burial, or by any other method approved by the executive director of the department of personnel. If the ballot boxes are needed for a

special election before the legal time for commencing any proceedings in the way of contests has elapsed or in case such clerk, at the time of holding such special election, has knowledge of the pendency of any contest in which the ballots would be needed, the clerk shall preserve the ballots in some secure manner and provide for their being kept so that no one can ascertain how any voter may have voted.

(2) The clerk shall preserve all other official election records and forms for at least six months following a regular or special election.

Source: **L. 75:** Entire title R&RE, p. 1053, § 1, effective July 1. **L. 79:** (1) amended, p. 1179, § 21, effective July 1. **L. 96:** (1) amended, p. 1543, § 135, effective June 1.

Editor's note: This section is similar to former § 31-10-616 as it existed prior to 1975.

ANNOTATION

Paper "ballots" are those paper documents that are to be printed and then possessed by the clerk at least 10 days prior to an election. Marks v. Koch, __ P.3d __ (Colo. App. 2011).

Digital copies of ballots do not meet the criteria for paper ballots. Marks v. Koch, __ P.3d __ (Colo. App. 2011).

When ballots are scanned and the resulting digital image is saved in tagged image file format (TIFF), the TIFF files are not ballots and the TIFF files are therefore open to inspection under the Colorado Open Records Act, provided that the files contain no content that could reveal the

identity of the voter. Marks v. Koch, __ P.3d __ (Colo. App. 2011).

Subsection (2) requires "other official election records" to be preserved for six months, but does not specify later destruction of such records or any other requirements beyond such six-month preservation. Marks v. Koch, __ P.3d __ (Colo. App. 2011).

Because digital copies of ballots are not ballots, releasing them for public inspection would not be contrary to this section's ballot storage and destruction provision. Marks v. Koch, __ P.3d __ (Colo. App. 2011).

31-10-617. Ranked voting methods. (1) Notwithstanding any provision of this article to the contrary, a municipality may use a ranked voting method, as defined in section 1-1-104 (34.4), C.R.S., to conduct a regular election to elect the mayor or members of the governing body of the municipality in accordance with section 1-7-1003, C.R.S., and the rules adopted by the secretary of state pursuant to section 1-7-1004 (1), C.R.S.

(2) A municipality conducting an election using a ranked voting method may adapt the requirements of this article, including requirements concerning the form of the ballot, the method of marking the ballot, the procedure for counting ballots, and the form of the election judges' certificate, as necessary for compatibility with the ranked voting method.

Source: **L. 2008:** Entire section added, p. 1252, § 4, effective August 5.

PART 7

VOTING MACHINES

31-10-701. Use of voting machines. Voting machines may be used in any municipal election if the governing body, by resolution, authorizes their use. The adoption and use of voting machines for municipal elections shall be in accordance with the provisions for the adoption and use of voting machines for general and primary elections insofar as such provisions are applicable to municipal elections.

Source: **L. 75:** Entire title R&RE, p. 1053, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-701 as it existed prior to 1975.

Cross references: For use of voting machines in general and primary elections, see part 4 of article 7 of title 1.

31-10-702. Judges to inspect machines. The judges of election of each precinct using voting machines shall meet at the polling place therein at least three-quarters of an hour before the time set for the opening of the polls at each election. Before the polls are open for an election, each judge shall carefully examine each machine used in the precinct and see that no vote has been cast and that every counter, except the protective counter, registers zero.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-702 as it existed prior to 1975.

31-10-703. Sample ballots, ballot labels, and cards of instruction. (1) Sample ballots shall be printed and in the possession of the clerk ten days before the election and shall be subject to public inspection. The sample ballots shall be arranged in the form of a diagram showing the front of the voting machine as it will appear after the official ballot labels are arranged thereon for voting on election day. Such sample ballots may be either in full or reduced size. The clerk shall provide at least two sample ballots for each election precinct, to be delivered to the judges of election and posted in the polling place on election day.

(2) The clerk shall also prepare and place on each voting machine to be used in election precincts under the clerk's supervision a set of official ballot labels arranged in the manner prescribed for the official election ballot to be used on voting machines. When there is more than one person to be elected to an office, there shall be provided two, and only two, spaces for write-in purposes for each different office. No cross mark (X) shall be required opposite the name of a write-in candidate. Candidate names shall be arranged by lot as prescribed by the municipal clerk under the designation of the office. The clerk shall deliver the required number of voting machines, equipped with the official ballot, to each election precinct no later than the day prior to the day of election.

(3) Cards of instruction for the guidance of voters in casting their ballots on voting machines shall also be supplied by the clerk as provided in section 31-10-906.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1. L. 93: (2) amended, p. 1709, § 8, effective July 1.

Editor's note: This section is similar to former § 31-10-703 as it existed prior to 1975.

31-10-704. Instructions to vote. In case any voter after entering the voting machine asks for further instructions concerning the manner of voting, a judge shall give such instruction to him; but no judge or other election officer or person assisting such voter shall enter the voting machine, except as provided in section 31-10-608, or in any manner request, suggest, or seek to persuade or induce any such voter to vote for any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instruction, such voter shall vote as in the case of an unassisted voter.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-704 as it existed prior to 1975.

31-10-705. Length of time to vote. No voter shall remain within the voting machine booth longer than three minutes. If he refuses to leave after a lapse of three minutes, he shall be removed by the judges, but the judges in their discretion may permit a voter to remain longer than three minutes.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-705 as it existed prior to 1975.

31-10-706. Judge to watch voting machines. The judges shall designate at least one of their number to be stationed beside the entrance to the voting machine during the entire period of the election to see that it is properly closed after a voter has entered to vote. At such intervals as he deems proper or necessary, the judge shall examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-706 as it existed prior to 1975.

31-10-707. Clerk to supply seals for voting machines. The clerk shall supply each election precinct with a seal for each voting machine to be used in the precinct for the purpose of sealing the machine after the polls are closed and with an envelope for the return of the keys to the machine along with the election returns.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-707 as it existed prior to 1975.

31-10-708. Close of polls and count of votes. As soon as the polls are closed, the judges of election shall immediately lock and seal each voting machine against further voting, and it shall so remain for a period of thirty days unless otherwise ordered by the court. Immediately after each machine is locked and sealed, the judges of election shall open the counting compartments thereof and proceed to count the votes thereon. After the total vote for each candidate and upon each question or proposition has been ascertained, the judges of election shall make out a certificate of votes cast, in numerical figures only, and return the same to the clerk as provided in section 31-10-614.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-708 as it existed prior to 1975.

31-10-709. Election laws apply - separate absentee ballots permitted. All of the provisions of this article not inconsistent with the provisions of sections 31-10-701 to 31-10-708 shall apply to all elections held in precincts where voting machines are used. Nothing in sections 31-10-701 to 31-10-708 shall prohibit the use of a separate paper ballot by absentee voters or for charter amendments where such is required.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-709 as it existed prior to 1975.

PART 8

ELECTRONIC SYSTEM

31-10-801. Use of electronic system. An electronic voting system may be used in any municipal election if the governing body authorizes its use. The adoption and use of an electronic voting system for municipal elections shall be in accordance with the provisions for the adoption and use of such system for general and primary elections insofar as such provisions are applicable to municipal elections.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-802. Sample ballots. Sample ballots shall be printed and in the possession of the clerk ten days before the election and shall be subject to public inspection. Such ballots shall be in the form of the official ballot but shall be printed on paper of a different color from the official ballot. The clerk shall provide that at least two sample ballots for each election precinct are delivered to the judges of election and posted in the polling place on election day.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-803. Ballots - electronic voting. (1) Ballot pages or ballot cards placed upon voting devices shall be, so far as practicable, in the same order of arrangement as provided by section 31-10-902 for paper ballots; except that they shall be of the size and design required by the vote recorder or the electronic vote counting equipment, or both the vote recorder and the electronic vote counting equipment, and may be printed on a number of separate pages which are placed on the voting device or on one or more ballot cards.

(2) If votes are recorded on a ballot card, a separate write-in ballot may be provided, which may be in the form of a paper ballot or envelope on which the voter may write in the titles of the office and the names of persons not on the printed ballot for whom he wishes to vote.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-804. Preparation for use - electronic voting. (1) Prior to an election in which an electronic voting system is to be used, the clerk shall have the vote recorders or punching devices, or both the vote recorders and punching devices, prepared for voting and shall inspect and determine that each such recorder or device is in proper working order and shall cause a sufficient number of such recorders or devices to be delivered to each election precinct in which the electronic voting system is to be used.

(2) The clerk shall supply each election precinct in which vote recorders or voting devices are to be used with a sufficient number of ballot cards, sample ballots, ballot boxes, write-in ballots, if required, and other supplies and forms as may be required. Each ballot card shall have a serially numbered stub attached, which shall be removed by a judge of election before the card is deposited in the ballot box.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-805. Instructions to vote. In case any voter, after commencing to vote, asks for further instructions concerning the manner of voting, a judge shall give such instructions to him; but no judge or other election officer or person assisting such voter shall request, suggest, or seek to persuade or induce any such voter to vote for any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such voter shall vote as in the case of an unassisted voter.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-806. Ballots. The clerk of each municipality using an electronic voting system shall provide sufficient ballots for every municipal election. The official ballots shall be printed and in the possession of the clerk at least ten days before the election.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-807. Distribution of ballots. In municipalities using an electronic voting system, the clerk shall distribute to the election judges in the respective precincts a sufficient number of ballots. The ballots shall be sent in one or more sealed packages for each precinct

with marks on the outside of each stating clearly the precinct and polling place for which it is intended, together with the number of ballots enclosed. Such package shall be delivered to one of the judges of election of such precinct between the close of business on the Friday preceding election day, or during any earlier day in which a judges' school of instruction is held, and 8 p.m. on the Monday before election day. A receipt for the ballots thus delivered shall be given by the election judge who received them. The receipt shall be filed with the clerk, who shall also keep a record of the time when and the manner in which each of said packages was sent and delivered.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1. L. 81: Entire section amended, p. 1505, § 25, effective July 1.

31-10-808. Cards of instruction. (1) The clerk shall furnish to the judges of election of each precinct a sufficient number of instruction cards for the guidance of voters in preparing their ballots. The election judges shall post at least one card in each polling place on the day of election. Such cards shall be printed in large, clear type and shall contain full instructions to the voter as to what should be done:

- (a) To obtain a ballot for voting;
- (b) To prepare the ballot for deposit in the ballot box;
- (c) To obtain a new ballot in the place of one spoiled by accident or mistake; and
- (d) To obtain assistance in marking ballots.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-809. Close of polls - count and seals in electronic voting. After the polls have been closed, the election judges shall secure the vote recorders or the voting devices, or both the vote recorders and the voting devices, against further use and prepare a ballot return in duplicate showing the number of voters as indicated by the pollbook who have voted in the precinct, the number of official ballot cards received, and the number of spoiled and unused ballot cards returned. The original copy of said ballot return shall be deposited in a metal or durable plastic transfer box, along with all voted and spoiled ballots. The transfer box shall then be sealed in such a way as to prevent tampering with the box or its contents. The clerk shall provide such a numbered seal. The duplicate copy of said ballot return shall be mailed at the nearest post office or post box to the clerk by a judge other than the one who delivers the transfer box to the counting center. One judge shall deliver the sealed transfer box to the counting center or other place designated by the clerk.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-810. Electronic vote counting - test. (1) The clerk shall have the electronic ballot counting equipment tested in the manner prescribed in this section to ascertain that it will accurately count the votes cast for all offices and all measures. The electronic equipment shall be tested at least three times, once on the day before the election, again just prior to the start of the count on election day, and finally at the conclusion of the counting. The clerk may make any additional tests he deems necessary.

(2) The clerk shall vote and retain at least one hundred test ballots, and shall observe the tabulation of all test ballots by means of the electronic counting equipment, and shall compare such tabulation with the previously retained records of the test vote count. The cause of any discrepancies shall be corrected prior to the actual vote tabulation.

(3) All test materials, when not in use, shall be kept in a metal box, and the clerk shall be the custodian of the box.

(4) After the final conclusion of the counting, all programs, test materials, and ballots shall be sealed and retained as provided for paper ballots.

Source: L. 75: Entire title R&RE, p. 1057, § 1, effective July 1.

31-10-811. Electronic vote counting - procedure. (1) All proceedings at the counting center shall be under the direction of the clerk and shall be conducted under the observation of watchers, so far as practicable, in accordance with the provisions of part 6 of this article; but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in the processing and counting of the ballots shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote counting equipment, a true duplicate copy shall be made of the damaged ballot in the presence of two witnesses. The duplicate ballot shall be substituted for the damaged ballot. All duplicate ballots shall be clearly labeled as such and shall bear a serial number which shall be recorded on the damaged ballot.

(2) The return printed by the electronic vote tabulating equipment, to which have been added write-in votes, shall constitute, when certified by the clerk, the official return of each precinct. The clerk may from time to time release unofficial returns. Upon completion of the count, the official returns shall be open to the public.

(3) Absentee ballots shall be counted at the counting center in the same manner as precinct ballots. Write-in ballots may be counted in their precincts by the precinct judges of election or at the counting center, but, before any write-in vote is counted, it shall be compared with votes cast for the same office on the ballot card to ascertain whether the write-in vote is valid. If the voter has cast more votes for the office than he is lawfully entitled to vote, the word "void" shall be written across the write-in vote, and it shall not be counted. Votes cast for a nominated candidate whose name appears on the ballot shall not be voided because of an invalid write-in vote for the same office.

(4) If for any reason it becomes impracticable to count all or a part of the ballots with electronic vote tabulating equipment, the clerk may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(5) The receiving, opening, and preservation of the transfer boxes and their contents shall be the responsibility of the clerk, who shall provide adequate personnel and facilities to assure accurate and complete election results. Any indication of tampering with the ballots or ballot cards or other fraudulent action shall be immediately reported to the municipal attorney who shall immediately investigate such action and report in writing within ten days his findings to the clerk and shall prosecute to the full extent of the law any person responsible for such fraudulent action. The conduct of municipal elections when electronic voting systems are used shall follow, as nearly as practicable, the conduct of general and primary elections when such systems are used.

Source: L. 75: Entire title R&RE, p. 1057, § 1, effective July 1.

31-10-812. Election laws apply - separate absentee ballots permitted. All of the provisions of this article not inconsistent with the provisions of this part 8 shall apply to all elections held in precincts where an electronic voting system is used. Nothing in this part 8 shall prohibit the use of a separate paper ballot by absentee voters or for charter amendments where such is required.

Source: L. 75: Entire title R&RE, p. 1058, § 1, effective July 1.

PART 9

PAPER BALLOTS

31-10-901. Ballot boxes. The governing body of each municipality using paper ballots shall provide one ballot box for each polling place. Each ballot box shall be strongly constructed so as to prevent tampering, with a small opening at the top thereof and with a lid to be locked. The ballot boxes and keys shall be kept by the clerk and delivered to the judges of election within one day immediately preceding any municipal election, to be

returned as provided in section 31-10-614. Nothing in this section shall prevent the governing body from obtaining ballot boxes from the office of the county clerk and recorder.

Source: L. 75: Entire title R&RE, p. 1058, § 1, effective July 1. L. 81: Entire section amended, p. 1505, § 26, effective July 1.

Editor's note: This section is similar to former § 31-10-507 as it existed prior to 1975.

31-10-902. Ballots. (1) The clerk of each municipality using paper ballots shall provide printed ballots for every municipal election. The official ballots shall be printed and in the possession of the clerk at least ten days before the election. In addition, sample ballots shall be printed and in the possession of the clerk ten days before the election and shall be subject to public inspection. The sample ballots shall be printed in the form of the official ballots but upon paper of a different color from the official ballots. Sample ballots shall be delivered to the judges of election and posted with the cards of instruction provided in section 31-10-906.

(2) Every ballot shall contain the names of all duly nominated candidates for offices to be voted for at that election, except those who have died or withdrawn, and the ballot shall contain no other names. The names of the candidates for each office shall be printed upon the ballot without political party designation and without any title or degree designating the business or profession of the candidate. The names shall be arranged by lot as prescribed by the municipal clerk under the designation of the office.

(3) (a) The ballots shall be printed to give each voter a clear opportunity to designate his choice of candidates by a cross mark (X) in the square at the right of the name. On the ballot may be printed such words as will aid the voter, such as "vote for not more than one".

(b) At the end of the list of candidates for each different office shall be as many blank spaces as there are persons to be elected to such office in which the voter may write the name of any eligible person not printed on the ballot for whom he desires to vote as a candidate for such office; but no cross mark (X) shall be required at the right of the name so written in.

(c) When the approval of any question is submitted at a municipal election, such question shall be printed upon the ballot after the lists of candidates for all offices. The ballots shall be printed to give each voter a clear opportunity to designate his answer by a cross mark (X) in the appropriate square at the right of the question.

(4) The extreme top part of each ballot shall be divided by two perforated lines into two spaces, each of which shall be not less than an inch in width, the top portion being known as the stub and the next portion as the duplicate stub. Upon each of said stubs nothing shall be printed except the number of the ballot, and the same number shall be printed upon both stubs. Stubs and duplicate stubs of ballots shall both be numbered consecutively. All ballots shall be uniform and of sufficient length and width to allow for the names of candidates and the proposed questions to be printed in clear, plain type with a space of at least one-half inch between the different columns on said ballot. On the back of each ballot shall be printed the endorsement "Official ballot for...", and after the word "for" shall follow the designation of the precinct, ward, and municipality for which the ballot is prepared, the date of the election, and a facsimile of the signature of the clerk who has caused the ballot to be printed. The ballot shall contain no caption or other endorsement or number. Each clerk shall use precisely the same quality and tint of paper, the same kind of type, and the same quality and tint of plain black ink for all ballots furnished by him at one election. When candidates are to be voted for only by the registered electors of a particular ward, the names of such candidates shall not be printed on any other ballots than those provided for use in such ward. The ballots shall be of such form that when folded the whole endorsement is visible and the contents of the ballot are not exposed.

Source: L. 75: Entire title R&RE, p. 1058, § 1, effective July 1. L. 93: (2) amended, p. 1710, § 9, effective July 1.

Editor's note: This section is similar to former § 31-10-508 as it existed prior to 1975.

31-10-903. Ballots changed if candidate dies or withdraws. If any person duly nominated dies before the day fixed for the election and the fact of such death becomes known to the clerk or withdraws by filing an affidavit of withdrawal with the clerk before the date fixed for election, the name of the deceased or withdrawn candidate shall not be printed upon the ballots for the election. If the ballots are already printed, the name of the deceased candidate or withdrawn candidate shall be erased or cancelled, if possible, before the ballots are delivered to the voters.

Source: L. 75: Entire title R&RE, p. 1059, § 1, effective July 1. L. 91: Entire section amended, p. 756, § 27, effective April 4. L. 92: Entire section amended, p. 2178, § 41, effective June 2.

Editor's note: This section is similar to former § 31-10-509 as it existed prior to 1975.

31-10-904. Printing and distribution of ballots. In municipalities using paper ballots, the clerk shall cause to be printed and distributed to the election judges in the respective precincts a sufficient number of ballots. The ballots shall be sent in one or more sealed packages for each precinct with marks on the outside of each clearly stating the precinct and polling place for which it is intended, together with the number of ballots enclosed. Such packages shall be delivered to one of the judges of election of such precinct between the close of business on the Friday preceding election day or during any earlier day in which a judges' school of instruction is held, and 8 p.m. on the Monday before election day. A receipt for the ballots thus delivered shall be given by the election judge who receives them. The receipt shall be filed with the clerk, who shall also keep a record of the time when and the manner in which each of said packages was sent and delivered. The election judge receiving such package shall produce the same, with the seal unbroken, in the proper polling place at the opening of the polls on election day and, in the presence of all election judges for the precinct, shall open the package.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1. L. 81: Entire section amended, p. 1506, § 27, effective July 1.

Editor's note: This section is similar to former § 31-10-510 as it existed prior to 1975.

31-10-905. Substitute ballots. If the ballots to be furnished to any election judge are not delivered by 8 p.m. on the Monday before election day or if after delivery they are destroyed or stolen, the clerk shall cause other ballots to be prepared, as nearly in the form prescribed as practicable, with the word "substitute" printed in brackets immediately under the facsimile signature of the clerk. Upon receipt of ballots thus prepared, accompanied by a written and sworn statement of the clerk that the same have been so prepared and furnished by him and that the original ballots have so failed to be received or have been destroyed or stolen, the election judges shall cause the ballots so substituted to be used at the election. If from any cause none of the official ballots or substitute ballots prepared by the clerk are ready for distribution at any polling place or if the supply of ballots is exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in the form of the official ballots, may be used until substitutes prepared by the clerk are printed and delivered.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-511 as it existed prior to 1975.

31-10-906. Cards of instruction. (1) The clerk shall furnish to the judges of election of each precinct a sufficient number of instruction cards for the guidance of voters in

preparing their ballots. The election judges shall post at least one card in each polling place upon the day of the election. Such cards shall be printed in large, clear type and shall contain full instructions to the voter as to what should be done:

- (a) To obtain ballots for voting;
- (b) To prepare the ballot for deposit in the ballot box;
- (c) To obtain a new ballot in the place of one spoiled by accident or mistake; and
- (d) To obtain assistance in marking ballots.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-512 as it existed prior to 1975.

PART 10

ABSENTEE VOTING

31-10-1001. When absent electors may vote. Any registered elector of a municipality may cast a ballot at the election in the manner provided in sections 31-10-1001 to 31-10-1007.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1. L. 87: Entire section amended, p. 329, § 88, effective July 1. L. 93: Entire section amended, p. 1669, § 85, effective July 1; entire section amended, p. 1710, § 10, effective July 1.

Editor's note: (1) This section is similar to former § 31-10-801 as it existed prior to 1975.

(2) This section was amended in Senate Bill 93-242. Those amendments were superseded by the amendment of the section in House Bill 93-1063.

ANNOTATION

Annotator's note. Since § 31-10-1001 is similar to former § 31-10-801 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Strict construction. The general rule is that absentee voter statutes should be strictly construed, and that the voter who wishes to cast an absentee ballot must comply with all the statutory requirements. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

Absentee ballot authorized in annexation election. Since the general assembly intended to

make the municipal election code, which expressly provides for absentee ballots, applicable generally to municipal elections, and since the municipal election code provides that the municipal election code should be construed liberally so that all legally qualified electors may be permitted to vote, we hold that the municipal election code by its terms authorized the absentee ballots in an annexation election. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

31-10-1002. Application for absentee ballot - delivery - list. (1) Requests for an application for an absentee voter's ballot may be made orally or in writing. Applications for absent voters' ballots shall be filed in writing and shall be personally signed by the applicant or a family member related by blood or marriage to the applicant. If the applicant is unable to sign the application, the applicant shall make such applicant's mark on the application, which shall be witnessed by another person. Such application shall be filed with the clerk not earlier than ninety days before and not later than the close of business on the Friday immediately preceding such regular or special election. The application may be in the form of a letter.

(2) Upon receipt of an application for an absent voter's ballot within the proper time, the clerk receiving it shall examine the records of the county clerk and recorder to ascertain whether or not the applicant is registered and lawfully entitled to vote as requested, and, if found to be so, the clerk shall deliver, as soon as practicable, but not more than seventy-two

hours after the ballots have been received, to the applicant personally in the clerk’s office or by mail to the mailing address given in the application an official absent voter’s ballot, an identification return envelope with the affidavit thereon properly filled in as to precinct and residence address as shown by the records of the county clerk and recorder, and an instruction card.

(2.5) In addition to the requirements of subsection (2) of this section, the clerk shall also deliver, as soon as practicable after the ballots are received, to each municipal elector whose status as a permanent mail-in voter is indicated in the voter registration records of the county clerk and recorder, an official absent voter’s ballot, an identification return envelope with the affidavit thereon properly filled in as to precinct and residence address as shown by the records of the county clerk and recorder, and an instruction card.

(3) Before any absent voter’s ballot is delivered or mailed or before any registered elector is permitted to cast his vote on an absent voter’s voting machine, the clerk shall record such elector’s name, the precinct number, and the number appearing on the stub of the ballot, together with the date the ballot is delivered or mailed. This information shall be recorded on the registration record or registration list before the registration book or list is delivered to the judges of election. A separate list of the registered electors who have received absent voters’ ballots shall be delivered to the judges of election in the precinct designated for counting absentee ballots, or, if the clerk elects to deliver absent voters’ envelopes received from electors of each precinct to the judges of election of such precinct, as provided by section 31-10-1006, a separate list of the registered electors of each precinct who have received absent voters’ ballots shall be delivered to the judges of election of each such precinct.

(4) (Deleted by amendment, L. 91, p. 640, § 87, effective May 1, 1991.)

Source: **L. 75:** Entire title R&RE, p. 1061, § 1, effective July 1. **L. 77:** (1) amended, p. 233, § 7, effective June 19. **L. 79:** (2) and (3) amended, p. 1179, § 22, effective July 1. **L. 87:** (1) amended and (4) added, p. 329, § 89, effective July 1. **L. 91:** (3) and (4) amended, p. 640, § 87, effective May 1. **L. 93:** (1) amended, p. 1670, § 86, effective July 1; (1) and (2) amended, p. 1710, § 11, effective July 1. **L. 2000:** (1) amended, p. 797, § 18, effective August 2. **L. 2009:** (2.5) added, (HB 09-1216), ch. 165, p. 730, § 8, effective August 5.

Editor’s note: (1) This section is similar to former § 31-10-802 as it existed prior to 1975.
(2) Subsection (1) was amended in Senate Bill 93-242. Those amendments were superseded by the amendment of the section in House Bill 93-1063.

31-10-1003. Self-affirmation on return envelope. (1) The return envelope shall have printed on its face a self-affirmation substantially in the following form:

“State of Municipality of, County of

I,, affirm and say that I am a qualified and registered elector in precinct no., municipality of and state of Colorado; that my residence and post-office address is; and that I herein enclose my ballot in accordance with the provisions of the “Colorado Municipal Election Code of 1965”. I realize that if any false statements are contained herein that I shall be subject to prosecution for criminal action.

.....
Signature of voter”

(2) (Deleted by amendment, L. 91, p. 641, § 88, effective May 1, 1991.)

Source: **L. 75:** Entire title R&RE, p. 1061, § 1, effective July 1. **L. 87:** Entire section amended, p. 330, § 90, effective July 1. **L. 91:** Entire section amended, p. 641, § 88, effective May 1.

Editor’s note: This section is similar to former § 31-10-803 as it existed prior to 1975.
Cross references: For the “Colorado Municipal Election Code of 1965”, see article 10 of this title.

31-10-1004. Manner of absentee voting by paper ballot. (1) Any registered elector applying for and receiving an absent voter's ballot, in casting the ballot, shall make and subscribe to the self-affirmation on the return identification envelope. The voter shall then mark the ballot. The voter shall fold the ballot so as to conceal the marking, deposit it in the return envelope, and seal the envelope securely. The envelope may be delivered personally or mailed by the voter to the clerk issuing the ballot. It is permissible for a voter to deliver the ballot to any person of the voter's own choice or to any duly authorized agent of the clerk for mailing or personal delivery to the clerk. All envelopes containing absent voters' ballots shall be in the hands of the clerk not later than the hour of 7 p.m. on the day of election.

(1.5) (Deleted by amendment, L. 91, p. 641, § 89, effective May 1, 1991.)

(2) Upon receipt of an absent voter's ballot, the clerk shall write or stamp upon the envelope containing the same the date and hour such envelope was received in his office and, if the ballot was delivered in person, the name and address of the person delivering the same. He shall safely keep and preserve all absent voters' ballots unopened until the time prescribed for delivery to the judges, as provided in section 31-10-1006.

Source: L. 75: Entire title R&RE, p. 1062, § 1, effective July 1. L. 79: (2) amended, p. 1180, § 23, effective July 1. L. 87: (1) amended and (1.5) added, p. 330, § 91, effective July 1. L. 91: (1) and (1.5) amended, p. 641, § 89, effective May 1. L. 93: (1) amended, p. 1711, § 12, effective July 1.

Editor's note: This section is similar to former § 31-10-804 as it existed prior to 1975.

31-10-1005. Absent voters' voting machines - electronic voting systems. (1) Any municipality using voting machines may provide one or more voting machines in the clerk's office for the use of qualified applicants for absent voters' ballots. If such machines are provided, they shall be available from twelve days prior to the election until the closing of business on the Friday immediately preceding the election. Votes on such machines shall be cast and counted in the same manner as votes would be cast and counted on a voting machine in a precinct polling place on election day. The clerk shall supervise the casting and counting of absent voters' ballots on the machines. The machines shall remain locked and the tabulation of the votes cast shall remain unknown until the day of the election.

(2) Any municipality using an electronic voting system may provide such system for the use of qualified applicants for absent voters' ballots. Such system shall be available from twelve days prior to the election until the closing day of business on the Friday immediately preceding the election. Votes cast using such system shall be cast in the same manner as votes would be cast in a precinct polling place on election day. The clerk shall supervise the casting and counting of absent voters' ballots using such system.

Source: L. 75: Entire title R&RE, p. 1062, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-805 as it existed prior to 1975.

31-10-1006. Delivery to judges. Not later than 8:30 a.m. on the day of any municipal election, the clerk shall deliver to the judges of one of the precincts of the municipality, which precinct shall be selected by the clerk, all the absent voters' envelopes received up to that time, in sealed packages, taking a receipt for the packages, together with the list of absent voters, or, in the clerk's discretion, the clerk may elect to deliver the absent voters' envelopes received from electors of each precinct and the list of absent voters for each precinct to the judges of the precinct. The clerk shall continue to deliver any envelopes which may be received thereafter during said day up to and including 7 p.m. On the sealed packages shall be printed or written, "This package contains(number) absent voters' ballots." With the envelopes the clerk shall deliver to one of the election judges written instructions, which shall be followed by the judges of election in casting and counting the ballots, and all the books, records, and supplies as are needed for tabulating, recording, and certifying said absent voters' ballots.

Source: L. 75: Entire title R&RE, p. 1062, § 1, effective July 1. L. 79: Entire section amended, p. 1180, § 24, effective July 1. L. 93: Entire section amended, p. 1711, § 13, effective July 1.

Editor's note: This section is similar to former § 31-10-806 as it existed prior to 1975.

31-10-1007. Casting and counting absentee ballots. (1) If the self-affirmation on the envelope containing the absent voter's ballot is properly sworn to, one of the judges shall open such voter's identification envelope in the presence of a majority of the judges, and, after announcing in an audible voice the name of such absent voter, he shall tear open such envelope without defacing the self-affirmation printed thereon or mutilating the enclosed ballot. Such ballot shall then be cast and counted in the same manner as if such absent voter had been present in person; except that one of the judges shall deposit the ballot in the ballot box without unfolding it. If the absent voters' ballots are delivered to the judges of one precinct selected by the clerk as provided by section 31-10-1006, the absentee vote shall be certified separately from the vote of the precinct where it is counted.

(2) (Deleted by amendment, L. 91, p. 642, § 90, effective May 1, 1991.)

Source: L. 75: Entire title R&RE, p. 1063, § 1, effective July 1. L. 79: Entire section amended, p. 1180, § 25, effective July 1. L. 87: Entire section amended, p. 331, § 92, effective July 1. L. 91: Entire section amended, p. 642, § 90, effective May 1.

Editor's note: This section is similar to former § 31-10-807 as it existed prior to 1975.

31-10-1008. Challenge of absentee ballots - rejection - record. (1) The vote of any absent voter may be challenged in the same manner as other votes are challenged, and the judges of election shall have power to determine the legality of such ballot. If the challenge is sustained or if the judges determine that the self-affirmation accompanying the absent voter's ballot is insufficient or that the voter is not a registered elector, the envelope containing the ballot of such voter shall not be opened, and the judges shall endorse on the back of the envelope the reason therefor. When it is made to appear to the judges of election by sufficient proof that any absent voter who has marked and forwarded his ballot has died, the envelope containing the ballot of such deceased voter shall not be opened, and the judges shall make proper notation on the back of such envelope. If an absent voter's envelope contains more than one marked ballot of any one kind, none of such ballots shall be counted, and the judges shall make notation on the back of the ballots the reason therefor. Judges of election shall certify in their returns the number of absent voters' ballots cast and counted and the number of such ballots rejected.

(2) All absent voters' identification envelopes, ballot stubs, and absent voters' ballots rejected by the judges of election in accordance with the provisions of this section shall be returned to the clerk. All absent voters' ballots received by the clerk after 7 p.m. the day of the election, together with those rejected and returned by the judges of election, as provided in this section, shall remain in the sealed identification envelopes and be destroyed later, as provided in section 31-10-616.

(3) If an absent voter's ballot is not returned or if it is rejected and not counted, such fact shall be noted on the record kept by the clerk. Such record shall be open to public inspection under proper regulations.

Source: L. 75: Entire title R&RE, p. 1063, § 1, effective July 1. L. 91: (1) amended, p. 642, § 91, effective May 1. L. 93: (2) amended, p. 1711, § 14, effective July 1.

Editor's note: This section is similar to former § 31-10-808 as it existed prior to 1975.

31-10-1009. Oaths for absentee ballots. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1063, § 1, effective July 1. **L. 87:** Entire section amended, p. 331, § 93, effective July 1. **L. 91:** Entire section repealed, p. 642, § 92, effective May 1.

Editor's note: Before its repeal, this section was similar to former § 31-10-809 as it existed prior to 1975.

31-10-1010. Emergency absentee voting. (1) (a) If the voter is confined in a hospital or his or her place of residence on election day because of conditions arising after the closing day for absent voters' ballot applications, the voter may request in a written statement, signed by him or her, that the clerk send him or her an absent voter's ballot with the word "EMERGENCY" stamped on the stubs thereof. The clerk shall deliver the emergency absent voter's ballot at his or her office, during the regular hours of business, to any authorized representative of the voter possessing a written statement from the voter's physician, advanced practice nurse, or practitioner that the voter will be confined in a hospital or his or her place of residence on election day. For the purposes of this paragraph (a), "authorized representative" means a person possessing a written statement from the voter containing the voter's signature, name, and address and requesting that the emergency absent voter's ballot be given to the authorized person as identified by name and address. The authorized person shall acknowledge receipt of the emergency ballot with his or her signature, name, and address.

(b) A request for an emergency absent voter's ballot under this section shall be made before, and the ballot shall be returned to the clerk's office no later than, 7 p.m. on election day.

(2) Any voter unable to go to the polls because of conditions arising after the closing day for absent voters' ballot applications which will result in his absence from the precinct on election day may apply at the office of the clerk for an emergency absent voter's ballot. Upon receipt of an affidavit signed by the voter on a form provided by the clerk and attesting to the fact that the voter will be compelled to be absent from his precinct on election day because of conditions arising after the closing day for absent voters' ballot applications, the clerk shall provide the voter with an absent voter's ballot, with the word "EMERGENCY" stamped on the stubs thereof.

(3) After marking his ballot, the voter shall place it in a return envelope provided by the clerk. He shall then fill out and sign the self-affirmation on the envelope, as provided in section 31-10-1003, on or before election day and return it to the office of the clerk. Upon receipt of the envelope, the clerk shall verify the voter's name on the return envelope with that which appears on his office precinct record and, if they compare, shall deliver the envelope to the election judges, as provided in section 31-10-1006.

Source: **L. 79:** Entire section added, p. 1181, § 26, effective July 1. **L. 81:** (1)(b) and (2) amended, p. 1506, § 28, effective July 1. **L. 91:** (3) amended, p. 643, § 93, effective May 1. **L. 93:** (1)(b) amended, p. 1712, § 15, effective July 1. **L. 2008:** (1)(a) amended, p. 135, § 28, effective January 1, 2009.

PART 11**CHALLENGE OF VOTERS**

31-10-1101. No voting unless registered. Unless otherwise permitted pursuant to section 31-10-203, no person shall be permitted to vote at any regular or special election unless his name is found on the registration list or official registration book or unless registration in that precinct is confirmed orally as provided by section 31-10-606 (1).

Source: **L. 75:** Entire title R&RE, p. 1064, § 1, effective July 1. **L. 79:** Entire section amended, p. 1181, § 27, effective July 1. **L. 81:** Entire section amended, p. 1506, § 29, effective July 1.

Editor's note: This section is similar to former § 31-10-901 as it existed prior to 1975.

31-10-1102. Right to vote may be challenged. (1) When any person whose name appears on the registration list or in the registration book makes application for a ballot, his right to vote at that poll and election may be challenged. If the person so applying is not entitled to vote, no ballot shall be delivered to him. Any person may also be challenged when he offers his ballot for deposit in the ballot box.

(2) It is the duty of any judge of election to challenge any person offering to vote who he believes is not a registered elector. In addition, challenges may be made by watchers or any registered elector of the precinct who is present.

Source: **L. 75:** Entire title R&RE, p. 1064, § 1, effective July 1. **L. 81:** (2) amended, p. 1506, § 30, effective July 1.

Editor's note: This section is similar to former § 31-10-902 as it existed prior to 1975.

31-10-1103. Challenge to be made by written oath. Each challenge shall be made by written oath, signed by the challenger under penalty of perjury, setting forth the name of the person challenged and the basis for the challenge. The judges of election shall deliver all challenges and oaths to the clerk at the time the other election papers are returned. The clerk shall forthwith deliver all challenges and oaths to the district attorney for investigation and appropriate action.

Source: **L. 75:** Entire title R&RE, p. 1064, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-903 as it existed prior to 1975.

Cross references: For penalty for perjury under this article, see § 31-10-1506.

31-10-1104. Challenge questions asked voter. (1) If a person offering to vote is challenged as unqualified, one of the judges shall tender to him the following written oath or affirmation: "You do solemnly swear or affirm that you will fully and truly answer all such questions as are put to you touching your place of residence and qualifications as a registered elector at this election."

(2) If the person is challenged as unqualified on the ground that he is not a citizen and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions:

- (a) "Are you a citizen of the United States?"
- (b) "Are you a native or naturalized citizen?"
- (c) and (d) Repealed.

(3) Repealed.

(4) If the person is challenged as unqualified on the ground that he or she has not resided in this state for thirty days immediately preceding the election, the judges, or one of them, shall put the following questions:

- (a) "Have you resided in this state for thirty days immediately preceding this election?"
- (b) "Have you been absent from this state within the thirty days immediately preceding this election, and during that time have you maintained a home or domicile elsewhere?"
- (c) "If so, when you left, was it for a temporary purpose with the design of returning, or did you intend to remain away?"
- (d) "Did you, while absent, look upon and regard this state as your home?"
- (e) "Did you, while absent, vote in any state or territory?"

(5) If the person is challenged on the ground that he or she has not resided in the precinct for thirty days, one of the judges shall question the person as to his or her residence in the precinct in a manner similar to the method of questioning a person as to his or her residence in this state.

(6) If the person is challenged as unqualified on the ground that he is not eighteen years of age, the judges, or one of them, shall ask the following question: "Are you eighteen years of age or over to the best of your knowledge and belief?"

(7) If the person challenged answers satisfactorily all of the questions put to him, he shall sign his name on the form of the challenge after the printed questions. The judges of election shall indicate in the proper place on the form of challenge whether the challenge was withdrawn and whether the challenged voter refused to answer the questions and left the polling place without voting.

Source: L. 75: Entire title R&RE, p. 1064, § 1, effective July 1. L. 79: (2)(c), (2)(d), and (3) repealed, p. 1640, § 50, effective July 19. L. 92: (4) and (5) amended, p. 2179, § 42, effective June 2. L. 94: IP(4), (4)(a), (4)(b), and (5) amended, p. 1774, § 42, effective January 1, 1995.

Editor's note: This section is similar to former § 31-10-904 as it existed prior to 1975.

31-10-1105. Oath of challenged voter. (1) If the challenge is not withdrawn after the person offering to vote has answered the questions put to him or her, one of the judges shall tender the following oath:

"You do solemnly swear or affirm that you are a citizen of the United States of the age of eighteen years or over; that you have been a resident of this state for thirty days next preceding this election and have not retained a home or domicile elsewhere; that you have been for the last thirty days, and now are, a resident of this precinct or have removed therefrom not more than thirty days as provided in section 31-10-201; that you are a registered elector of this precinct; and that you have not voted at this election."

(2) After the person has taken the oath or affirmation, his ballot shall be received and the word "sworn" shall be written on the pollbook after the person's name.

Source: L. 75: Entire title R&RE, p. 1065, § 1, effective July 1. L. 92: (1) amended, p. 2179, § 43, effective June 2. L. 94: (1) amended, p. 1775, § 43, effective January 1, 1995.

Editor's note: This section is similar to former § 31-10-905 as it existed prior to 1975.

31-10-1106. Refusal to answer questions or take oath. If the challenged person refuses to answer fully any question which is put to him as provided in section 31-10-1104 or refuses to take the oath or affirmation tendered as provided in section 31-10-1105, the judges shall reject his vote.

Source: L. 75: Entire title R&RE, p. 1065, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-906 as it existed prior to 1975.

PART 12

CANVASS OF VOTES

31-10-1201. Returns - canvass. The returns of all municipal elections shall be made to the clerk of the municipality. The clerk shall request the assistance of the mayor of the municipality in conducting the canvass of votes. If there is no mayor or if the mayor has been a candidate at the election, the clerk shall appoint a municipal judge, a member of the

election commission, or a person who is qualified to be an election judge and who did not serve as an election judge in the election as an assistant. No later than seven days after the election, the clerk, in the presence of the assistant, shall open the returns and make out abstracts of votes for each office.

Source: **L. 75:** Entire title R&RE, p. 1065, § 1, effective July 1. **L. 93:** Entire section amended, p. 1712, § 16, effective July 1.

Editor's note: This section is similar to former § 31-10-1001 as it existed prior to 1975.

ANNOTATION

Law reviews. For article "Election Preview: Voters and Fraud", see 27 Colo. Law. 67 (August 1998).
New Statutory Duties to Investigate Ineligible

31-10-1202. Imperfect returns. When the clerk and his assistant find that the returns from any precinct do not strictly conform to the requirements of law in making, certifying, and returning the same, the votes cast in such precinct nevertheless shall be canvassed and counted if such returns are sufficiently explicit to enable such persons authorized to canvass votes and returns to determine therefrom how many votes were cast for the several candidates.

Source: **L. 75:** Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1002 as it existed prior to 1975.

31-10-1203. Corrections. If, upon proceeding to canvass the votes, it clearly appears to the clerk and his assistant that in any statement produced to them certain matters are omitted which should have been inserted or that any mistakes which are merely clerical exist, they shall cause the statement to be sent to the precinct judges from whom they were received to have the same corrected. The judges of election, when so demanded, shall make such correction as the facts of the case require but shall not change or alter any decision made before by them. The clerk and his assistant may adjourn from day to day for the purpose of obtaining and receiving such statement.

Source: **L. 75:** Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1003 as it existed prior to 1975.

31-10-1204. Tie - lots - notice to candidates. If any two or more candidates receive an equal and the highest number of votes for the same office and if there are not enough offices remaining for all such candidates, the clerk and his assistant shall determine by lot the person who shall be elected. Reasonable notice shall be given to such candidates of the time when such election will be so determined.

Source: **L. 75:** Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1004 as it existed prior to 1975.

31-10-1205. Statement - certificates of election. (1) The clerk shall immediately make out statements from the abstract of votes which shall show the names of the candidates and the whole number of votes given to each, distinguishing the several precincts in which they were given. The clerk and his assistant shall certify such statement to be correct and subscribe their names thereto. They shall thereupon determine which persons have been by the greatest number of votes duly elected and shall endorse and subscribe on such statements a certificate of their determination.

(1.5) In any election in a municipality that utilizes four-year overlapping terms of office for members of the governing body as provided in sections 31-4-107 (3) and 31-4-301 (5), any available four-year terms of office shall be awarded to the candidate or the candidates receiving the highest number of votes. The term of office of the candidate or candidates receiving the next highest vote total or totals shall be shortened as provided in sections 31-4-107 (3) and 31-4-301 (5).

(2) The clerk shall record in his office, in a book to be kept by him for that purpose, each such certified statement and determination and shall, without delay, make out and transmit to each of the persons thereby declared to be elected a certificate of his election, certified by him under his seal of office. The clerk shall also forthwith cause a copy of such certified statement and determination to be published in a newspaper of general circulation within the municipality or posted when no newspaper is published within the municipality. The clerk shall also file a copy in the office of the secretary of state.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1. L. 93: (1.5) added, p. 1712, § 17, effective July 1. L. 96: (1.5) amended, p. 1769, § 66, effective July 1.

Editor's note: This section is similar to former § 31-10-1005 as it existed prior to 1975.

31-10-1206. Fees of municipal judge. Each municipal judge appointed to assist the clerk in opening the returns of any municipal election and making abstracts of the votes cast thereat, as required in this article, shall receive for such services the sum of ten dollars for each day in which he is actually engaged therein, to be paid by the municipality in which such service is rendered.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1006 as it existed prior to 1975.

31-10-1207. Recount. (1) The municipal clerk shall conduct a recount of the votes cast in any election if it appears, as evidenced by the survey of returns, that the difference between the highest number of votes cast in the election and the next highest number of votes cast in the election is less than or equal to one-half of one percent of the highest number of votes cast in the election. Any recount conducted pursuant to this subsection (1) shall be completed no later than the tenth day following the election and shall be paid for by the governing body. The clerk shall give notice of the recount to all candidates and, in the case of a ballot issue or question, to any petition representatives identified pursuant to sections 31-2-221 (1), 31-4-502 (1) (a) (I), and 31-11-106 (2) that are affected by the result of the election. Such notice shall be given by certified mail, by posting such notice in three public places within the municipal limits, or by other means reasonably expected to notify the affected candidates or petition representatives. Any affected candidate or petition representative shall be allowed to be present during and observe the recount.

(2) Whenever a recount of the votes cast in an election is not required pursuant to subsection (1) of this section, any interested party, including a candidate for office or the petition representatives for a ballot issue or question, may submit to the clerk a written request for a recount at the expense of the interested party making the request. This request shall be filed with the clerk within seven days after the election. Before conducting the recount, the clerk shall give notice of the recount in accordance with the provisions of subsection (1) of this section, shall determine the cost of the recount, shall notify the interested party that requested the recount of such cost, and shall collect the cost of conducting the recount from such interested party. The interested party that requested the recount shall pay on demand the cost of the recount to the clerk. The funds paid to the clerk for the recount shall be placed in escrow for payment of all expenses incurred in the recount. If, after the recount, the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required pursuant to subsection (1) of this section, the payment for

expenses shall be refunded to the interested party who paid them. Any recount of votes conducted pursuant to this subsection (2) shall be completed no later than the tenth day after the election.

(3) The clerk shall be responsible for conducting the recount and shall be assisted by those persons who assisted in preparing the official abstract of votes. If the person cannot participate in the recount, another person shall be appointed as provided in section 31-10-1201. The clerk may appoint additional persons qualified to be the election judges who did not serve as judges in the election as assistants in conducting the recount. Persons assisting in the conduct of the recount shall be compensated as provided in section 31-10-1206.

(4) The clerk may require the production of any documentary evidence regarding the legality of any vote cast or counted and may correct the survey of returns in accordance with the clerk's findings based on the evidence presented.

(5) In precincts using paper or electronic ballots, the recounts shall be of the ballots cast, and the votes shall be tallied on sheets other than those used at the election. In precincts using voting machines, the recount shall be of the votes tabulated on the voting machines, and separate tally sheets shall be used for each machine.

(6) After a recount conducted pursuant to this section has been completed, the clerk shall notify the governing body of the results of the recount, shall make a certificate of election for each candidate who received the highest number of votes for an office for which a recount was conducted, and shall deliver the certificate to such candidate.

Source: L. 93: Entire section added, p. 1712, § 18, effective July 1. L. 2000: (1) and (2) amended and (6) added, p. 797, § 19, effective August 2.

PART 13

CONTESTS

31-10-1301. Who may contest - causes. (1) The election of any person declared duly elected to any municipal office may be contested by any registered elector of such municipality:

(a) When the contestee is not eligible for the office to which he has been declared elected;

(b) When illegal votes have been received or legal votes rejected at the polls in sufficient numbers to change the results;

(c) For any error or mistake on the part of any of the judges of election or the clerk and his assistant in counting or declaring the result of the election if the error or mistake would be sufficient to change the result;

(d) For malconduct, fraud, or corruption on the part of the judges of election in any precinct or any clerk or his assistant if the malconduct, fraud, or corruption would be sufficient to change the result;

(e) For any other cause which shows that another was the legally elected person.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1. L. 87: IP(1) amended, p. 331, § 94, effective July 1.

Editor's note: This section is similar to former § 31-10-1101 as it existed prior to 1975.

ANNOTATION

Subsection (1)(b) requires the contestor to prove for whom the illegal votes were cast, but the contestor cannot compel the testimony of the ineligible voters. *Mahaffey v. Barnhill*, 855 P.2d 847 (Colo. 1993).

Illegal votes have been received in sufficient numbers to change the results of an election when the number meets or exceeds the margin of victory. *Mahaffey v. Barnhill*, 855 P.2d 847 (Colo. 1993).

31-10-1302. District judge to preside - bond. (1) All contested election cases of municipal officers shall be tried and determined in the district court of the county in which the municipality is located. Where a municipality is located in more than one county, the district court of either county has jurisdiction. The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution thereon shall be according to the rules and practices of the district court.

(2) Before the district court is required to take jurisdiction of the contest, the contestor must file with the clerk of said court a bond, with sureties, to be approved by the district judge, running to said contestee and conditioned to pay all costs in case of failure to maintain his contest.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1102 as it existed prior to 1975.

ANNOTATION

A cost bond need not be filed for a district court to have jurisdiction over an election contest. The language is permissive so the court

may require a cost bond before it accepts jurisdiction but it need not do so. *Mahaffey v. Barnhill*, 855 P.2d 847 (Colo. 1993).

31-10-1303. Filing statement - contents. The contestor shall file in the office of the clerk of the district court, within ten days after the expiration of the period within which a recount may be requested pursuant to section 31-10-1207 (2), or within ten days after the conclusion of a recount conducted pursuant to section 31-10-1207, whichever is later, a written statement of the contestor's intention to contest the election, setting forth the name of the contestor, that the contestor is a registered elector of the municipality, the name of the contestee, the office contested, the time of election, and the particular causes of the contest. The statement shall be verified by the affidavit of the contestor or some registered elector of the municipality that the causes set forth in such statement are true to the best of the affiant's knowledge and belief.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1. L. 87: Entire section amended, p. 332, § 95, effective July 1. L. 2000: Entire section amended, p. 799, § 20, effective August 2.

Editor's note: This section is similar to former § 31-10-1103 as it existed prior to 1975.

ANNOTATION

Declaratory judgment action to determine whether sales and use tax properly authorized under municipal election is an election

contest and therefore must be brought within ten days of canvassing. *Molleck v. City of Golden*, 884 P.2d 725 (Colo. 1994).

31-10-1304. Summons - answer. (1) The clerk of the district court shall thereupon issue a summons in the ordinary form, in which the contestor shall be named as plaintiff and the contestee as defendant, stating the court in which the action is brought and a brief statement of the causes of contest, as set forth in the contestor's statement. The summons shall be served upon the contestee in the same manner as other summonses are served out of the district court of this state.

(2) The contestee, within ten days after the service of such summons, shall make and file his answer to the same with the clerk of said court in which he shall either admit or specifically deny each allegation intended to be controverted by the contestee on the trial of such contest and shall set up in such answer any counterstatement which he relies upon as entitling him to the office to which he has been declared elected.

(3) When the reception of illegal votes or the rejection of legal votes is alleged as the

cause of the contest, a list of the number of persons who so voted or offered to vote shall be set forth in the statement of contestor and shall be likewise set forth in the answer of contestee if any such cause is alleged in his answer by way of counterstatement.

(4) When the answer of the contestee contains new matter constituting a counterstatement, the contestor, within ten days after the filing of such answer, shall reply to the same, admitting or specifically denying, under oath, each allegation contained in such counterstatement intended by him to be controverted on the trial, and file the same in the office of the clerk of the district court.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1104 as it existed prior to 1975.

31-10-1305. Trial and appeals. Immediately after the joining of issue, the district court shall fix a day for the trial to commence, not more than twenty days nor less than ten days after the joining of issue. Such trial shall take precedence over all other business in said court. The testimony may be oral or by depositions taken before any officer authorized to take depositions. Any depositions taken to be used upon the trial of such contest may be taken upon four days' notice thereof. The district judge shall cause the testimony to be taken in full and filed in said cause. The trial of such causes shall be conducted according to the rules and practice of the district court in other cases. Such proceedings may be reviewed and finally adjudicated by the supreme court of this state if application to such court is made by either party and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1105 as it existed prior to 1975.

ANNOTATION

Statute creates no limitation on the district court's power to hear a controversy. It does not state that jurisdiction is lacking absent the

setting of a trial within its limitations. *Mahaffey v. Barnhill*, 855 P.2d 847 (Colo. 1993).

31-10-1306. Recount. If, upon the trial of any contested election under this article, the statement or counterstatement sets forth an error in canvass sufficient to change the result, the trial judge has the power to conduct a recount of the ballots cast or the votes tabulated on the voting machines in the precinct where the alleged error was made. The court may also require the production before it of such witnesses, documents, records, and other evidence as may have or may contain information regarding the legality of any vote cast or counted for either of the contesting candidates or the correct number of votes cast for either candidate and may correct the canvass in accordance with the evidence presented and its findings thereon.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1106 as it existed prior to 1975.

31-10-1307. Judgment. The court shall pronounce judgment whether the contestee or any other person was duly elected. The person so declared elected is entitled to the office upon qualification. If the judgment is against the contestee and he has received his certificate, the judgment annuls it. If the court finds that no person was duly elected, the judgment shall be that the election be set aside and that a vacancy exists.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1107 as it existed prior to 1975.

31-10-1308. Ballot questions and ballot issues - how contested. (1) The results of an election on any ballot question may be contested in the manner provided by this part 13. The grounds for such contest shall be those grounds set forth in section 31-10-1301 (1) (b), (1) (c), and (1) (d). The contestee shall be the appropriate election official. In addition to other matters required to be set forth by this part 13, the statement of intention to contest the election shall set forth the question contested.

(2) Any contest arising out of a ballot issue or ballot question, as defined in section 1-1-104 (2.3) and (2.7), C.R.S., concerning the order on the ballot or concerning whether the form or content of any ballot title meets the requirements of section 20 of article X of the state constitution, shall be conducted as provided in section 1-11-203.5, C.R.S.

(3) The result of an election on any ballot issue, as defined in section 1-1-104 (2.3), C.R.S., approving the creation of any debt or other financial obligation may be contested in the manner provided by this part 13. The grounds for such contest shall be those grounds set forth in sections 1-11-201 (4), C.R.S., and 31-10-1301 (1) (b), (1) (c), and (1) (d). The contestee shall be the municipality for which the ballot issue was decided.

Source: **L. 81:** Entire section added, p. 1507, § 31, effective July 1. **L. 94:** Entire section amended, p. 1192, § 94, effective July 1. **L. 2000:** (2) amended, p. 799, § 21, effective August 2. **L. 2003:** (3) added, p. 750, § 7, effective August 6.

Editor's note: This section is similar to former § 31-10-1108 as it existed prior to 1975.

PART 14

OTHER JUDICIAL PROCEEDINGS

31-10-1401. Controversies. (1) When any controversy arises between any official charged with any duty or function under this article and any candidate or other person, the district court, upon the filing of a verified petition by any such official or person setting forth in concise form the nature of the controversy and the relief sought, shall issue an order commanding the respondent in such petition to appear before the court and answer under oath to such petition. It is the duty of the court to summarily hear and dispose of any such issues, with a view to obtaining a substantial compliance with the provisions of this article by the parties to such controversy, and to make and enter orders and judgments and to follow the procedures of such court to enforce all such orders and judgments.

(2) Such proceedings may be reviewed and finally adjudicated by the supreme court of this state if application to such court is made within five days after the termination thereof by the court in which the petition was filed and if the supreme court is willing to assume jurisdiction of the case.

Source: **L. 75:** Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1201 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-10-1401 is similar to former § 31-10-1201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

There is no ambiguity in the explicit language of the statute which names the district court as the forum in which such petitions are

to filed. *Birkenmayer v. Carter*, 165 Colo. 459, 439 P.2d 991 (1968).

Jurisdiction continues past election. Because the municipal election was 20 days ago and persons elected on that date are now in office, it appears that no remedy is afforded the petitioner whose name was omitted from the ballot in connection with the election; nevertheless, the district court erred in dismissing the

action of the ground that it had no jurisdiction of the present controversy. *Birkenmayer v. Carter*, 165 Colo. 459, 439 P.2d 991 (1968).

Applied in *Theobald v. Byrns*, 195 Colo. 330, 579 P.2d 609 (1978).

31-10-1402. Correction of errors. (1) The clerk shall, on his own motion, correct without delay any error in publication or sample or official ballots which he discovers or which is brought to his attention and which can be corrected without interfering with the timely distribution of the ballots.

(2) When it appears by verified petition of a candidate or his agent to the district court that an error or omission has occurred in the publication of the names or descriptions of the candidates or in the printing of the sample or official ballots which has not been corrected by the clerk, the court shall issue an order requiring the clerk to forthwith correct such error or to forthwith show cause why such error should not be corrected. Costs, including a reasonable attorney fee, may be taxed in the discretion of such court against either party.

(3) Such proceedings may be reviewed and finally adjudicated by the supreme court of this state if application to such court is made within five days after the termination thereof by the court in which the petition was filed and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 75: Entire title R&RE, p. 1069, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1202 as it existed prior to 1975.

PART 15

ELECTION OFFENSES

31-10-1501. District attorney or attorney general to prosecute. (1) Any person may file with the district attorney an affidavit stating the name of any person who has violated any of the provisions of this article and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, he shall prosecute the same.

(2) The attorney general of the state shall have equal power with district attorneys to file informations or complaints against any person for violating any provision of this article.

Source: L. 75: Entire title R&RE, p. 1069, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1301 as it existed prior to 1975.

31-10-1502. Sufficiency of complaint - judicial notice. Irregularities or defects in the mode of calling, giving notice of, convening, holding, or conducting any regular or special election constitutes no defense to a prosecution for a violation of this article. When an offense is committed in relation to any municipal election, an indictment, information, or complaint for such offense is sufficient if it alleges that such election was authorized by law, without stating the call or notice of the election, the names of the judges of election holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any regular or special election.

Source: L. 75: Entire title R&RE, p. 1069, § 1, effective July 1. L. 81: Entire section amended, p. 1507, § 32, effective July 1.

Editor's note: This section is similar to former § 31-10-1302 as it existed prior to 1975.

31-10-1503. Immunity of witness from prosecution. Any person violating any provision of this article is a competent witness against any other such violator and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation in the

same manner as any other person, but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which his testimony was given and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1303 as it existed prior to 1975.

31-10-1504. Penalties for election offenses. In all cases where an offense is denominated by this article as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1304 as it existed prior to 1975.

31-10-1505. Payment of fines. All fines collected under the provisions of this article shall be paid to the county in which the municipality concerned is located.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1305 as it existed prior to 1975.

31-10-1506. Perjury. Any person, having taken any oath or made any affirmation required by this article, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or suborns any other person to swear or affirm willfully, corruptly, and falsely commits perjury in the second degree or subornation of perjury.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1306 as it existed prior to 1975.

31-10-1507. Forgery. Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges the name of a registered elector to an absent voter's ballot commits forgery.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1. L. 97: Entire section amended, p. 1027, § 57, effective August 6.

Editor's note: This section is similar to former § 31-10-1307 as it existed prior to 1975.

31-10-1508. Tampering with nomination papers. Any person who, being in possession of nomination papers entitled to be filed under this article, wrongfully or willfully destroys, defaces, mutilates, suppresses, neglects, or fails to cause the same to be filed by the proper time in the clerk's office or who files any such paper knowing the same, or any part thereof, to be falsely made commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1308 as it existed prior to 1975.

31-10-1509. Bribery of petition signers. Any person who offers or knowingly permits any person to offer for his benefit any bribe or promise of gain to an elector to induce him to sign any nomination petition or other election paper or any person who accepts any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after signing, commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1309 as it existed prior to 1975.

31-10-1510. Statements of expenses. (Repealed)

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1. L. 85: Entire section repealed, p. 273, § 7, effective April 30.

Editor's note: Before its repeal, this section was similar to former § 31-10-1310 as it existed prior to 1975.

31-10-1511. Custody and delivery of ballots and other election papers. (1) Any election official having charge of official ballots, tally sheets, the registration book or list, and the pollbook who destroys, conceals, or suppresses the same, except as expressly permitted by this article, commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

(2) Any election official who has undertaken to deliver the official ballots, the tally sheets, the registration book or list, and the pollbook to the clerk and who neglects or refuses to do so within the time prescribed by law or who fails to account fully for all official ballots and other papers in his charge commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1311 as it existed prior to 1975.

31-10-1512. Destroying, removing, or delaying delivery of ballots and other election papers. Any person who willfully destroys or defaces any ballot or tally sheet, or who willfully delays the delivery of the ballots, tally sheets, registration book or list, or pollbook, or who conceals or removes any ballot, ballot box, or tally sheet from the polling place or from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1312 as it existed prior to 1975.

31-10-1513. Unlawfully refusing or permitting to vote. Any election judge who willfully and maliciously refuses or neglects to receive the ballot of any registered elector who has taken or offered to take the oath prescribed in section 31-10-1105 or knowingly and

willfully permits any person to vote who is not entitled to vote at any election commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1313 as it existed prior to 1975.

31-10-1514. Revealing how elector voted. Any election official, watcher, or person who assists a disabled person in voting who reveals how a voter has voted commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1314 as it existed prior to 1975.

31-10-1515. Violation of duty. Any municipal official election official or other person upon whom any duty is imposed by this article who violates, neglects, or omits to perform such duty or is guilty of corrupt conduct in the discharge of the same or any notary public or other officer authorized by law to administer oaths who administers an oath knowing it to be false or who knowingly makes a false certificate in regard to an election matter commits a misdemeanor for each offense and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1315 as it existed prior to 1975.

31-10-1516. Unlawful receipt of money. (1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To receive, agree to, or contract for, before or during any municipal election, any money, gift, loan, or other valuable consideration for himself or any other person for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting for any particular person or measure at any municipal election; or

(b) To receive any money or other valuable thing during or after any municipal election on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1316 as it existed prior to 1975.

31-10-1517. Disclosing or identifying vote. Except as provided in section 31-10-608 or 31-10-609, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents, and no person shall solicit or induce the voter to do so. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed upon the ballot to identify it after it

has been prepared for voting. Any person violating the provisions of this section commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1317 as it existed prior to 1975.

31-10-1518. Delivering and receiving ballots at polls. (1) No voter shall receive an official ballot from any person except one of the judges of election, and no person other than a judge of election shall deliver an official ballot to a voter.

(2) No person except a judge of election shall receive from any voter a ballot prepared for voting.

(3) Any voter who does not vote the ballot received by him shall return his ballot to the judge of election from whom he received the same before leaving the polling place.

(4) Each violation of the provisions of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. L. 81: (1) to (3) amended, p. 1507, § 33, effective July 1.

Editor's note: This section is similar to former § 31-10-1318 as it existed prior to 1975.

31-10-1519. Voting twice. Any person who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. L. 95: Entire section amended, p. 858, § 105, effective July 1.

Editor's note: This section is similar to former § 31-10-1319 as it existed prior to 1975.

31-10-1520. Voting in the wrong precinct. Any person who, at any municipal election, fraudulently votes or offers to vote in any precinct in which he or she does not reside shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. L. 95: Entire section amended, p. 858, § 106, effective July 1.

Editor's note: This section is similar to former § 31-10-1320 as it existed prior to 1975.

31-10-1521. Electioneering near polls. Any person who does any electioneering on election day within any polling place or in any public street or room or in any public manner within one hundred feet of any building in which a polling place is located commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1073, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1321 as it existed prior to 1975.

31-10-1521.5. Anonymous statements concerning candidates or issues - penalties. (Repealed)

Source: **L. 93:** Entire section added, p. 1713, § 19, effective July 1. **L. 97:** Entire section repealed, p. 1545, § 16, effective July 1.

31-10-1522. Employer's unlawful acts. (1) It is unlawful for any employer, whether corporation, association, company, firm, or person, or any officer or agent of such employer:

(a) To refuse any of his employees the privilege of taking time off to vote as provided in section 31-10-603; or

(b) To influence the vote of any employee by force, violence, or restraint, or by inflicting or threatening to inflict any injury, damage, harm, or loss, or by discharging from employment, or by promoting in employment; or

(c) To enclose, in paying his employees the salary or wages due them, their pay in pay envelopes upon which there are written or printed any political mottoes, devices, or arguments containing threats, expressed or implied, intended or calculated to control the political opinions, views, or actions of such employees; or

(d) To put up or otherwise exhibit, within ninety days prior to any municipal election, in his factory, workshop, mine, mill, office, or other establishment or place where his employees may be working or be present in the course of such employment any handbill, notice, or placard containing any threat, notice, or information that, in case any particular candidate is elected or issue is carried, work in his place or establishment will cease in whole or in part or the wages of his employees be reduced or containing any other threats, expressed or implied, intended or calculated to control the political opinions or actions of his employees; or

(e) To either expressly or by implication threaten, intimidate, influence, induce, or compel any employee to vote or refrain from voting for any particular person or issue in any municipal election or to refrain from voting at any municipal election.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 31-10-1504.

Source: **L. 75:** Entire title R&RE, p. 1073, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1322 as it existed prior to 1975.

31-10-1523. Intimidation. It is unlawful for any person directly or indirectly, by himself or any other person in his behalf, to make use of any force, violence, restraint, abduction, duress, or forcible or fraudulent device or contrivance, or to inflict or threaten the infliction of any injury, damage, harm, or loss, or in any manner to practice intimidation upon or against any person in order to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any qualified elector, or to compel, induce, or prevail upon any qualified elector either to give or refrain from giving his vote at any municipal election or to give or refrain from giving his vote for any particular person or measure at any such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 31-10-1504.

Source: **L. 75:** Entire title R&RE, p. 1073, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1323 as it existed prior to 1975.

31-10-1524. Unlawfully giving or promising money. (1) It is unlawful for any person, directly, by himself, or through any other person:

(a) To pay, loan, or contribute or offer or promise to pay, loan, or contribute any money or other valuable consideration to or for any qualified or registered elector or to or for any other person to induce such elector to vote or refrain from voting at any municipal election, or to induce any registered elector to vote or refrain from voting at such election for any

particular person, or to induce such elector to go to the polls or remain away from the polls at such election or on account of such qualified or registered elector having voted or refrained from voting for any particular person or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay or cause to be paid any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, be used in bribery at any municipal election or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1073, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1324 as it existed prior to 1975.

31-10-1525. Corrupt means of influencing vote. If any person, by bribery, menace, or other corrupt means or device whatsoever, either directly or indirectly, attempts to influence any voter of this state in giving his vote or ballot, or deters him from giving the same, or disturbs or hinders him in the free exercise of the right of suffrage at any municipal election in this state, or fraudulently or deceitfully changes or alters a ballot, such person so offending commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1325 as it existed prior to 1975.

31-10-1526. Interference with voter while voting. Any person who interferes with any voter when inside the immediate voting area or when marking a ballot or operating a voting machine commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1326 as it existed prior to 1975.

31-10-1527. Introducing liquor into polls. It is unlawful for any person to introduce into any polling place or to use therein or offer to another for use therein at any time while any election is in progress or the results thereof are being ascertained by the counting of the ballots any intoxicating malt, spirituous, or vinous liquors. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1327 as it existed prior to 1975.

31-10-1528. Inducing defective ballot. Any person who willfully causes a ballot to misstate in any way the wishes of the voter casting the same or who causes any other deceit to be practiced with intent fraudulently to induce such voter to deposit a defective ballot so as to have the ballot thrown out and not counted commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1328 as it existed prior to 1975.

31-10-1529. Personating elector. Any person who falsely personates any registered elector and votes under the name of such elector shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. L. 95: Entire section amended, p. 858, § 107, effective July 1.

Editor's note: This section is similar to former § 31-10-1329 as it existed prior to 1975.

31-10-1530. Altering posted abstract of votes. Any person who defaces, mutilates, alters, or unlawfully removes the abstract of votes posted outside of a polling place commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1330 as it existed prior to 1975.

31-10-1531. Wagers with electors. It is unlawful for any person, including any candidate for public office, before or during any municipal election, to make any bet or wager with a qualified elector or take a share or interest in, or in any manner become a party to, any such bet or wager or provide or agree to provide any money to be used by another in making such bet or wager upon any event or contingency whatever arising out of such election. For each such offense, the offender commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1331 as it existed prior to 1975.

31-10-1532. Tampering with notices or supplies. Any person who, prior to a municipal election, willfully defaces, removes, or destroys any notice of election posted in accordance with the provisions of this article, or who, during an election, willfully defaces, removes, or destroys any card of instruction or sample ballot posted for the instruction of voters, or who, during an election, willfully removes or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot commits a misdemeanor for each offense and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1332 as it existed prior to 1975.

31-10-1533. Tampering with registration book, registration list, or pollbook. Any person who mutilates or erases any name, figure, or word on any registration book, registration list, or pollbook, or who removes such registration book, registration list, or pollbook or any part thereof from the place where it has been deposited with an intention to destroy the same, or to procure or prevent the election of any person, or to prevent any registered elector from voting, or who destroys any registration book or pollbook or part thereof commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1333 as it existed prior to 1975.

31-10-1534. Tampering with voting machine. Any person who tampers with a voting machine before, during, or after any municipal election with intent to change the tabulation of votes thereon to reflect other than an accurate accounting commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1334 as it existed prior to 1975.

31-10-1535. Interference with election official. Any person who at any municipal election intentionally interferes with any election official in the discharge of his duty, or who induces any election official to violate or refuse to comply with his duty, or who aids, counsels, procures, advises, or assists any person to do so commits a misdemeanor for each offense and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1335 as it existed prior to 1975.

31-10-1536. Unlawful qualification as taxpaying elector. It is unlawful to take or place title to property in the name of another, or to pay the taxes, or to take or issue a tax receipt in the name of another for the purpose of attempting to qualify such person as a "qualified taxpaying elector", or to aid or assist any person to do so. The ballot of any such person violating this section shall be void. Each person violating any of the provisions of this section commits a misdemeanor for each offense and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1336 as it existed prior to 1975.

31-10-1537. Absentee voting. Any election official or other person who knowingly violates any of the provisions of this article relative to the casting of absent voters' ballots or who aids or abets fraud in connection with any absent vote cast or to be cast shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. L. 95: Entire section amended, p. 859, § 108, effective July 1.

Editor's note: This section is similar to former § 31-10-1337 as it existed prior to 1975.

31-10-1538. Article to be liberally construed. This article shall be liberally construed so that all legally registered electors may be permitted to vote and so that fraud and corruption in municipal elections may be prevented.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1338 as it existed prior to 1975.

31-10-1539. Applicability. (1) This article shall apply to regular and special municipal elections.

(2) This article shall not apply to cities, towns, or cities and counties having home rule, but any such city, town, or city and county may adopt all or any part of this article by reference.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-10-1339 as it existed prior to 1975.

ANNOTATION

Annotator’s note. Since § 31-10-1539 is similar to former § 31-10-1339 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Includes annexation election. It is the legislative intent that the term “special municipal elections” as contained in the municipal election

code extends to annexation elections. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

The municipal election code applies to elections under the annexation act to the extent that its terms are not inconsistent with the specific provisions of the annexation act. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

31-10-1540. Political campaign signs - restrictions. (Repealed)

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1. L. 79: Entire section repealed, p. 293, § 1, effective June 7.

Editor’s note: Before its repeal, this section was similar to former § 31-10-1340 as it existed prior to 1975.

ARTICLE 11

Municipal Initiatives, Referenda,
and Referred Measures

31-11-101.	Legislative declaration.	31-11-111.	Initiatives, referenda, and referred measures - ballot titles.
31-11-102.	Applicability of article.		
31-11-103.	Definitions.		
31-11-103.5.	Computation of time.	31-11-112.	Petitions - not election materials - no bilingual requirement.
31-11-104.	Ordinances - initiative - conflicting measures.		
31-11-105.	Ordinances - when effective - referendum.	31-11-113.	Receiving money to circulate petitions - filing.
31-11-106.	Form of petition sections.	31-11-114.	Unlawful acts - penalty.
31-11-107.	Circulators - requirements.	31-11-115.	Tampering with initiative or referendum petition.
31-11-108.	Signatures.		
31-11-109.	Signature verification - statement of sufficiency.	31-11-116.	Enforcement.
		31-11-117.	Retention of petitions.
31-11-110.	Protest.	31-11-118.	Powers of clerk and deputy.

31-11-101. Legislative declaration. It is the intention of the general assembly to set forth in this article the procedures for exercising the initiative and referendum powers reserved to the municipal electors in subsection (9) of section 1 of article V of the state constitution. It is not the intention of the general assembly to limit or abridge in any manner these powers but rather to properly safeguard, protect, and preserve inviolate for municipal electors these modern instrumentalities of democratic government.

Source: L. 95: Entire article added, p. 422, § 1, effective May 8.

ANNOTATION

Annotator’s note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-101.

31-11-102. Applicability of article. This article shall apply to municipal initiatives, referenda, and referred measures unless alternative procedures are provided by charter, ordinance, or resolution.

Source: L. 95: Entire article added, p. 422, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-103.

31-11-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Ballot title" means the language that is printed on the ballot that is comprised of the submission clause and the title.

(2) "Final determination of petition sufficiency" means the date following passage of the period of time within which a protest must be filed pursuant to section 31-11-110 or the date on which any protest filed pursuant to section 31-11-110 results in a finding of sufficiency, whichever is later.

(3) "Petition section" means the stapled or otherwise bound package of documents described in section 31-11-106.

(4) "Submission clause" means the language that is attached to the title to form a question that can be answered by "yes" or "no".

(5) "Title" means a brief statement that fairly and accurately represents the true intent and meaning of the proposed initiative, referendum, or referred measure.

Source: L. 95: Entire article added, p. 422, § 1, effective May 8. **L. 96:** (2) amended, p. 1770, § 67, effective July 1.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-102.

31-11-103.5. Computation of time. Except as otherwise provided in this article, calendar days shall be used in all computations of time made under the provisions of this article. In computing time for any act to be done before any municipal election, the first day shall be included, and the last or election day shall be excluded. Except when computing business days, Saturdays, Sundays, and legal holidays shall be included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. If the time for an act to be done under this article is referred to in business days, the time shall be computed by excluding Saturdays, Sundays, and legal holidays.

Source: L. 2000: Entire section added, p. 799, § 22, effective August 2.

31-11-104. Ordinances - initiative - conflicting measures. (1) Any proposed ordinance may be submitted to the legislative body of any municipality by filing written notice of the proposed ordinance with the clerk and, within one hundred eighty days after approval of the petition pursuant to section 31-11-106 (1), by filing a petition signed by at least five percent of the registered electors of the city or town on the date of such notice. The proposed ordinance may be adopted without alteration by the legislative body within twenty days following the final determination of petition sufficiency. If vetoed by the mayor, the proposed ordinance may be passed over the mayor's veto within ten days after the veto. If the proposed ordinance is not adopted by the legislative body, the legislative body shall

forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

(2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Source: **L. 95:** Entire article added, p. 423, § 1, effective May 8. **L. 96:** (1) amended, p. 1770, § 68, effective July 1. **L. 2000:** (1) amended, p. 799, § 23, effective August 2.

ANNOTATION

Annotator's note. For cases construing a municipal elections, see §§ 1-40-128 and similar provision that applied to state and municipal elections, see §§ 1-40-129.

31-11-105. Ordinances - when effective - referendum. (1) No ordinance passed by the legislative body of any municipality shall take effect before thirty days after its final passage and publication, except an ordinance calling for a special election or necessary to the immediate preservation of the public peace, health, or safety, and not then unless the ordinance states in a separate section the reasons why it is necessary and unless it receives the affirmative vote of three-fourths of all the members elected to the legislative body taken by ayes and noes.

(2) Within thirty days after final publication of the ordinance, a referendum petition protesting against the effect of the ordinance or any part thereof may be filed with the clerk. The petition must be signed during the thirty-day period by at least five percent of the registered electors of the municipality registered on the date of final publication.

(3) If a referendum petition is filed, the ordinance or part thereof protested against shall not take effect, and, upon a final determination of petition sufficiency, the legislative body shall promptly reconsider the ordinance. If the petition is declared not sufficient by the clerk or found not sufficient in a protest, the ordinance shall forthwith take effect, unless otherwise provided therein.

(4) If, upon reconsideration, the ordinance or part thereof protested is not repealed, the legislative body shall submit the measure to a vote of the registered electors at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance or part thereof shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

Source: **L. 95:** Entire article added, p. 423, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-127.

31-11-106. Form of petition sections. (1) Each petition section shall be printed in a form consistent with the requirements of this article. No petition section shall be printed or circulated unless the form and the first printer's proof of the petition section have first been approved by the clerk. The clerk shall approve or reject the form and the first printer's proof of the petition no later than five business days following the date on which the clerk received such material. The clerk shall assure that the petition section contains only those elements required by this article and contains no extraneous material. The clerk may reject

a petition or a section of a petition on the grounds that the petition or a section of the petition does not propose municipal legislation pursuant to section 1 (9) of article V of the state constitution.

(2) Each petition section shall designate by name and mailing address two persons who shall represent the proponents thereof in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

(3) (a) At the top of each page of every initiative or referendum petition section, the following shall be printed, in a form as prescribed by the clerk:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A
REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.
TO BE A REGISTERED ELECTOR,
YOU MUST BE A CITIZEN OF COLORADO
AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

(b) A summary of the proposed initiative or ordinance that is the subject of a referendum petition shall be printed following the warning on each page of a petition section. The summary shall be true and impartial and shall not be an argument, or likely to create prejudice, either for or against the measure. The summary shall be prepared by the clerk.

(c) The full text of the proposed initiated measure or ordinance that is the subject of a referendum petition shall be printed following the summary on the first page or pages of the petition section that precede the signature page. Notwithstanding the requirement of paragraph (a) of this subsection (3), if the text of the proposed initiated measure or ordinance requires more than one page of a petition section, the warning and summary need not appear at the top of other than the initial text page.

(d) The signature pages shall consist of the warning and the summary, followed by ruled lines numbered consecutively for registered electors' signatures. If a petition section contains multiple signature pages, all signature lines shall be numbered consecutively, from the first signature page through the last. The signature pages shall follow the page or pages on which the full text of the proposed initiated measure or ordinance that is the subject of the referendum petition is printed.

(e) (I) Following the signature pages of each petition section, there shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include the following:

(A) The affiant's printed name, the address at which the affiant resides, including the street name and number, the municipality, the county, and the date the affiant signed the affidavit;

(B) That the affiant has read and understands the laws governing the circulation of petition;

(C) That the affiant was eighteen years of age or older at the time the section of the petition was circulated and signed by the listed electors;

(D) That the affiant circulated the section of the petition;

(E) That each signature thereon was affixed in the affiant's presence;

(F) That each signature thereon is the signature of the person whose name it purports to be;

(G) That, to the best of the affiant's knowledge and belief, each of the persons signing the petition section was, at the time of signing, a registered elector; and

(H) That the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

(II) The clerk shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by subparagraph (I) of this paragraph (e). Any disassembly of a section of the petition that has the effect of separating the affidavit from the signature page or pages shall render that section of the petition invalid and of no force and effect.

(III) Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

(4) All sections of any petition shall be prenumbered serially.

(5) Any petition section that fails to conform to the requirements of this article or that is circulated in a manner other than that permitted by this article shall be invalid.

Source: L. 95: Entire article added, p. 424, § 1, effective May 8. **L. 2000:** (1) and (3)(e)(I) amended, p. 800, § 24, effective August 2.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-110.

31-11-107. Circulators - requirements. The circulation of any petition section other than personally by a circulator is prohibited. No section of a petition for any initiative or referendum measure shall be circulated by any person who is not at least eighteen years of age at the time the section is circulated.

Source: L. 95: Entire article added, p. 426, § 1, effective May 8. **L. 2000:** Entire section amended, p. 801, § 25, effective August 2.

31-11-108. Signatures. Any initiative or referendum petition shall be signed only by registered electors who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city or town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this section. The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

Source: L. 95: Entire article added, p. 426, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-111.

31-11-109. Signature verification - statement of sufficiency. (1) The clerk shall inspect timely filed initiative or referendum petitions and the attached affidavits, and may do so by examining the information on signature lines for patent defects, by comparing the information on signature lines against a list of registered electors provided by the county, or by other reasonable means.

(2) After examining the petition, the clerk shall issue a statement as to whether a sufficient number of valid signatures have been submitted. A copy of the statement shall be mailed to the persons designated as representing the petition proponents pursuant to section 31-11-106 (2).

(3) The statement of sufficiency or insufficiency shall be issued no later than thirty calendar days after the petition has been filed. If the clerk fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient.

Source: L. 95: Entire article added, p. 427, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a municipal elections, see §§ 1-40-116 and similar provision that applied to state and municipal elections, see §§ 1-40-117.

31-11-110. Protest. (1) Within forty days after an initiative or referendum petition is filed, a protest in writing under oath may be filed in the office of the clerk by any registered elector who resides in the municipality, setting forth specifically the grounds for such protest. The grounds for protest may include, but shall not be limited to, the failure of any portion of a petition or circulator affidavit to meet the requirements of this article. No signature may be challenged that is not identified in the protest by section and line number. The clerk shall forthwith mail a copy of such protest to the persons designated as representing the petition proponents pursuant to section 31-11-106 (2) and to the protester, together with a notice fixing a time for hearing such protest that is not less than five or more than ten days after such notice is mailed.

(2) The county clerk shall furnish a requesting protester with a list of the registered electors in the municipality and shall charge a fee to cover the cost of furnishing the list.

(3) Every hearing shall be held before the clerk with whom such protest is filed. The clerk shall serve as hearing officer unless some other person is designated by the legislative body as the hearing officer, and the testimony in every such hearing shall be under oath. The hearing officer shall have the power to issue subpoenas and compel the attendance of witnesses. The hearing shall be summary and not subject to delay and shall be concluded within sixty days after the petition is filed. No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the officer shall identify those portions of the petition that are not sufficient and the reasons therefor. The result of the hearing shall be forthwith certified to the protester and to the persons designated as representing the petition proponents pursuant to section 31-11-106 (2). The determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protester, the persons designated as representing the petition proponents pursuant to section 31-11-106 (2), or the municipality, but such review shall be had and determined forthwith.

Source: L. 95: Entire article added, p. 427, § 1, effective May 8. **L. 2000:** (1) amended, p. 801, § 26, effective August 2.

ANNOTATION

Annotator's note. For cases construing a municipal elections, see §§ 1-40-118 and similar provision that applied to state and municipal elections, see §§ 1-40-119.

31-11-111. Initiatives, referenda, and referred measures - ballot titles. (1) After an election has been ordered pursuant to section 31-11-104 or 31-11-105, the legislative body of the municipality or its designee shall promptly fix a ballot title for each initiative or referendum.

(2) The legislative body of any municipality may, without receipt of any petition, submit any proposed or adopted ordinance or resolution or any question to a vote of the registered electors of the municipality. The legislative body of the municipality or its designee shall fix a ballot title for the referred measure.

(3) In fixing the ballot title, the legislative body or its designee shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes” or “no” vote would be unclear. The ballot title shall not conflict with those titles selected for any other measure that will appear on the municipal ballot in the same election. The ballot title shall correctly and fairly express the true intent and meaning of the measure.

(4) Any protest concerning a ballot title shall be conducted as provided by local charter, ordinance, or resolution.

Source: L. 95: Entire article added, p. 428, § 1, effective May 8.

ANNOTATION

Annotator’s note. For cases construing a similar provision that applied to state and municipal elections, see §§ 1-40-106 and 1-40-107.

The fixing of a ballot title occurs upon the final action of a local government legislative body to settle or decide the wording of the

ballot title. Under § 1-11-203.5, a person must, therefore, contest the form or content of a ballot title within five days of the legislative body’s final action concerning the ballot title. *Cacioppo v. Eagle County Sch. Dist.* RE-50J, 92 P.3d 453 (Colo. 2004).

31-11-112. Petitions - not election materials - no bilingual requirement. The general assembly hereby determines that initiative and referendum petitions are not election materials or information covered by the federal “Voting Rights Act of 1965”, and are therefore not required to be printed in any language other than English in order to be circulated in any municipality in Colorado.

Source: L. 95: Entire article added, p. 428, § 1, effective May 8.

Cross references: For the federal “Voting Rights Act of 1965”, see Pub.L. 89-110.

ANNOTATION

Annotator’s note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-114.

31-11-113. Receiving money to circulate petitions - filing. The proponents of the petition shall file with the clerk a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the clerk. Any payment made to circulators is an expenditure under article 45 of title 1, C.R.S.

Source: L. 95: Entire article added, p. 428, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-121.

31-11-114. Unlawful acts - penalty. (1) It is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(b) For any person to sign any name other than his or her own name to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(c) For any person knowingly to sign any petition relating to an initiative or referendum in a municipality who is not a registered elector of that municipality at the time of signing the petition;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(e) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act that hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(g) For any officer to do willfully any act that shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election or refuse to submit any petition in the form presented for submission at any election;

(h) For any officer or person to violate willfully any provision of this article.

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment.

Source: L. 95: Entire article added, p. 429, § 1, effective May 8.

31-11-115. Tampering with initiative or referendum petition. (1) Any person commits a class 2 misdemeanor who:

(a) Willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition;

(b) Willfully neglects to file or delays the delivery of the initiative or referendum petition;

(c) Conceals or removes any initiative or referendum petition from the possession of the person authorized by law to have custody of the petition;

(d) Adds, amends, alters, or in any way changes the information on the petition as provided by the elector; or

(e) Aids, counsels, procures, or assists any person in doing any of such acts.

(2) Any person convicted of committing such a misdemeanor shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) This section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

Source: L. 95: Entire article added, p. 430, § 1, effective May 8.

31-11-116. Enforcement. (1) Any person may file with the district attorney an affidavit stating the name of any person who has violated any of the provisions of this article and stating the facts that constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, the district attorney shall prosecute the same.

(2) The attorney general of the state shall have equal power with district attorneys to file information or complaints against any person for violating any provision of this article.

Source: L. 95: Entire article added, p. 430, § 1, effective May 8.

31-11-117. Retention of petitions. After a period of three years from the time of submission of the petitions to the clerk, if it is determined that the retention of the petitions is no longer necessary, the clerk may destroy the petitions.

Source: L. 95: Entire article added, p. 430, § 1, effective May 8.

31-11-118. Powers of clerk and deputy. (1) Except as otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform the duties of the clerk's office.

Source: L. 2000: Entire section added, p. 801, § 27, effective August 2.

ANNEXATION - CONSOLIDATION - DISCONNECTION

ARTICLE 12

Annexation - Consolidation - Disconnection

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31-12-101.	Short title.		
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31-12-103.	Definitions.		
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31-12-106.	Annexation of enclaves, partly surrounded land, and municipally owned land.	31-12-116.	Review.
		31-12-117.	Effect of review and of voiding of annexation ordinance by court order.
31-12-107.	Petitions for annexation and for annexation elections.	31-12-118.	Priority of annexation proceedings.
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31-12-111.	Annexation without election.		
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ment to annex.
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PART 1

MUNICIPAL ANNEXATION ACT OF 1965

31-12-101. Short title. This part 1 shall be known and may be cited as the "Municipal Annexation Act of 1965".

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-101 as it existed prior to 1975.

Cross references: For the annexation of school districts, see § 22-30-128.

ANNOTATION

Law reviews. For article, "Annexation in Colorado", see 37 Dicta 259 (1960). For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809 (1988). For article, "Annexation: Municipal Discretion in Approving or Denying the Petition", see 22 Colo. Law. 1929 (1993). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law, 61 (March 2002).

Annotator's note. Since § 31-12-101 is similar to former § 31-8-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Part 1 of this article is constitutional. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

This article deals with the subject of annexation of territory. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Annexation is a special statutory proceeding and § 1 of art. XX, Colo. Const., requires compliance with such procedures by the city and county of Denver. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Detaches territory from county. The provisions of this article make it clear that any annexation under any of the general laws of this state operates per se as a detachment of the annexed territory from the county in which it lies. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).

And becomes part of city. If land has been lawfully annexed it would ipso facto become a part of the city annexing for all authorized purposes. People ex rel. City & County of Denver v.

County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Present annexation law applicable. After Denver was organized under the twentieth article of the constitution and became a charter city, its authority to annex territory had to be determined under the present applicable law rather than that under which it was originally organized. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).

Election code applicable. It is the legislative intent that the term "special municipal elections" as contained in the municipal election code, extends to annexation elections. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Part 1 is silent on power of municipality to repeal annexation ordinance. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Preannexation agreements not prohibited. There is no language in this article which prohibits a preannexation agreement which requests a certain zoning classification. Gernalnes B.V. v. City of Greenwood Vill., 583 F. Supp. 830 (D. Colo. 1984).

Annexation authority under this article does not extend to Denver. Bd. of County Comm'rs v. Denver, 714 P.2d 1352 (Colo. App. 1986).

Act contemplates annexation agreements as a routine step in the annexation process. Although annexation agreement is not required for a valid annexation, where parties had contemplated execution of an annexation agreement throughout the process, adoption of annexation resolution without having an agreement in place was an abuse of discretion. Midcities Co. v. Town of Superior, 916 P.2d 595 (Colo. App. 1995), aff'd, 933 P.2d 596 (Colo. 1997).

31-12-102. Legislative declaration. (1) The general assembly hereby declares that the policies and procedures in this part 1 are necessary and desirable for the orderly growth of urban communities in the state of Colorado, and to these ends this part 1 shall be liberally construed. The general assembly further declares that it is the purpose of this part 1:

- (a) To encourage natural and well-ordered development of municipalities of the state;
- (b) To distribute fairly and equitably the costs of municipal services among those persons who benefit therefrom;
- (c) To extend municipal government, services, and facilities to eligible areas which form a part of the whole community;
- (d) To simplify governmental structure in urban areas;
- (e) To provide an orderly system for extending municipal regulations to newly annexed areas;
- (f) To reduce friction among contiguous or neighboring municipalities; and
- (g) To increase the ability of municipalities in urban areas to provide their citizens with the services they require.

(2) The general assembly further declares that:

(a) Section 30 of article II of the state constitution was added to the state constitution as a voter-approved ballot measure in 1980;

(b) Since its adoption, section 30 of article II of the state constitution has been in lawful force and effect. As part of the state constitution, all annexations since its enactment have been or should have been undertaken subject to its terms.

(c) By enacting House Bill 10-1259, enacted in 2010, which amends various provisions of this part 1, the general assembly does not intend to change the law governing annexations in the state but rather to better harmonize the provisions of this part 1 with those of section 30 of article II of the state constitution.

Source: **L. 75:** Entire title R&RE, p. 1076, § 1, effective July 1. **L. 2010:** (2) added, (HB 10-1259), ch. 211, p. 913, § 1, effective August 11.

Editor's note: This section is similar to former § 31-8-102 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-102 is similar to former § 31-8-102 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Policy. Policy of the enactment is to encourage natural and well-ordered development of municipalities, not to discourage it by providing for last minute maneuvers designed only to defeat annexation. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

Organization of enclaves of municipal area into separate political units is inconsistent with objectives of section. This type of incor-

poration results in a duplication of government facilities, frustrates area-wide coordination and uniformity of regulations, complicates government structure, often circumvents legitimate zoning controls, frequently leads to an avoidance of city tax burdens, and thus causes an inequitable distribution of the costs of municipal services. In re *Incorporation of Town of Eastridge v. City of Aurora*, 198 Colo. 440, 601 P.2d 1374 (1979).

Applied in *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969); *City & County of Denver v. Bd. of County Comm'rs*, 191 Colo. 104, 550 P.2d 862 (1976).

31-12-103. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Adult" means any person who has attained his twenty-first birthday.

(2) "Agricultural land" means land used for the growing of crops, truck gardening, the grazing of farm animals, and other agricultural pursuits in contrast to land used for urban development.

(3) "Development standards" means the substantive portions of building codes, zoning ordinances, housing codes, fire district ordinances, subdivision regulations, and any other ordinance, code, or regulation relating to the construction or occupancy of buildings upon land or the preparation of such land for such construction.

(4) "Enclave" means an unincorporated area of land entirely contained within the outer boundaries of the annexing municipality.

(5) "Identical ownership" means a situation where each owner has exactly the same degree of interest in each separate parcel of two or more parcels of land.

(6) "Landowner" means the owner in fee of any undivided interest in a given parcel of land. If the mineral estate has been severed, the landowner is the owner in fee of an undivided interest in the surface estate and not the owner in fee of an undivided interest in the mineral estate.

(7) (Deleted by amendment, L. 2010, (HB 10-1259), ch. 211, p. 913, § 2, effective August 11, 2010.)

(8) "Period of notice for hearing" means the time between the effective date of the resolution establishing the hearing date and the date when such hearing first commences.

(9) (Deleted by amendment, L. 2010, (HB 10-1259), ch. 211, p. 913, § 2, effective August 11, 2010.)

(10) "Quasi-municipal corporation" means a corporation vested with the municipal powers for the accomplishment of a limited municipal purpose, including but not limited to

domestic water districts, metropolitan districts, sanitation districts, water and sanitation districts, fire protection districts, recreation districts, and disposal districts.

(10.5) "Registered elector" shall have the same meaning as set forth in section 1-1-104 (35), C.R.S.

(11) "Resident" means one who makes his primary dwelling place within the area proposed to be annexed.

(12) "Taxpayer" means any person who has paid or becomes liable for ad valorem taxes on real property located in the area proposed to be annexed during a specified period of time.

(13) "Urban development" means the construction on land of improvements for residential, institutional, commercial, industrial, transportation, public flood control, and recreational and similar uses, in contrast to use of the land for growing crops, truck gardening, grazing of farm animals, and other agricultural pursuits. The term also applies to vacant ground which has been or is being prepared for urban development by such steps as subdivision into lots or plots and blocks, installation of water and sewer lines, construction of access streets, and construction of railroad spur or branch tracks.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1. L. 2010: (7) and (9) amended and (10.5) added, (HB 10-1259), ch. 211, p. 913, § 2, effective August 11.

Editor's note: This section is similar to former § 31-8-103 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-103 is similar to former § 31-8-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Status prerequisites for parties. The requirements of ownership in fee and the liability for taxes are both prerequisites for participation as a proponent of the annexation, and the same requirements confront an opponent of the annexation. *City & County of Denver v. Holmes*, 156 Colo. 586, 400 P.2d 901 (1965).

Option-holder not owner in fee. Where the holder of an option was under no obligation to exercise that option and could have abandoned

the development at any time, he was not the "owner in fee" of a single lot at the time he affixed his name to the petition, and since the owners of more than 50 percent of the area proposed to be annexed had not joined in seeking the annexation, the ordinance of the city council, purporting to annex the acres included in the petition is void. *Elkins v. City & County of Denver*, 157 Colo. 252, 402 P.2d 617 (1965).

The streets and public ways in an area were not to be included in calculating the area to be annexed. *City & County of Denver v. Holmes*, 156 Colo. 586, 400 P.2d 901 (1965).

Applied in *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

31-12-104. Eligibility for annexation. (1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:

(a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105 (1) (e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

(b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality. The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:

(I) Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.

(II) One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.

(III) It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.

(2) (a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.

(b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be provided. The provisions of section 31-12-116 (2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105 (1) (e) directly affected by such annexation, in addition to those described in section 31-12-116 (1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.

(c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

Source: L. 75: Entire title R&RE, p. 1078, § 1, effective July 1. L. 87: (1)(a) amended, p. 1218, § 1, effective May 28. L. 91: (2) added, p. 763, § 1, effective May 15. L. 2010: IP(1) amended, (HB 10-1259), ch. 211, p. 914, § 3, effective August 11.

Editor's note: This section is similar to former § 31-8-104 as it existed prior to 1975.

Cross references: For annexation of unincorporated areas, see § 30 of article II of the state constitution.

ANNOTATION

Annotator's note. Since § 31-12-104 is similar to former § 31-8-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The annexation statutes are more than mere formalities. *Johnston v. City Council*, 189 Colo. 345, 540 P.2d 1081 (1975).

Contiguity required. Territory is eligible for annexation if a percentage of its boundaries are contiguous with those of a city. *City of Littleton v. Wagenblast*, 139 Colo. 346, 338 P.2d 1025 (1959).

Specific findings required for proposed area for annexation. In a unilateral annexation pursuant to § 31-12-106 (2), the legislative body with annexing authority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. *Cesario v. City of Colo. Springs*, 200 Colo. 459, 616 P.2d 113 (1980).

A resolution of the absolute factual existence of the one-sixth contiguity requirement is mandatory. *Johnston v. City Council*, 177 Colo. 223, 493 P.2d 651 (1972).

The size and shape of a parcel to be annexed is immaterial and is conclusively a legislative problem. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

But courts will not read into the annexation statutes limitations relating to unusual or irregular shapes or patterns of territory annexed. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

City's division of property into multiple one-foot strips of land to satisfy the one-sixth contiguity requirement is not prohibited. *Arapahoe County Bd. of County Comm'rs v. City of Greenwood Vill.*, 30 P.3d 846 (Colo. App. 2001).

Where the property annexed includes public streets, the court may include the perimeter of the streets in calculating whether one-sixth of the perimeter of the annexed property is contiguous to the annexing municipality. The one-sixth requirement is in no way altered by § 31-12-105 (1)(e). *Bd. of County Comm'rs v. City of Lakewood*, 813 P.2d 793 (Colo. App. 1991).

It is not permissible to include and use a county street as the "pole" in order to meet the subsection (1) contiguity requirement, but to ignore the county ownership of the street for purposes of meeting the § 31-8-106(3) sole ownership requirement in a city annexation ordinance. *Bd. of County Comm'rs v. City &*

County of Denver, 190 Colo. 8, 543 P.2d 521 (1975).

But a public way or a portion of a public way can be utilized as a noncontiguous boundary of the annexed territory, since the statute contains no such restriction. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

Legal description held to be in substantial compliance with the requirements of this section. *Slack v. City of Colo. Springs*, 655 P.2d 376 (Colo. 1982).

Effect of ditch. The statutory requirement of contiguity is satisfied where part of the area to be annexed is bounded by a ditch, the east side of which is contiguous to the city. *Rice v. City of Englewood*, 147 Colo. 33, 362 P.2d 557 (1961).

Contiguity basis for finding of community of interest. With respect to the matters of community of interest, that the territory is urban or will be urbanized in the near future, and that the territory is integrated or capable of being integrated into the city, subsection (1)(a) provides that the fact that the territory has the contiguity with the annexing municipality required by this article shall be a basis for a finding of compliance, and where there was a requisite continuity, the court erred in its criticism of the findings of the city council. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Once the one-sixth contiguity requirement is satisfied, the community of interest requirement is also satisfied. *Arapahoe County Bd. of County Comm'rs v. City of Greenwood Vill.*, 30 P.3d 846 (Colo. App. 2001).

Contiguity requirement not met where federal land intervened between town and the proposed annexation and consent was not obtained from federal agency to divide that tract from the rest of the federal lands. *Caroselli v. Town of Vail*, 706 P.2d 1 (Colo. App. 1985).

Subsection (1)(a) is not ambiguous; therefore the court will not consider the legislative history of the section to aid in construction. *Bd. of County Comm'rs v. City of Lakewood*, 813 P.2d 793 (Colo. App. 1991).

Municipality lacked standing to contest annexation because it did not have a plan in place for the area annexed. *Town of Berthoud v. Town of Johnstown*, 983 P.2d 174 (Colo. 1999).

While the county is authorized to own, dispose of, and designate the uses of real property, it has no authority to define terms employed by the general assembly in state statutes. Rather, interpretation of subsection (1) is a question of law for the courts to decide, and judicial review is therefore de novo. Accordingly, in determining whether the roadways at issue are open space for purposes of subsection (1)(a), the county's designation is not binding.

Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Property at issue designated by the county has been improved through grading and surfacing and serves as public roadways. A parcel consisting entirely of roadway is not "essentially unimproved" and, therefore, is not open space within the meaning of subsection (1)(a). Be-

cause the county roads here are not open space, they do not affect contiguity under the terms of this section. Hence, the court erred in voiding the annexation of the two parcels for failure to satisfy the contiguity requirement. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

31-12-105. Limitations. (1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations shall apply to all annexations:

(a) In establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

(b) In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

(c) No annexation pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

(d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to section 31-12-106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

(e) (I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by section 31-12-104 (1) (a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the

effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.

(II) Prior to completion of an annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

(A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;

(B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to section 31-12-107; and

(C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

(e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by section 31-12-108.5. As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of section 31-12-104.

(e.3) In connection with any annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12-108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

(f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

(h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

Source: L. 75: Entire title R&RE, p. 1078, § 1, effective July 1. L. 87: (1)(e) to (1)(g) added, p. 1218, § 2, effective May 28. L. 96: (1)(h) added, p. 1770, § 69, effective July 1. L. 97: (1)(c) and (1)(d) amended, p. 994, § 1, effective May 27. L. 2001, 2nd Ex. Sess.: (1)(e) amended and (1)(e.1) and (1)(e.3) added, p. 32, § 2, effective November 6.

Editor's note: This section is similar to former § 31-8-105 as it existed prior to 1975.

ANNOTATION

- I. General Consideration.
- II. Land Not to be Divided.
- III. Land Comprising 20 Acres or More.
- IV. Annexation of School District's Land.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-105 is similar to former § 31-8-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A statute is presumed to be constitutional, and to be declared unconstitutional it must be shown clearly to be so. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Courts will not read into annexation statutes limitations relating to unusual or irregular shapes or patterns of territory annexed. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

Streets, etc., annexed in order to include territory. There is no legislative intent that a municipality may annex streets, roads, or highways only when it is necessary to do so to include territory otherwise eligible for annexation but separated from the annexing municipality by a public right-of-way. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

A public way or a portion of a public way can be utilized as a noncontiguous boundary of the annexed territory, since the statute contains no such restriction. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

Legal description held to be in substantial compliance with the requirements of this section. *Slack v. City of Colo. Springs*, 655 P.2d 376 (Colo. 1982).

Subsection (1)(e) is not ambiguous; therefore the court will not consider the legislative history in construing the statute. *Bd. of County Comm'rs v. City of Lakewood*, 813 P.2d 793 (Colo. App. 1991).

Subsection (1)(e) in no way alters the contiguity requirements of § 31-12-104 (1)(a); it

merely provides that contact between a street or an alley and an existing boundary of the annexing municipality may be used to achieve the contiguity requirements of § 31-12-104 (1)(a). *Bd. of County Comm'rs v. City of Lakewood*, 813 P.2d 793 (Colo. App. 1991).

Deficiency in the notice required by subsection (1)(e.3) was inadvertent where defendant town provided notice 25 days before the hearing, the town mayor and clerk believed timely notice was given in compliance with the statute, and no one appeared at the annexation hearing to testify or object to lack of sufficient notice. *Town of Erie v. Town of Frederick*, 251 P.3d 500 (Colo. App. 2010).

II. LAND NOT TO BE DIVIDED.

Written consent prerequisite to annexation of divided parcel. This section makes it very clear that no territory owned by the same owner shall be divided into separate parts or parcels without the written consent of the owner thereof. *City & County of Denver v. Bd. of County Comm'rs*, 151 Colo. 230, 376 P.2d 981 (1962).

Division of tract from rest of federal land requires consent of the United States as owner. *Caroselli v. Town of Vail*, 706 P.2d 1 (Colo. App. 1985).

Annexation did not effect a separation. Where the owners of a tract own all of a half-section, a railroad track passed diagonally through the northeast corner of this half-section, it was apparent that the triangular piece of land lying north and east of the track was physically separated from the larger parcel, and this piece was not included in the area proposed to be annexed, assuming that this was a right-of-way grant to a railroad by the congress and therefore it was not a mere easement but a limited fee with right of exclusive use and possession, as a result, the triangular tract was effectively separated by the congressional grant and the annexation did not "separate" the half-section within the meaning of subsection (1)(a). *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

III. LAND COMPRISING 20 ACRES OR MORE.

The policy of this enactment is to encourage natural and well-ordered development of municipalities, not to discourage it by provid-

ing for last minute maneuvers designed only to defeat annexation. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

Written consent required. Land held in identical ownership in excess of 20 acres which, together with improvements thereon, has an assessed value in excess of \$200,000 for the year next preceding the annexation shall not be included in a unilateral annexation without the written consent of the owner or owners. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

This exemption as to 20 acres, etc., does not apply to enclaves. *Cline v. City of Boulder*, 168 Colo. 112, 450 P.2d 335 (1969).

Termination of proceedings when tract affects boundaries. Only if there is such a tract as would affect the establishment of the boundaries, i.e., the outer perimeters of the area to be annexed, does this statute cause the annexation proceedings to terminate; if the boundaries of the annexed area are not affected, the excluded tracts of 20 acres or more are not to be included in the annexed territory, but the annexation continues. *Adams v. City of Colo. Springs*, 178 Colo. 241, 496 P.2d 1005 (1972).

As no reference to tract "within area ...". If the general assembly meant to refer to such tracts "within the area or territory to be annexed" (rather than referring to "establishing the boundaries"), it would have said so as it did in other sections dealing with problems within the territory to be affected. *Adams v. City of Colo. Springs*, 178 Colo. 241, 496 P.2d 1005 (1972).

IV. ANNEXATION OF SCHOOL DISTRICT'S LAND.

Legislative intent. In enacting subsection (1)(d) of this section, the general assembly intended to empower school boards to protect themselves against having involuntarily to undertake responsibility for providing educational services in newly annexed areas. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 211, 565 P.2d 212 (1977).

Formal written consent required. This section explicitly requires, in annexation involving school property, "the written consent of the board of education" of the school district involved, and faced with the clear mandate of the statute, we are not at liberty to hold that, in some cases, the giving of the required consent is but a ministerial act, not requiring formal action by the board. *Gavend v. City of Thornton*, 165 Colo. 182, 437 P.2d 778 (1968).

Ordinance invalid due to lack of consent. Where on the date of final passage of the annexation ordinance here, the effective date thereof, no valid written consent of the board of education had been obtained, the ordinance was invalid when passed, and no action or resolution

purporting to ratify the superintendent's consent taken by the board of education thereafter could, in and of itself, breathe life into this dead ordinance. *Gavend v. City of Thornton*, 165 Colo. 182, 437 P.2d 778 (1968).

Later ratification invalid. The school board's resolution consenting to the annexation of its property, and ratifying the action of the superintendent in signing the annexation petition does not satisfy the express requirement that the written consent of the school board be obtained before any territory which includes school property can be annexed. *Gavend v. City of Thornton*, 165 Colo. 182, 437 P.2d 778 (1968).

Superintendent's signature insufficient. The act of the superintendent of schools in signing the annexation petition without prior formal authorization by the school board was not an act of the board, and could not satisfy the requirement that the "written consent of the board of education" be obtained. *Gavend v. City of Thornton*, 165 Colo. 182, 437 P.2d 778 (1968).

School board consented to the first stage of an annexation by having consented to the entire two-stage transaction. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 211, 565 P.2d 212 (1977).

A school board's resolution was not ineffective on the theory that approval was conditional upon obtaining a particular zoning classification where the resolution's "whereas" clauses, rather than expressing conditions, recited the factual circumstances as presented to the board and the "resolved" clauses contained the board's unqualified approval of the annexation. *City & County of Denver v. Bd. of County Comm'rs*, 191 Colo. 104, 550 P.2d 862 (1976).

Substantial compliance with requirements that documents accompany petition. Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board resolution, and these documents were available on file with the Denver clerk and recorder for the city council's inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

While the resolution of a city's school board was not attached to the petition for annexation pursuant to subsection (1)(d), this defect was of no moment since the resolution was filed with the city clerk and the council could take notice of such information when it was contained within the city's files. *Bd. of County Comm'rs v. City & County of Denver*, 38 Colo. App. 171, 556 P.2d 486 (1976), *aff'd*, 194 Colo. 252, 571 P.2d 1094 (1977).

31-12-106. Annexation of enclaves, partly surrounded land, and municipally owned land. (1) **Annexation of enclaves.** When any unincorporated area is entirely contained within the boundaries of a municipality, the governing body may by ordinance annex such territory to the municipality in accordance with section 30 (1) (c) of article II of the state constitution, but without complying with section 31-12-104, 31-12-105, 31-12-108, or 31-12-109, if said area has been so surrounded for a period of not less than three years; except that notice of the proposed annexation ordinance shall be given by publication as provided by section 31-12-108 (2) for notices of annexation petitions, and resolutions initiating annexation proceedings, but no public hearing on the proposed annexation ordinance shall be required, and the first publication of notice shall be at least thirty days prior to the adoption of the ordinance.

(1.1) **Exception to annexation of enclaves.** (a) No enclave may be annexed pursuant to subsection (1) of this section if:

(I) Any part of the municipal boundary or territory surrounding such enclave consists at the time of the annexation of the enclave of public rights-of-way, including streets and alleys, that are not immediately adjacent to the municipality on the side of the right-of-way opposite to the enclave; or

(II) Any part of the territory surrounding the enclave was annexed to the municipality since December 19, 1980, without compliance with section 30 of article II of the state constitution.

(b) In the case of an enclave the population of which exceeds one hundred persons according to the most recent United States census and that contains more than fifty acres, the enclave shall not be annexed pursuant to subsection (1) of this section unless the governing body of the annexing municipality has:

(I) Created an annexation transition committee composed of nine members, five of whom shall reside, operate a business, or own real property within the enclave, two of whom shall represent the annexing municipality, and two of whom shall represent one or more counties in which the enclave is situated; and

(II) Published notice of the creation and existence of the committee, together with its regular mail, electronic mail, or telephonic contact information, in the same manner as provided by section 31-12-108 (2) for notices of annexation petitions and resolutions initiating annexation proceedings.

(c) The duties of the annexation transition committee required by paragraph (b) of this subsection (1.1) shall be to:

(I) Serve as a means of communication between or among the annexing municipality, one or more counties within which the enclave is situated, and the persons who reside, operate a business, or own real property within the enclave regarding any public meetings on the proposed annexation; and

(II) Provide a mechanism by which persons who reside, operate a business, or own real property within the enclave may communicate, whether by electronic mail, telephonic communication, regular mail, or public meetings, with the annexing municipality or any counties within which the enclave is situated regarding the proposed annexation.

(2) (Deleted by amendment, L. 97, p. 995, § 2, effective May 27, 1997.)

(3) **Annexation of unincorporated municipally owned land.** When the municipality is the sole owner of the area that it desires to annex, which area is eligible for annexation in accordance with section 30 (1) (c) of article II of the state constitution and sections 31-12-104 (1) (a) and 31-12-105, the governing body may by ordinance annex said area to the municipality without notice and hearing as provided in sections 31-12-108 and 31-12-109. The annexing ordinance shall state that the area proposed to be annexed is owned by the annexing municipality and is not solely a public street or right-of-way.

(4) **Additional terms and conditions on the annexation.** Additional terms or conditions may be imposed by the governing body in accordance with section 31-12-112.

(5) Any municipality that has entered into an intergovernmental agreement, any portion of which addresses issues pertaining to the annexation of enclaves shall, promptly upon execution of the agreement, record the agreement with the clerk and recorder of any county within which any land area addressed in the agreement is situated.

Source: **L. 75:** Entire title R&RE, p. 1079, § 1, effective July 1. **L. 81:** (1) amended and (1.1) added, p. 1510, § 1, effective July 1. **L. 97:** (1.1) and (2) amended, p. 995, § 2, effective May 27. **L. 2006:** (1.1) amended and (5) added, p. 1007, § 1, effective September 1. **L. 2010:** (1) and (3) amended, (HB 10-1259), ch. 211, p. 914, § 4, effective August 11.

Editor's note: This section is similar to former § 31-8-106 as it existed prior to 1975.

Cross references: For annexation of unincorporated areas, see § 30 of article II of the state constitution.

ANNOTATION

Law reviews. For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-106 is similar to former § 31-8-106 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

There is not absolute constitutional right under the due process clause to vote on a proposed annexation, and the state general assembly has the ultimate control of the method of annexing by its agency cities. The general assembly may grant the right to vote in some types of annexation and deny it in others, provided that there is some rational basis for the distinction, and the equal protection clause of the federal constitution does not preclude creation of distinct classes if such classifications are reasonably related to some legitimate state interest and all those within the class created are treated equally. Therefore, within each of the present classes based on the extent of contiguous boundaries all persons residing within the territory to be annexed are treated equally with respect to the right to exercise the franchise, and the distinction recognized by the assembly as to when the franchise may be exercised is reasonable in light of the manifest purpose for the differentiation. *Adams v. City of Colo. Springs*, 308 F. Supp. 1397 (D. Colo.), *aff'd mem.*, 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

Unilateral annexation statute is not violative of due process and equality of rights where persons within territory proposed to be annexed are not allowed to vote on the annexation. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

Plain meaning of "unincorporated area" cannot logically include areas which are not being considered for annexation or areas which have already become part of the annexing municipality for the purposes of a unilateral annexation. *Cesario v. City of Colo. Springs*, 200 Colo. 459, 616 P.2d 113 (1980).

Commencement of three-year period. The intentment of this section is that the area to be annexed need only be contiguous for a three-year period, the commencement of which can be either before or after the act became effective so long as the total time is three years. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

Significance of required two-thirds contiguity. Where the area to be annexed has less than two-thirds contiguity with the annexing city, the interrelationship between the annexed area and the city may not be great enough to warrant a politically undesirable unilateral merger; where, however, the territory to be annexed has over two-thirds contiguity with the annexing city, the interrelationship between the two areas is or can be so close that the city should be allowed to annex despite the unwillingness of the residents of the annexed territory. The law thus recognizes that a municipality such as Colorado Springs is severely handicapped by an annexation law which requires the approval of the property owners and qualified electors of an annexed area, it being unable to deal with groups of citizens who form small tax colonies on the borders of the core city which is the economic base of the urban area and to which the colonies owe their very existence and yet pay nothing for the advantages which the city provides, as these people would seldom consent to the annexation and their nonconsent would threaten the very existence of the core city. *Adams v. City of Colo. Springs*, 308 F. Supp. 1397 (D. Colo.), *aff'd mem.*, 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

Annexation power is legislative in nature. Since by statute the general assembly has delegated the power to annex territory to a city, that power remains legislative in character. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

Certain preliminary findings are mandated by this section, i.e., that the subject property appears to have had the requisite contiguity for the requisite period prior to the commencement of annexation procedures. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

In a unilateral annexation pursuant to subsection (2), the legislative body with annexing au-

thority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. *Cesario v. City of Colo. Springs*, 200 Colo. 459, 616 P.2d 113 (1980).

The size and shape of a parcel to be annexed is immaterial and is conclusively a legislative problem. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

A public way or a portion of a public way can be utilized as a noncontiguous boundary of the annexed territory, since the statute contains no such restriction. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

Railroad rights-of-way do not constitute public rights-of-way as the term is used in subsection (1.1), and annexations in question are not void based on the public rights-of-way exception. *Sinclair Mktg. Inc. v. Commerce City*, 226 P.3d 1239 (Colo. App. 2009).

Streets not exempt from subsection (3). If the general assembly had intended that streets be excluded from the definition of sole ownership, it would have provided an exception to that effect. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 8, 543 P.2d 521 (1975).

Determination of sole ownership involving street as only contiguous point. Even though contiguity is not affected by the existence of a street the determination of sole ownership for purpose of annexation under § 31-12-106 (3) is affected by a street owned by an entity other than the annexing authority where that street constitutes the only contiguous land. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 8, 543 P.2d 521 (1975).

Measurements for determining boundary contiguity confined to area's perimeter. The measurements for determining boundary conti-

guity under subsection (2) must be confined solely to the perimeter of the area proposed to be annexed. *Cesario v. City of Colo. Springs*, 200 Colo. 459, 616 P.2d 113 (1980).

Where city owns 50-foot strip in land to be annexed. Since the city council must decide whether annexation will be approved under § 31-12-107 (1)(g) where owners of 100% of the land to be annexed had signed the petition, no purpose would be served by requiring the city, as owner of a 50-foot contiguous strip in the land to be annexed, to sign a petition addressed to itself. Likewise, to require that since the city has not signed the petition, it must first annex the 50-foot strip pursuant to subsection (3), would be to establish a procedure that does not comport with the legislative mandate that the purpose of the act is to provide for the "orderly growth of urban communities". *Bd. of County Comm'rs v. City & County of Denver*, 38 Colo. App. 171, 556 P.2d 486 (1976), *aff'd*, 194 Colo. 252, 571 P.2d 1094 (1977).

County-owned street may be used as "pole". It is not permissible to include and use a county street as the "pole" in order to meet the § 31-12-104 (1) contiguity requirement, but to ignore the county ownership of the street for purposes of meeting the subsection (3) sole ownership requirement in a city annexation ordinance. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 8, 543 P.2d 521 (1975).

Where plaintiffs fail to go forward to demonstrate any deficiency in boundaries to defeat the contiguity requirement, findings of ultimate fact are substantially in the language of the statute and are sufficient when based on evidence not specifically controverted by other evidence in the record. *Adams v. City of Colo. Springs*, 178 Colo. 241, 496 P.2d 1005 (1972).

Applied in *McArthur v. Zabka*, 177 Colo. 337, 494 P.2d 89 (1972); *Slack v. City of Colo. Springs*, 655 P.2d 376 (Colo. 1982).

31-12-107. Petitions for annexation and for annexation elections. (1) Petition for annexation in accordance with section 30 (1) (b) of article II of the state constitution:

(a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and 31-12-105 may petition the governing body of any municipality for the annexation of such territory.

(b) The petition shall be filed with the clerk.

(c) The petition shall contain the following:

(I) An allegation that it is desirable and necessary that such area be annexed to the municipality;

(II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;

(III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;

(IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;

(V) The signatures of such landowners;

(VI) The mailing address of each such signer;

(VII) The legal description of the land owned by such signer;

(VIII) The date of signing of each signature; and

(IX) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.

(d) Accompanying the petition shall be four copies of an annexation map containing the following information:

(I) A written legal description of the boundaries of the area proposed to be annexed;

(II) A map showing the boundary of the area proposed to be annexed;

(III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;

(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

(e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.

(f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).

(g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken.

(2) Petition for annexation election in accordance with section 30 (1) (a) of article II of the state constitution:

(a) The registered electors may petition the governing body of any municipality to commence proceedings for the holding of an annexation election in the area proposed to be annexed. This petition shall meet the standards described in paragraphs (c) and (d) of this subsection (2) and either:

(I) Shall be signed by at least seventy-five registered electors or ten percent of said electors, whichever is less, if such area is located in a county of more than twenty-five thousand inhabitants; or

(II) Shall be signed by at least forty registered electors or ten percent of said electors, whichever is less, if such area is located in a county of twenty-five thousand inhabitants or less.

(b) The petition shall be filed with the clerk.

(c) The petition for annexation election shall comply with the provisions of paragraph (c) of subsection (1) of this section; except that:

(I) Rather than an allegation of any certain percentage of land owned, it shall contain an allegation that the signers of the petition are qualified electors resident in and landowners of the area proposed to be annexed; and

(II) The petition shall request the annexing municipality to commence proceedings for the holding of an annexation election in accordance with section 30 (1) (a) of article II of the state constitution.

(d) The requirements and procedures provided for in paragraphs (e) and (f) of subsection (1) of this section shall be met and followed in a proceeding under this subsection (2).

(e) If the petition is found to be in substantial compliance with this subsection (2), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed, subject thereafter to an annexation election to be held in accordance with section 31-12-112. If the petition for an annexation election is not found to be in substantial compliance, no further action shall be taken; except that the governing body shall make such determination by resolution.

(3) Procedures alternative: The procedures set forth in subsections (1) and (2) of this section are alternative to each other and to any procedure set forth in section 31-12-106; except that a petition for annexation election filed pursuant to subsection (2) of this section shall take precedence over an annexation petition involving the same territory and filed pursuant to subsection (1) of this section if such petition for annexation election is filed at least ten days prior to the hearing date set for the annexation petition filed pursuant to subsection (1) of this section.

(4) Additional terms and conditions on the annexation: Additional terms and conditions may be imposed by the governing body in accordance with section 31-12-112.

(5) If a petition is filed pursuant to subsection (1) or (2) of this section and the territory sought to be annexed meets the specifications of section 31-12-106 (1), the governing body of the municipality with which the petition is filed shall thereupon initiate annexation proceedings pursuant to the appropriate provisions of section 31-12-106 (1). In the event that any governing body fails to initiate such annexation proceedings within a period of one year from the time that such petition is filed, annexation may be effected by an action in the nature of mandamus to the district court of the county where the land to be annexed is located, and the petitioner's court costs and attorney fees incident to such action shall be borne by the municipality.

(6) No proceedings for annexation to a municipality may be initiated in any area which is the same or substantially the same area in which an election for annexation to the same municipality has been held within the preceding twelve months.

(7) For the purpose of determining the compliance with the petition requirements in this section, a signature by any landowner shall be sufficient so long as any other owner in fee of an undivided interest in the same area of land does not object in writing to the governing body of the annexing municipality within fourteen days after the filing of the petition for annexation or annexation election. The entire area of the land signed for shall be computed as petitioning for annexation if such signing landowner has become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes. One who is purchasing land under a written contract duly recorded shall be deemed the owner of the land which is subject to the contract if he has paid the taxes thereon for the next preceding tax year. The signers for an area owned by a corporation, whether profit or nonprofit, shall be the same persons as those authorized to convey land for such corporation.

(8) No power of attorney providing the consent of a landowner to be annexed by a municipality pursuant to this section shall be valid for a term of more than five years, and no such power of attorney executed before May 27, 1997, shall be valid for a term of more than five years after May 27, 1997.

Source: **L. 75:** Entire title R&RE, p. 1080, § 1, effective July 1; (1)(d)(IV) amended, p. 1452, § 12, effective July 1. **L. 87:** (1)(e) and (1)(g) amended, p. 1219, § 3, effective May 28. **L. 97:** (5) amended and (8) added, p. 995, § 3, effective May 27. **L. 2010:** IP(1), (1)(a), (1)(c)(III), (1)(g), IP(2), (2)(a), (2)(c)(II), and (2)(e) amended, (HB 10-1259), ch. 211, p. 914, § 5, effective August 11.

Editor's note: This section is similar to former §§ 31-8-103 and 31-8-107 as they existed prior to 1975.

ANNOTATION

- I. General Consideration.
- II. Petition for Annexation.
- III. Petition for Annexation Election.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-107 is similar to former § 31-8-107 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The 1965 annexation act provided for alternate methods of annexing land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Procedures detailed. This section detailed procedures relating to petitions by those owners residing within or only owning land within the area to be annexed. Tanner v. City of Boulder, 151 Colo. 283, 377 P.2d 945 (1962).

Differentiation of petitioner qualifications. Except for differences regarding the qualifications of the petitioners, the procedures under this section are substantially the same. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

The article contains no express prohibition against any person becoming the circulator of a petition. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

This section requires an affidavit that each signature thereon is the signature of the person whose name it purports to be. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The streets and public ways in the area are not to be included in calculating the area to be annexed. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Where a court has already exercised exclusive jurisdiction over issues of ownership, the municipality may not also consider the issue in an annexation proceeding. Sensible Hous. Co. v. Town of Minturn, __ P.3d __ (Colo. App. 2010).

Applied in Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

II. PETITION FOR ANNEXATION.

Legislative intent in subsection (1)(g). The general assembly clearly intended to distinguish between petitions for annexation signed by 100

percent of the owners of the land proposed for annexation and petitions signed by a lesser number by enacting this section. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

The legislative limitation applies to the entire part, and not merely to this section. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Initiation of proceedings by petition. This section provides that annexation proceedings of eligible territory shall be initiated by written petition presented to the legislative body of the city, city and county, or incorporated town to which it is proposed to annex such territory. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958); City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Land ownership and tax liability proponent and opponent prerequisites. The requirements of ownership in fee and the liability for taxes were both prerequisites for participation as a proponent of the annexation, and the same requirements confronted an opponent of the annexation. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Owners of land in joint tenancy are entitled to sign and to be counted with the resident landowners, because each joint tenant owns an interest and is in his own right a landowner. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Petition signed by executor. The petition for annexation was signed by the "owner" of 100 percent of the territory annexed where it was signed by an executor to whom was given full power to manage and sell estate property as well as authority to do any act or carry out any agreement respecting the property even though title was not in him. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Where an annexation petition was signed by a tenant-in-common holding an undivided interest in the land annexed, the requirements of subsection (1)(g) were met and no notice, hearing, or election was necessary. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where signers of the annexation petition owned well over 50% of the land proposed to be annexed, but at the same time five of the nine resident signers were favorable to the annexation, the fact that these resident owners represented a percentage of property less than 50% is inconsequential since much more than 50% of the area was represented by resident and non-resident owners. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Notice and hearing are not required when 100% of the landowners sign the annexation petition. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Streets and roadways are excluded when considering whether all of the landowners in an area proposed to be annexed have signed an annexation petition, and, if all other owners are signatories, there are no notice, hearing, or election requirements. Bd. of County Comm'rs v. City & County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

Immaterial who obtains consent. With regard to petitions for annexation, so long as the requisite number of landowners freely consent to the annexation it is wholly immaterial who obtains that consent. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Such as city officials. Nowhere does this article prohibit, either expressly or by necessary implication, the annexing city's officials from participating in the circulation of annexation petitions. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The fact that city councilmen must "find" that the form of the petition meets the statutory requirements when it is presented to the annexing city's council does not disqualify the councilmen from acting as circulators of the petitions. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

"Finding" is administrative conclusion. The "finding" of compliance with the section, as a preliminary step in annexation proceedings, is no more than an administrative or ministerial conclusion of fact upon which the legislative power to act is dependent, and this "finding" would necessarily be made by the legislative body whether this section required it or not. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

An obvious typographical error in the signature page of an annexation petition considered in context was insubstantial and did not invalidate the petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

An annexation petition was sufficient even though the signature pages failed to set out the date of each signature, where the dates on the verifications accompanying the signatures showed that signing took place prior to filing the documents, and there was no allegation that prejudice resulted or that any of the signatures were stale. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

There is substantial compliance with the requirement of subsection (1)(d) that copies of the annexation map accompany the petition where the map is available to the city council whether or not it is physically attached to the

petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board resolution, and these documents were available on file with the Denver clerk and recorder for the city council's inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

When no substantial compliance with subsection (1)(g). The standard of substantial compliance under subsection (1)(g) is not met where the ownership of the land to be annexed does not clearly appear. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

The standard of substantial compliance under subsection (1)(g) is not met where the description of the area to be annexed is so confused and contradictory that the area to be annexed cannot be determined from the petition and its attachments. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

Where city owned 50-foot strip in land to be annexed. Since the city council must decide whether annexation will be approved under subsection (1)(g) where owners of 100% of the land to be annexed had signed the petition, no purpose would be served by requiring the city, as owner of a 50-foot contiguous strip in the land to be annexed, to sign a petition addressed to itself. Bd. of County Comm'rs v. City & County of Denver, 38 Colo. App. 171, 556 P.2d 486 (1976), aff'd, 194 Colo. 252, 571 P.2d 1094 (1977).

III. PETITION FOR ANNEXATION ELECTION.

This section provides for the electorate to have a veto power over annexation when it commands that an election petition take precedence over any petition filed with city council by petitioners who own more than 50% of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Compliance with subsection (1)(c)(III) not required. When a petition for annexation election is filed pursuant to subsection (2), the signers, if they comprise the requisite number or percentage and are qualified electors and resident landowners in the territory, need not also comply with subsection (1)(c)(II). Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

The general assembly intended that subsection (1)(c)(III) of this section requiring signa-

tures of more than 50% of the landowners be excepted, i.e., "taken out" and excluded from consideration when the requisite number of petitioners sought annexation by the election alternative. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

If the provision of subsection (2) that either 75 electors or 10%, whichever is the lesser, can petition for an election in which the majority vote will control, it simply does not make sense to add the additional requirement that these same petitioners be owners of more than 50% of the land. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Corporate or nonresident owners have no voice in election. Subsection (2), if it is to be given life and meaning, was intended to provide for a voice in the annexation process to be given to people living in the area as opposed to corporate or nonresident owners of larger segments of the land. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Except corporate owner may petition. By giving full force and effect to the subsection (2) alternative, one corporate owner, or two, or half a dozen owners of more than 50% of the land cannot impose their annexation whims on other resident-electors who own the balance or less

than 50% of the territory, but the latter may nevertheless petition for an election if 75 electors or 10% wish to put the matter to a vote. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Suspension of actions on annexation petition. The provision that a petition for annexation election shall take precedence over an annexation petition does not require that, when the election petition was filed, all actions under the annexation petition should have been abandoned, and a new procedure should have been initiated under subsection (2). *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

Findings as to qualifications of signers proper. Where there was testimony that the signers of the petition were registered voters, that each signer stated under oath that he was a landowner, and that an examination of the county records disclosed them all to be landowners, and the petition recited that the signers were qualified electors, residents in and landowners of the area proposed to be annexed, and there is nothing in the record to indicate that less than 75 of the signers were not qualified to sign, the finding of the city council as to the qualifications of the signers is proper. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

31-12-108. Setting hearing date - notice given. (1) As a part of the resolution initiating annexation proceedings by the municipality or of a resolution finding substantial compliance of an annexation petition or of a petition for an annexation election, the governing body of the annexing municipality shall establish a date, time, and place that the governing body will hold a hearing to determine if the proposed annexation complies with section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 or such provisions thereof as may be required to establish eligibility under the terms of this part 1. The hearing shall be held not less than thirty days nor more than sixty days after the effective date of the resolution setting the hearing. This hearing need not be held if the municipality has determined conclusively that the requirements of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have not been met.

(2) The clerk shall give notice as follows: A copy of the resolution or the petition as filed (exclusive of the signatures) together with a notice that, on the given date and at the given time and place set by the governing body, the governing body shall hold a hearing upon said resolution of the annexing municipality or upon the petition for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 and is considered eligible for annexation. Said notice shall be published once a week for four successive weeks in some newspaper of general circulation in the area proposed to be annexed. The first publication of such notice shall be at least thirty days prior to the date of the hearing. The proof of publication of the notice and resolution or petition, or the summary thereof, shall be returned when the publication is completed, the certificate of the owner, editor, or manager of the newspaper in which said notice is published shall be proof thereof, and a hearing shall then be held as provided in said notice. A copy of the published notice, together with a copy of the resolution and petition as filed, shall also be sent by registered mail by the clerk to the board of county commissioners and to the county attorney of the county wherein the territory is located and to any special district or school district having territory within the area to be annexed at least twenty-five days prior to the date fixed for such hearing. The notice required to be sent to the special district or school district by this subsection (2) shall not confer any right of review in addition to those rights provided for in section 31-12-116.

(3) The governing body of the annexing municipality, from time to time, may continue the hearing to another date without additional notice if the volume of material to be received cannot be presented within the available time for any given session; except that no session of a hearing shall be so continued unless at least one hour of testimony has been heard.

Source: **L. 75:** Entire title R&RE, p. 1083, § 1, effective July 1. **L. 87:** (2) amended, p. 1220, § 4, effective May 28. **L. 2010:** (1) and (2) amended, (HB 10-1259), ch. 211, p. 916, § 6, effective August 11.

Editor's note: This section is similar to former § 31-8-108 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809 (1988).

Annotator's note. Since § 31-12-108 is similar to former § 31-8-108 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Proceedings duly commenced before a city council may be completed regardless of changes in personnel, because a city council is a continuing body. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Legal description held to be in substantial compliance with the requirements of this section. *Slack v. City of Colo. Springs*, 655 P.2d 376 (Colo. 1982).

Immaterial variation in two legal descriptions of annexed area does not invalidate annexation. *TCD North, Inc. v. City Council of Greenwood*, 713 P.2d 1320 (Colo. App. 1985).

The regional transportation district (RTD) and the Douglas county soil conservation dis-

trict (DCSCD) are not special districts to whom notice of the annexation hearing must be given under subsection (2). Subsection (2) requires, among other things, that the annexing municipality provide notice of the annexation hearing to any special district having territory within the area to be annexed. For purposes of this subsection, a "special district" means any quasi-municipal corporation and political subdivision organized or acting pursuant to the provisions of the Special District Act, article 1 of title 32. Here, RTD and DCSCD were not created and do not act pursuant to the Special District Act. Rather, each was created and operates pursuant to its own enabling legislation. Such legislation refers to both entities as "districts" but not "special districts". Accordingly, the district court incorrectly voided the annexation because of the city's failure to give notice to these districts. *Bd. of County Comm'rs v. City of Aurora*, 62 P.3d 1049 (Colo. App. 2002).

Applied in *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969); *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

31-12-108.5. Annexation impact report - requirements. (1) The municipality shall prepare an impact report concerning the proposed annexation at least twenty-five days before the date of the hearing established pursuant to section 31-12-108 and shall file one copy with the board of county commissioners governing the area proposed to be annexed within five days thereafter. Such report shall not be required for annexations of ten acres or less in total area or when the municipality and the board of county commissioners governing the area proposed to be annexed agree that the report may be waived. Such report shall include, as a minimum:

(a) A map or maps of the municipality and adjacent territory to show the following information:

(I) The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;

(II) The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches, and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and

(III) The existing and proposed land use pattern in the areas to be annexed;

(b) A copy of any draft or final preannexation agreement, if available;

(c) A statement setting forth the plans of the municipality for extending to or otherwise providing for, within the area to be annexed, municipal services performed by or on behalf of the municipality at the time of annexation;

- (d) A statement setting forth the method under which the municipality plans to finance the extension of the municipal services into the area to be annexed;
- (e) A statement identifying existing districts within the area to be annexed; and
- (f) A statement on the effect of annexation upon local-public school district systems, including the estimated number of students generated and the capital construction required to educate such students.

Source: L. 87: Entire section added, p. 1220, § 5, effective May 28.

ANNOTATION

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809 (1988).

Act contemplates annexation agreements as a routine step in the annexation process. Although annexation agreement is not required for a valid annexation, where parties had contemplated execution of an annexation agreement throughout the process, adoption of annexation resolution without having an agreement in place was an abuse of discretion. *Midcities Co. v. Town of Superior*, 916 P.2d 595 (Colo. App. 1995), *aff'd*, 933 P.2d 596 (Colo. 1997).

An immaterial variation from the requirements of this section is not fatal, and annexation may not be voided when there has been substantial compliance. Here, city was in substantial compliance with impact report requirement by providing maps showing the streets and utility lines near the area to be annexed. Accordingly, district court erred in determining that city failed to comply with impact report requirement. *Bd. of County Comm'rs v. City of Aurora*, 62 P.3d 1049 (Colo. App. 2002).

31-12-109. Hearing. (1) Any person may appear at such hearing and present evidence upon any matter to be determined by the governing body.

(2) All proceedings at the hearing and any continuances thereof shall be recorded, but the recorder's notes need not be transcribed unless proceedings for judicial review are initiated as provided in section 31-12-116.

(3) The board of trustees of a town may dispense with the reporting of the hearing as provided in this section and substitute in lieu thereof minutes summarizing the presentation of each speaker and describing the proceedings of the hearing. In the event that any proceedings are commenced for judicial review of an annexation in which this subsection (3) has been followed, the provisions of section 31-12-116 (5) shall be applicable.

Source: L. 75: Entire title R&RE, p. 1083, § 1, effective July 1. **L. 87:** (1) amended, p. 1221, § 6, effective May 28.

Editor's note: This section is similar to former § 31-8-109 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-109 is similar to former § 31-8-109 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A city council can take official notice of all maps, records, and other pertinent information within a city's files to insure a fair disposition of an annexation controversy. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

Subsection (2) complied with. Where stenographic notes of an annexation hearing were

made by a reporter who attended the hearing and died shortly thereafter, and the notes were transcribed and certified by a different reporter even though the certification was not made by the attending reporter there was no failure of compliance with rule 80, C.R.C.P., and subsection (2). *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

When resorting to injunctive relief available. Where the statute relating to annexation of territory by a city provides a proper time and forum for hearing objections, objectors must exhaust all such remedies before resorting to the

courts for injunctive relief. *City & County of Denver v. Bd. of County Comm'rs*, 141 Colo. 102, 347 P.2d 132 (1959).

31-12-110. Findings. (1) Upon the completion of the hearing, the governing body of the annexing municipality, by resolution, shall set forth its findings of fact and its conclusion based thereon with reference to the following matters:

(a) Whether or not the requirements of the applicable provisions of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have been met;

(b) Whether or not an election is required under section 30 (1) (a) of article II of the state constitution and section 31-12-107 (2).

(2) The governing body shall also determine whether or not additional terms and conditions are to be imposed.

(3) A finding that the area proposed for annexation does not comply with the applicable provisions of section 30 of article II of the state constitution or sections 31-12-104 and 31-12-105 shall terminate the annexation proceeding.

Source: **L. 75:** Entire title R&RE, p. 1084, § 1, effective July 1. **L. 2010:** (1) and (3) amended, (HB 10-1259), ch. 211, p. 917, § 7, effective August 11.

Editor's note: This section is similar to former § 31-8-110 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-110 is similar to former § 31-8-110 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Specific findings required for proposed area for annexation. In a unilateral annexation pursuant to § 31-12-106 (2), the legislative body with annexing authority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. *Cesario v. City of Colo. Springs*, 200 Colo. 459, 616 P.2d 113 (1980).

Findings of ultimate fact are sufficient where they are based on evidence not specifically controverted by other evidence in the record made before the city council. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972).

Capricious or arbitrary exercise of discretion can arise where an administrative board neglects to use reasonable care in procuring such evidence as it is authorized by law to

consider such applying to a city council when it is attempting to employ or administer the municipal annexation act. *Johnston v. City Council*, 177 Colo. 223, 493 P.2d 651 (1972).

A city council implicitly is authorized to consider all competent evidence with regard to the contiguity requirement by virtue of the fact that it has to make a finding thereon being under a duty to use reasonable diligence in searching for and procuring such evidence. *Johnston v. City Council*, 177 Colo. 223, 493 P.2d 651 (1972).

Findings as to school districts other than Denver. When the city and county of Denver is the only city in the state whose boundaries are coexistent with those of the school district, the trial court can take judicial notice that the only occasion upon which annexation will cause territory in Colorado to be detached from one school district and attached to another is when territory is annexed by the city and county of Denver, such being the case, there is no necessity for evidence to support the finding concerning school districts in proceedings not involving Denver. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

31-12-111. Annexation without election. If the resolution of the governing body adopted pursuant to section 31-12-110 determines that the applicable provisions of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have been met, and further determines that an election is not required under section 31-12-107 (2), and does not determine that additional terms and conditions are to be imposed, the governing body may thereupon annex the area proposed to be annexed by ordinance.

Source: L. 75: Entire title R&RE, p. 1084, § 1, effective July 1. L. 2010: Entire section amended, (HB 10-1259), ch. 211, p. 917, § 8, effective August 11.

Editor's note: This section is similar to former § 31-8-111 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-111 is similar to former § 31-8-111 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A state has broad discretion in determining the procedures for effectuating annexation. *Adams v. City of Colo. Springs*, 308 F. Supp. 1397 (D. Colo.), *aff'd mem.*, 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

Variance in description of deleted territory not fatal. A variation from requirements imposed by city charter or statutory authority is not fatal and does not render void an ordinance of annexation where variance in the descriptions deleting some territory is immaterial as to the area remaining. *Adams v. City of Colo. Springs*, 178 Colo. 241, 496 P.2d 1005 (1972).

And appellants are not deprived of due process because of the variance, for the general assembly may give to municipalities the power to annex upon any condition it chooses to impose. *Adams v. City of Colo. Springs*, 178 Colo. 241, 496 P.2d 1005 (1972).

It is clearly within the power of a city to require the payment of the annexation fees as a condition of annexation. *City of Aurora v. Andrew Land Co.*, 176 Colo. 246, 490 P.2d 67 (1971).

Municipal ordinance may require an election even if its governing body determines that the other requirements of the act have been met. *Minch v. Town of Mead*, 957 P.2d 1054 (Colo. App. 1998).

Authority for assessing certain fees. Authority for assessing fees for water development and sanitary sewer taps may be found not only in an annexation petition, but also in an annexation ordinance. *City of Aurora v. Andrew Land Co.*, 176 Colo. 246, 490 P.2d 67 (1971).

By city ordinance. The city council under its general powers can enact an ordinance which itself fixes the fees to be charged in a particular annexation proceedings. *City of Aurora v. Andrew Land Co.*, 176 Colo. 246, 490 P.2d 67 (1971).

31-12-112. Election - annexation pursuant to election. (1) If the governing body determines that an annexation election is required under the provisions of section 30 (1) (a) of article II of the state constitution and section 31-12-107 (2) or that additional terms and conditions should be imposed upon the area proposed to be annexed, an election shall be called, as provided in this section, to determine whether a majority of the landowners and the registered electors in the area proposed to be annexed approve such annexation, with such terms and conditions, if any, as may attach thereto.

(2) Any landowner owning land in the area proposed to be annexed may vote, irrespective of whether he or she is a registered elector. Any corporate landowner may by resolution designate one of its officers to cast its vote; except that nothing in this part 1 shall invalidate any memorandum of agreement or escrow arrangement voluntarily made by and between the annexing municipality and one or more landowners within the area proposed to be annexed nor require an election for the approval of any terms and conditions to be accomplished or assured in this manner.

(3) The municipality shall forthwith petition the district court of the county in which the area proposed to be annexed or a part thereof is located to hold such election.

(4) Upon receipt of such petition, the court shall appoint three commissioners, one of whom shall be nominated by the municipality, one of whom shall be a landowner of land in the area proposed to be annexed or such landowner's nominee, and the third shall be acceptable to the other two. All of the commissioners shall be residents of the state of Colorado and willing to serve as such commissioners. The appointees, within three days after the date of their appointment, shall take an oath before the court faithfully to perform their duties. In case of disability or failure of any commissioner to act, the court shall forthwith fill his place with some person competent, willing, and able to act.

(5) Such commissioners shall forthwith call an election of all the landowners and the registered electors in the area proposed to be annexed, to be held at some convenient place

within the area proposed to be annexed. The commissioners shall establish such polling places within the area proposed to be annexed, or immediately adjacent thereto if such area is vacant and unoccupied, as in their judgment are necessary to afford all of the landowners and the registered electors the opportunity to cast their votes. If more than one polling place is found to be necessary, the court may appoint three additional persons to act as judges or clerks for each additional polling place. Such additional judges and clerks shall meet the same requirements as the original appointees.

(6) Notice of such election shall be given by publication once a week for four weeks in some newspaper of general circulation in the area and published in the county in which such area is located or, if there is no such newspaper in the county, in some newspaper of general circulation published in an adjacent county. Additional notice shall be given by posting a notice at each polling place. The said posting and first newspaper publication shall be not less than four weeks preceding such election. Such notice shall specify the time and place of such election, shall contain a description of the boundaries of the area proposed to be annexed, and shall state that a map or plat thereof is on file in the office of the clerk of the district court in which such area, or a part thereof, is located. Such notice shall also set forth the conditions and requirements proposed by the governing body for annexation of the area, and it shall inform the public that an issue committee is required by law to register with the appropriate officer pursuant to section 1-45-108, C.R.S., within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose the annexation question.

(7) Such commissioners and additional appointees provided for in subsection (5) of this section shall act as judges or clerks of the election, shall take the oath required by law for judges of general elections, and shall report the result of the voting in their respective polling places to the court within three days after such election. The court shall allow each judge and clerk a reasonable compensation for his services as such, not exceeding two dollars for each hour necessarily employed in the performance of his duties.

(8) The ballot used in such election shall contain the words "For Annexation" and "Against Annexation". At the time of voting, each voter shall indicate his choice by placing a cross mark (X) opposite one or the other of said groups of words. Voting machines may be used in the same manner as in municipal elections.

(9) If a majority of the votes cast at such election are against annexation or the vote is tied, the court shall order that all annexation proceedings to date are void and of no effect and that the governing body shall proceed no further with the instant annexation proceedings. If a majority of the votes cast at the election are for annexation, the court shall order, adjudge, and decree that such area may be annexed to the municipality upon the terms and conditions, if any, set forth by the governing body, and the municipality, by ordinance, may thereafter annex said area and impose the terms and conditions, if any, as approved by the landowners and the registered electors.

(10) All costs and expenses connected with such annexation election, including commissioner fees and all election expenses when incurred, shall be paid by the municipality to which the annexation is proposed.

Source: L. 75: Entire title R&RE, p. 1084, § 1, effective July 1. L. 2009: (6) amended, (HB 09-1153), ch. 174, p. 776, § 3, effective September 1. L. 2010: (1), (2), (5), and (9) amended, (HB 10-1259), ch. 211, p. 917, § 9, effective August 11; (1) amended, (HB 10-1422), ch. 419, p. 2127, § 192, effective August 11.

Editor's note: This section is similar to former § 31-8-112 as it existed prior to 1975.

Cross references: For municipal elections, see article 10 of this title.

ANNOTATION

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988).

Annotator's note. Since § 31-12-112 is similar to former § 31-8-112 prior to the 1975 repeal and reenactment of this title, and laws

antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Election code applicable. It is the legislative intent that the term “special municipal elections” as contained in the municipal election code, extends to annexation elections. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

The municipal election code applies to elections under the annexation act to the extent that its terms are not inconsistent with the specific provisions of the annexation act. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

Nonresident landowner may vote. In view of the specific provision in subsection (2) that a landowner may vote irrespective of whether he is a qualified elector, which entails residency, and the further recognition in subsection (5) that qualified electors and landowners may be two separate groups, both entitled to vote, the supreme court concludes that the general assembly intended to permit a nonresident landowner to vote in an annexation election, because the specific provisions must be held to prevail over the general provisions, and to the extent that this construction conflicts with the residency requirements of the municipal election code, those provisions are held to be superseded by the provisions of the annexation act. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

Absentee ballots authorized. Since the municipal election code provides that such code should be construed liberally so that all legally qualified electors may be permitted to vote, we

hold that the municipal election code by its terms authorized the absentee ballots in an annexation election. *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

No election where 100% of landowners have consented. No election is triggered where 100% of the landowners, by petitioning for annexation, have already consented to be governed by the annexing city's preexisting ordinances. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

Or unless annexation ordinance itself imposes terms and conditions. Unless the annexation ordinance itself imposes terms and conditions upon the annexed area, the requirement of an election under subsection (1) is not triggered. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

Preexisting ordinances do not impose additional terms and conditions on the area to be annexed, but are merely general laws which become applicable to new territory upon annexation. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

The relatively standard practice under which a landowner donates land to a school district does not trigger the requirement of an election, since no term or condition is thereby imposed upon the area to be annexed. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 211, 565 P.2d 212 (1977).

Annexation void because town exceeded its jurisdiction when it failed to hold election to get the consent of the landowner before the annexation. *Town of Superior v. Midcities Co.*, 933 P.2d 596 (Colo. 1997).

31-12-113. Effective date of annexation - required filings. (1) If the conditions of subsection (2) of this section are met, area annexed to a municipality, as provided in this part 1, shall be annexed upon the effective date of the annexing ordinance, except as otherwise provided in sections 31-12-118 and 31-12-118.5 and for tax purposes as provided in subsection (3) of this section.

(2) (a) The annexing municipality shall:

(I) File one copy of the annexation map with the original of the annexation ordinance in the office of the clerk of the annexing municipality;

(II) (A) File for recording three certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area with the county clerk and recorder of each county affected.

(B) The county clerk and recorder of each county involved shall file one certified copy of such annexation ordinance and map with the division of local government of the department of local affairs and one certified copy of such annexation ordinance and map with the department of revenue.

(a.5) Upon receiving an annexation ordinance and map pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (a) of this subsection (2), the department of revenue shall communicate with any taxing entities affected by the annexation in order to facilitate the administration and collection of taxes within the annexed areas and to identify all retailers affected by the annexation. The department of revenue shall make copies of any such ordinances and maps available to all taxing entities in the state, including any special districts that impose a sales tax.

(b) No annexation shall be effective until the requirements of sub-subparagraph (A) of subparagraph (II) of paragraph (a) of this subsection (2) are met.

(c) In any action attacking the validity of an annexation proceeding, failure of the annexing municipality to have made the filings required by this subsection (2) shall not be deemed to invalidate the annexation where good cause for such failure is shown.

(3) An annexation shall be effective for the purpose of general taxation on and after the January 1 next ensuing.

(4) In the event that an annexation which has the effect of changing county lines occurs before January 1, the assessor of the county from which such area was detached shall provide to the assessor of the county to which such area has been added, on or before the February 1 next ensuing, the following:

(a) An abstract of the total valuation for assessment of all taxable property so transferred;

(b) A certified copy of the assessment records of the individual properties in the annexed area as of the effective date of annexation containing the legal description, the name and address of the owner, and the valuation for assessment of all taxable property, together with such supporting records as are required by the regulations of the property tax administrator.

Source: L. 75: Entire title R&RE, p. 1086, § 1, effective July 1. L. 99: (1) amended, p. 1, § 1, effective February 1. L. 2000: (2)(a)(II) amended and (2)(a.5) added, p. 422, § 2, effective August 2.

Editor's note: This section is similar to former § 31-8-113 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-113 is similar to former § 31-8-113 prior to the 1975 repeal and reenactment of this title, relevant cases construing that provision have been included in the annotations to this section.

Read with § 31-21-120. The legislative intent is clear, and § 31-12-116 and this section must be read in conjunction with § 31-12-120. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 347, 547 P.2d 249 (1976).

Annexation ordinance becomes effective after completion of annexation proceedings. *Green Valley Ranch Venture Co. v. District Court*, 186 Colo. 173, 526 P.2d 141 (1974).

Filing requirements of subsection (2)(a)(II)(A) and § 24-32-109 not satisfied by mere substantial compliance. There are several clear indications in these statutory provisions that substantial compliance with filing requirements is insufficient. Both statutes plainly declare that the consequence of noncompliance is that annexation shall not become effective. Unlike statutes governing annexations by petition, this section and § 24-32-109 do not expressly allow for substantial compliance. Pres-

ence of an explicit good cause exception in subsection (2)(c) suggests general assembly intended that only a showing of good cause would excuse strict compliance. *Grandote Golf & Ctry. Club v. Town of La Veta*, 252 P.3d 1196 (Colo. App. 2011).

Even assuming that substantial compliance with this section and the requirements of § 24-32-109 may render an annexation effective, there was no substantial compliance with additional requirement that a certified copy of the annexation ordinance and map be filed with division of local government. This requirement cannot be deemed a mere formality; excusing noncompliance with this requirement would not result in fulfillment of the relevant statutes' purposes. *Grandote Golf & Ctry. Club v. Town of La Veta*, 252 P.3d 1196 (Colo. App. 2011).

Because required filings of annexation ordinance did not occur, and because no good cause was shown (or even alleged for the failure), the annexation contemplated by the ordinance did not become effective. *Grandote Golf & Ctry. Club v. Town of La Veta*, 252 P.3d 1196 (Colo. App. 2011).

31-12-114. Conflicting annexation claims of two or more municipalities. (1) At any time during a period of notice given by a municipality pursuant to section 31-12-108, any other municipality may, subject to compliance with section 30 of article II of the state constitution, receive a petition for annexation or a petition for an annexation election pursuant to section 31-12-107 with the area partly or wholly overlapping the area proposed for annexation by the first municipality. If this occurs, the respective rights of the several municipalities shall be determined in accordance with an election as provided in this section.

(2) All further proceedings for the annexation of the area claimed by both municipalities shall be held in abeyance pending the holding of an election of the landowners and the registered electors within such area as described in subsection (4) of this section for the purpose of determining to which municipality such electors prefer to annex. This election shall be held pursuant to the provisions of section 31-12-112, except as provided in this section.

(3) The second municipality indicating its intent to annex shall petition the district court of the county in which the area proposed to be annexed is located for the election provided for in subsection (2) of this section. Such petition shall be filed within thirty days after the effective date of the resolution of intent or the date of the filing of the petition described in subsection (1) of this section.

(4) All of the landowners and the registered electors in the area claimed by both municipalities shall be entitled to vote at said election. Any corporate landowner may by resolution designate one of its officers to cast its vote.

(5) (a) If the disputed area has less than two-thirds boundary contiguity with either municipality, the ballot shall contain two questions:

(I) "For Annexation" and "Against Annexation"; and

(II) "For annexation to(name of municipality first starting proceedings)..." and "For annexation to(name of municipality second starting proceedings):"

(b) If more than two municipalities dispute the same area, the ballot shall list each municipality in order of the date when it started proceedings under this part 1 and in the same form as specified in this section. If the disputed area does have more than two-thirds boundary contiguity with one of the municipalities, only the question in subparagraph (II) of paragraph (a) of this subsection (5) shall appear on the ballot. If both questions are to appear on the ballot, the notice of the election shall contain a statement that all of the landowners and the registered electors may vote on the second question irrespective of their votes on the first question.

(6) If, upon a canvass of the votes, it is found that a majority of the votes cast were against annexation, or that the vote on the issue of annexation is tied, or that the vote on which municipality should annex is tied, the court shall declare all annexation proceedings of both municipalities insofar as they relate to the disputed area to be void and of no effect, and both municipalities shall be barred from continuing with the current annexation proceedings insofar as they relate to such disputed area.

(7) If the vote is in favor of annexation, the municipality to which the landowners and the registered electors indicate their intention to annex may proceed to hold a hearing as provided in this part 1 and to comply with the other provisions of this part 1 with respect to the area claimed by both municipalities; if such area is found to comply with the applicable provisions of sections 31-12-104 and 31-12-105 and if the entire area proposed to be annexed has been in dispute, the subject election shall be deemed to comply with the provisions of sections 31-12-107 and 31-12-112 relative to an election of the landowners and the registered electors for areas having less than two-thirds boundary contiguity with the annexing municipality.

(8) If more than two municipalities claim a disputed area and a majority of the votes are cast in favor of one municipality, that municipality may proceed to hold a hearing as provided in this part 1 and to comply with the other provisions of this part 1 with respect to the area claimed by the several municipalities; but the subject election shall be deemed to comply with the provisions of sections 31-12-107 and 31-12-112 relative to an election of the landowners and the registered electors for areas having less than two-thirds boundary contiguity with the annexing municipality. If no municipality receives a majority, a runoff election between the two municipalities receiving the largest pluralities shall be held no sooner than four weeks and no longer than seven weeks after the date of the initial election to determine to which municipality the landowners and the registered electors desire to annex. Notice of such second election shall be given in the manner directed by the court. This election shall have the same effect as if it were the original election between the two municipalities involved.

(9) Notwithstanding any provision in this part 1 to the contrary, if the total area proposed for annexation or the disputed part thereof has more than two-thirds boundary

contiguity with one of the municipalities, that municipality shall have the right to annex the disputed area unless three-fourths of the total votes cast at the election favor annexation to another municipality.

(10) Unless the area claimed by more than one municipality constitutes more than one-third of the area proposed for annexation, inclusive of streets, to the first annexing municipality, nothing in this part 1 shall prevent a municipality from proceeding with the annexation of that part of the area described in its resolution which is not claimed by another municipality without waiting for the holding of the election described in this section. In the hearing required by sections 31-12-108 and 31-12-109 and the findings required by section 31-12-110, the issue shall be the compliance of the undisputed portion of the area proposed for annexation with the requirements and limitations of sections 31-12-104 and 31-12-105. If the annexation was initiated by petition under section 31-12-107 and if the requirements of said sections 31-12-104 and 31-12-105 are met, the annexing municipality shall submit the issue of annexation with the changed boundaries to an election of the landowners and the registered electors to be held in accordance with section 31-12-112.

(11) The costs of the election shall be paid by the municipalities which are disputing the annexation by the first annexing municipality. If more than one municipality is disputing such annexation, the costs shall be apportioned among such disputing municipalities on a just and equitable basis by the court supervising the election.

Source: **L. 75:** Entire title R&RE, p. 1086, § 1, effective July 1. **L. 2010:** (1), (2), (4), (5)(b), (7), (8), and (10) amended, (HB 10-1259), ch. 211, p. 918, § 10, effective August 11; (1) amended, (HB 10-1422), ch. 419, p. 2120, § 168, effective August 11.

Editor's note: (1) This section is similar to former § 31-8-114 as it existed prior to 1975.

(2) Amendments to subsection (1) by House Bill 10-1259 and House Bill 10-1422 were harmonized.

ANNOTATION

Law reviews. For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-114 is similar to former § 31-8-114 prior to the 1975 repeal and reenactment of this title, a relevant case construing that provision has been included in the annotations to this section.

Annexation is strictly statutory. City of Westminster v. City of Northglenn, 178 Colo. 334, 498 P.2d 343 (1972).

Applied in Bd. of County Comm'rs v. City & County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

31-12-115. Zoning of land while annexation is under way - zoning of newly annexed land - subdivision of land while annexation is under way - regulatory impairments affecting newly annexed land used for agricultural purposes - notice - definitions. (1) An annexing municipality may institute the procedure outlined in state statutes or municipal charter to make land subject to zoning at any time after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of section 31-12-107. The proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is passed on final reading. If the zoning process is commenced prior to the effective date of the annexation ordinance, the legal protest area for zoning shall be determined solely on geographic location, irrespective of whether the land in such legal protest area is within or without or partly within and partly without the annexing municipality.

(2) If the municipality has a zoning ordinance, any area annexed on or after January 1, 1966, shall be brought under such zoning ordinance and map within ninety days after the effective date of the annexation ordinance, irrespective of any legal review which may be instituted pursuant to section 31-12-116.

(3) During such ninety-day period or such portion thereof required to comply with

subsection (2) of this section, the annexing municipality may refuse to issue any building or occupancy permit for any portion or all of the newly annexed area.

(4) Any provision in a zoning ordinance automatically applying a uniform zoning classification to all land which may be annexed in the future is void and of no effect as to any annexation completed on or after January 1, 1966.

(5) Any annexing municipality may institute the procedure outlined in its subdivision regulations to subdivide land in the area proposed to be annexed at any time after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of section 31-12-107. The ordinance accepting the proposed subdivision shall not be passed on final reading prior to the date when the annexation is passed on final reading.

(6) (a) Notwithstanding any other provision of law, whenever a municipality annexes an area that contains any portion of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment, for the period during which land use within the annexed area is devoted to agricultural use and regardless of whether the annexed area has been zoned for agricultural uses, the municipality shall not adopt or enforce any ordinance or regulation affecting the right-of-way, whether arising in connection with zoning, rezoning, the regulation of traffic, or otherwise, so as to restrict such customary or regular use of the right-of-way that is in existence as of the time of the annexation. Nothing in this subsection (6) shall be construed as in any way restricting the municipality from adopting or enforcing traffic regulations that are either consistent with the customary or regular use of the right-of-way or are necessary for the safety of vehicular and pedestrian traffic using the right-of-way.

(b) In addition to any other applicable notice requirements provided by law, not less than thirty days prior to final adoption of an ordinance or regulation affecting the right-of-way in an annexed area that is devoted to agricultural use and regardless of whether the annexed area has been zoned for agricultural uses, the municipality shall send notice of the proposed ordinance or regulation to the following persons by means of the following methods:

(I) To any person who owns property in the annexed area that is contiguous to the right-of-way, by certified mail; and

(II) To such persons as appear on a list maintained by the municipality of interested persons who are to receive such notice by first-class mail. The name of any such person shall remain on the list until such time as the person requests removal of the person's name from the list.

(c) For purposes of this subsection (6), "agricultural vehicles and equipment" means any vehicle or equipment that is designed, adapted, or used for agricultural purposes.

Source: **L. 75:** Entire title R&RE, p. 1088, § 1, effective July 1. **L. 97:** (1) and (5) amended, p. 996, § 5, effective May 27. **L. 2004:** (6) added, p. 618, § 1, effective September 1.

Editor's note: This section is similar to former § 31-8-115 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-115 is similar to former § 31-8-115 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

When a city annexes land from a county, the power to zone that land shifts to the city. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

In order to accommodate lands. The city is allowed to impose zoning restrictions on an-

nexed lands, after annexation, in order that those lands may be accommodated into the orderly growth patterns of the city. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

But this statute does not allow the city to impose arbitrary or automatic uniform zoning upon lands which it annexes in the future. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

Simultaneous passage of zoning and annexation ordinances. Since the statute states only that the zoning ordinance shall not be passed

prior to the annexation ordinance, the statute does not preclude the two ordinances from being passed at the same time. *Cline v. City of Boulder*, 168 Colo. 112, 450 P.2d 335 (1969).

A county building permit obtained prior to the involuntary annexation ordinance does not preclude the rezoning made by the city, because the majority rule in the United States is

that the owner must take some steps in reliance on the permit before his rights vest thereunder and a municipality may revoke permit where zoning in enacted or changed to prohibit the use and where the permittee has not materially changed his position in reliance on the permit. *Cline v. City of Boulder*, 168 Colo. 112, 450 P.2d 335 (1969).

31-12-116. Review. (1) (a) If any landowner or any registered elector in the area proposed to be annexed, the board of county commissioners of any county governing the area proposed to be annexed, or any municipality within one mile of the area proposed to be annexed believes itself to be aggrieved by the acts of the governing body of the annexing municipality in annexing said area to said municipality, such acts or findings of the governing body may be reviewed by certiorari in accordance with the Colorado rules of civil procedure. Such review proceedings shall be instituted in any district court having jurisdiction of the county in which the annexed area is located. In no event shall such a proceeding be instituted prior to the effective date of the annexing ordinance by the annexing municipality.

(b) If the annexed area is located within two or more counties, review proceedings may be brought in any district court having jurisdiction of any one of such counties. In all such certiorari proceedings under this part 1, the district court shall be presided over by a judge appointed by the chief justice of the supreme court of the state of Colorado, which judge shall not be from the judicial district in which the area proposed to be annexed is located nor from a judicial district contiguous thereto.

(2) (a) (I) All such actions to review the findings and the decision of the governing body shall be brought within sixty days after the effective date of the ordinance, and, if such action is not brought within such time, such action shall forever be barred.

(II) All such actions to review the findings and the decision of the governing body shall be subject to the following requirement, which is a condition precedent to the right to obtain judicial review under this section: Any party bringing such action shall first have filed a motion for reconsideration within ten days of the effective date of the ordinance finalizing the challenged annexation, which motion shall state with particularity the grounds upon which judicial review is sought.

(III) The district court shall schedule such actions for expedited hearing.

(IV) In the event that the person bringing an action pursuant to this section fails to substantially prevail, the court may award the municipality its reasonable attorney fees and costs of defense.

(b) In any action brought within the sixty-day limitation of paragraph (a) of this subsection (2) to review the annexation of an enclave pursuant to section 31-12-106 (1), the court may review the findings and determinations of the governing body in annexing any territory which, in whole or in part, resulted in the creation of the enclave. If the court finds that any such prior annexation resulted in the creation of a municipal boundary that consists of public rights-of-way as set forth in section 31-12-106 (1.1) (a) (I) or occurred without compliance with section 30 of article II of the state constitution as set forth in section 31-12-106 (1.1) (a) (II), it shall declare the annexation of the enclave to be void, but no such finding or decision shall affect the validity of the prior annexation.

(3) Review proceedings instituted under this section shall not be extended further than to determine whether the governing body has exceeded its jurisdiction or abused its discretion under the provisions of this part 1.

(4) Any annexation accomplished in accordance with the provisions of this part 1 shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized in this section.

(5) If the hearing has not been stenographically reported as provided in section 31-12-109 (2) and if the court determines, after proper investigation, that the minutes of the hearing are not adequate to form the basis for a determination of the issue in the certiorari proceedings, the court may proceed to try the issue de novo.

(6) All proceedings for judicial review of any annexation proceeding under this part 1 shall be advanced as a matter of immediate public interest and concern and heard at the earliest practical moment. The courts shall be open at all times for the purposes of this part 1.

Source: **L. 75:** Entire title R&RE, p. 1089, § 1, effective July 1. **L. 81:** (2) amended, p. 1511, § 2, effective July 1. **L. 87:** (1)(a) and (2) amended, p. 1221, § 7, effective May 28. **L. 90:** (1)(a) amended, p. 1479, § 1, effective March 9. **L. 97:** (2)(b) amended, p. 996, § 6, effective May 27. **L. 2006:** (2)(b) amended, p. 1008, § 2, effective September 1. **L. 2010:** (1)(a) amended, (HB 10-1259), ch. 211, p. 919, § 11, effective August 11.

Editor's note: This section is similar to former § 31-8-116 as it existed prior to 1975.

ANNOTATION

- I. General Consideration.
- II. District Court's Jurisdiction.
- III. Aggrieved Persons.
- IV. Forty-five-day Limitation.
- V. Annexation Enjoined.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For comment on *Tanner v. City of Boulder* (151 Colo. 283, 377 P.2d 945 (1962)), see 36 U. Colo. L. Rev. 288 (1964). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-116 is similar to former § 31-8-116 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

No denial of due process in review procedure. The procedures for review in the Colorado act are not so fundamentally unfair as to constitute a denial of due process under the federal constitution. *Adams v. City of Colo. Springs*, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

This section must be construed as a whole. *Green Valley Ranch Venture Co. v. District Court*, 186 Colo. 173, 526 P.2d 141 (1974).

Annexation is a legislative function and it is within legislative competence to prescribe who may challenge annexation proceedings, and within what time limits a challenge must be made. *City & County of Denver v. District Court*, 181 Colo. 386, 509 P.2d 1246 (1973).

Since by statute the general assembly has delegated the power to annex territory to a city, that power remains legislative in character. *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976).

Unlimited legislative power over annexation. In the absence of express constitutional provisions to the contrary, the general assembly

has unlimited power over annexation of territory by municipalities. *Fort Collins-Loveland Water Dist. v. City of Fort Collins*, 174 Colo. 79, 482 P.2d 986 (1971).

Read in conjunction with § 31-12-120. The legislative intent is clear, and § 31-12-113 and this section must be read in conjunction with § 31-12-120. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 347, 547 P.2d 249 (1976).

Review procedure proper for state control. The question of what procedures should be provided for review of annexations is primarily a matter within the discretion of the general assembly, provided that the review procedures are not so arbitrary and unreasonable as to constitute a denial of due process, and since the state has provided and determined the powers, methods, and procedures for annexation of property by municipal corporations and the safeguards thought necessary to protect against abuse, such a subject is a proper one for state control. *Adams v. City of Colo. Springs*, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

Judicial review of annexations is a special statutory proceeding. *Fort Collins-Loveland Water Dist. v. City of Fort Collins*, 174 Colo. 79, 482 P.2d 986 (1971).

And is limited. Annexation review is a special statutory proceeding and is limited to a determination of whether the city council has "exceeded its jurisdiction or abused its discretion". *Bd. of County Comm'rs v. City & County of Denver*, 37 Colo. App. 395, 548 P.2d 922 (1976); *Bd. of County Comm'rs v. City of Aurora*, 62 P.3d 1049 (Colo. App. 2002).

Judicial review of an annexation is a special statutory procedure and is limited to whether the town's board of trustees exceeded its jurisdiction or abused its discretion. *TCD North, Inc. v. City Council, Greenwood Vill.*, 713 P.2d 1320 (Colo. App. 1985); *Midcities Co. v. Town of Superior*, 916 P.2d 595 (Colo. App. 1995), aff'd, 933 P.2d 596 (Colo. 1997).

A motion for reconsideration must be filed no later than 10 days after the effective date

of the ordinance finalizing the challenged annexation under the language of subsection (2)(a)(II). Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

On review, great latitude must be accorded the legislative discretion, and every reasonable presumption in favor of validity of the action of the city must be indulged. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976); Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

The court is generally limited to determining whether the act's procedural mandates have been met and must indulge every reasonable presumption favoring the validity of the annexation. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

The rules of civil procedure do not apply insofar as they are inconsistent with special statutory law. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

Subsection (1)(a) creates a substantive legal status for review of annexation proceedings and preempts the rules of civil procedure insofar as they are inconsistent with the statute. Berry Props. v. City of Commerce City, 667 P.2d 247 (Colo. App. 1983).

Special review procedure. The general assembly, rather than arrogate unto itself the right to establish an annexation review procedure, has adopted a specific procedure from the rules promulgated by the supreme court. Fort Collins-Loveland Water Dist. v. City of Fort Collins, 174 Colo. 79, 482 P.2d 986 (1971).

Annexation ordinance on review not presumed valid. Under this section, where the question to be determined in an annexation proceeding is whether the land involved has been lawfully annexed, the presumption of the validity of an ordinance does not apply, it being a defense only which shifts the burden of proof to a challenger in the pleadings and trial. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Findings of ultimate fact by city council are sufficient to support annexation on review when based on uncontradicted evidence. TCD North, Inc. v. City Council of Greenwood, 713 P.2d 1320 (Colo. App. 1985).

Applied in Colo. Land Use Comm'n v. Bd. of County Comm'rs, 199 Colo. 7, 604 P.2d 32 (1979).

II. DISTRICT COURT'S JURISDICTION.

Venue. Review proceedings may be brought in either the district court of the county in which the land was situated prior to annexation or in the district court of the county in which the land is located after annexation. Green Valley Ranch

Venture Co. v. District Court, 186 Colo. 173, 526 P.2d 141 (1974).

The district court, composed of all of the district judges, is granted jurisdiction to hear an appeal from an annexation proceeding if the county wherein the annexed territory is located is in the judicial district. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

In this statute the use of the word "such" indicates that an "outside" judge need only be appointed when an annexation proceeding involves property in more than one county. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

Court reviews area eligibility and compliance with procedures. The function of a county court in annexation proceedings is to provide a forum in order to insure first, that the area is eligible and, second, that the procedural requirements of the statute have been fully complied with. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Only grounds for invalidation. The district court cannot pass upon the wisdom of the annexation itself, nor can it invalidate any annexation for a reason other than a failure to comply with the provisions of the article. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Court hearing due to complexity. Since the annexation proceedings are somewhat intricate this complexity demonstrates the need for a district court hearing for the purpose of testing its sufficiency. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

This section does not vest in a district court plenary powers to grant relief in accordance with the justice or equities of the individual case. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Nor does this section confer jurisdiction on a district court to hear appeals of individual property owners following annexation and to grant or deny disconnection based upon a county court's uncontrolled discretion. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

There exists no inherent power in the courts to grant disconnection of property annexed to a city, such power is essentially legislative, and absent an express statutory authorization the courts possess no power to detach territory from a municipality. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Problems for legislative correction. The fact that the state statutes did not provide in more detail how to solve the problems of taxation and refunds, voting and building restrictions, where an annexation ordinance was later held to be invalid, were problems better addressed to the general assembly than to the courts. City &

County of Denver v. Bd. of County Comm'rs, 141 Colo. 102, 347 P.2d 132 (1959).

III. AGGRIEVED PERSONS.

Only "any landowners or any qualified elector in the territory proposed to be annexed" may seek review. Fort Collins-Loveland Water Dist. v. City of Fort Collins, 174 Colo. 79, 482 P.2d 986 (1971); City of Westminster v. City of Northglenn, 178 Colo. 334, 498 P.2d 343 (1972).

All landowners in an area to be annexed were not indispensable parties to an action challenging the annexation. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

And no standing if excluded from area subject to annexation. Landowners do not have standing to challenge the validity of annexation proceedings where their properties are excluded from the area subject to the annexation, as they cannot complain of the proposed annexation of property owned by others. Richter v. City of Greenwood Vill., 40 Colo. App. 310, 577 P.2d 776 (1978).

It was held that a county had such an interest in the detachment of its territory as to be a "person aggrieved" under the statute where it was charged that the annexation was invalid. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963); Elkins v. City & County of Denver, 157 Colo. 252, 402 P.2d 617 (1965).

A resident of an unincorporated area, but not of the particular tract to be detached by annexation proceedings, is not a person aggrieved thereby, since such person does not suffer a detriment peculiar to himself as distinguished from detriment shared by all property owners in the governmental unit. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963); Smith v. City of Aurora, 153 Colo. 204, 385 P.2d 129 (1963).

Initial annexing city not "aggrieved". Where owners of a tract entered into agreements with a city to annex tract and to furnish water service to the land, but on the following day the city council of another city accepted a petition for an annexation election, the city in the position of the first city is not one of those specified in this section who may seek review of the action of city council. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Municipality lacked standing to contest annexation because it was not within one mile of the area that was annexed. Town of Berthoud v. Town of Johnstown, 983 P.2d 174 (Colo. 1999).

While municipality within one mile of the proposed annexations that believes itself to be aggrieved has standing to the extent it is actually aggrieved, said municipality does not

have unfettered standing to raise issues on behalf of anyone else. Town of Erie v. Town of Frederick, 251 P.3d 500 (Colo. App. 2010).

Plaintiff outside of statutory category lacks standing. This section expressly limits the right of review to certain categories of plaintiffs. Where plaintiffs are not within those categories, they do not have standing to seek review. Berry Props. v. City of Commerce City, 667 P.2d 247 (Colo. App. 1983).

Standing to challenge zoning does not give standing to challenge annexation. Nothing in the annexation act limits the right to judicial review of zoning procedures to landowners or qualified electors within territory annexed under the annexation act. But it does not follow that standing to challenge zoning gives standing to challenge annexation. Snyder v. City Council, 35 Colo. App. 32, 531 P.2d 643 (1974).

Standing to challenge zoning and standing to challenge annexation are quite different matters. City of Thornton v. Bd. of County Comm'rs, 42 Colo. App. 102, 595 P.2d 264 (1979), aff'd, 629 P.2d 605 (Colo. 1981).

IV. FORTY-FIVE-DAY LIMITATION.

The 45-day provision is jurisdictional. Snyder v. City Council, 35 Colo. App. 32, 531 P.2d 643 (1974).

If an action is not brought within the 45-day time limitation, the court has no jurisdiction to entertain the action. City and County of Denver v. District Court, 181 Colo. 386, 509 P.2d 1246 (1973).

Commencement of an action within the 45-day time period is necessary before a trial court has any jurisdiction to entertain an action which challenges a municipal annexation. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 300, 546 P.2d 497 (1976).

A complaint filed more than 45 days after the effective date of the ordinance must be dismissed. Val d'Gore, Inc. v. Town Council, 193 Colo. 311, 566 P.2d 343 (1977).

The 45-day period under subsection (2) did not begin to run until the enactment of an ordinance amending the original annexation ordinance where an erroneous property description was repeated throughout the election petitions, the election notices, and the original ordinance, thereby depriving potentially interested parties of an opportunity to contest the annexation of their property. Val d'Gore, Inc. v. Town Council, 193 Colo. 311, 566 P.2d 343 (1977).

Not a statute of limitations. The 45-day provision of subsection (2) is not a true statute of limitations, because the time limitation is jurisdictional, and unlike other statutes of limitations, as a matter of public policy, it cannot be tolled or waived. Fort Collins-Loveland Water Dist. v. City of Fort Collins, 174 Colo. 79, 482

P.2d 986 (1971); *Richter v. City of Greenwood Vill.*, 40 Colo. App. 310, 577 P.2d 776 (1978).

In effect, the 45-day provision is a condition precedent to the exercise of the right to challenge an annexation, and when it appears on the face of the complaint, or is admitted, the complaint simply does not state a claim upon which relief can be granted, the claim is barred, and the court has no jurisdiction of the subject matter, and can, for that reason, grant a motion to dismiss on this ground. *Fort Collins-Loveland Water Dist. v. City of Fort Collins*, 174 Colo. 79, 482 P.2d 986 (1971).

Favors finality. By enacting the 45-day time limitation set forth in this section the general assembly has pursued a deliberate policy of favoring the finality of an annexation even though there may have existed some ground for attacking the annexation. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 300, 546 P.2d 497 (1976).

Limitation recognizes that boundary lines be expeditiously and finally determined. Implicit in the 45-day time limitation imposed by this section is a recognition of the desirability that municipal boundary lines be expeditiously and finally determined in order that the responsibility for providing municipal services and the applicability of municipal ordinances and regulations may be known to those affected. *City and County of Denver v. District Court*, 181 Colo. 386, 509 P.2d 1246 (1973).

Applicable to challenge to repeal of annexation ordinance. No legislative intent appears in the municipal annexation act which would exclude from the 45-day time limitation a court challenge involving a municipality's capacity to repeal an annexation ordinance. *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 300, 546 P.2d 497 (1976).

No time waiver. Just as no discretion is afforded the annexing municipality as to the application of ordinances, it has none with reference to the waiver of the time limitation for the challenge to the validity of the annexation ordinance. *Fort Collins-Loveland Water Dist. v. City of Fort Collins*, 174 Colo. 79, 482 P.2d 986 (1971).

V. ANNEXATION ENJOINED.

Proceedings by a city to annex territory can only be enjoined where they are in excess of the powers of a city. *City & County of Denver v. Bd. of County Comm'rs*, 141 Colo. 102, 347 P.2d 132 (1959).

Legislative function cannot be enjoined. The general rule is that a municipal corporation, in the exercise of legislative power with relation to the subjects committed to its jurisdiction, can no more be enjoined than can the general assembly of the state. *City & County of Denver v. Bd. of County Comm'rs*, 141 Colo. 102, 347 P.2d 132 (1959).

31-12-117. Effect of review and of voiding of annexation ordinance by court order.

(1) After the effective date of an annexation ordinance, the annexing municipality shall apply all pertinent ordinances to the annexed area, irrespective of any proceedings for judicial review.

(2) In the event that the district court enters a final judgment, as defined in rule 54 (a), Colorado rules of civil procedure, declaring the annexation proceedings void, no acts taken in compliance with or pursuant to the charter, ordinances, or regulations of the annexing municipality shall be voided thereby, even though such acts are not in compliance with applicable county requirements or the requirements of other municipal or quasi-municipal corporations having jurisdiction over the area affected by such judicial proceedings. Such acts shall include, among others, subdivision platting and the construction and occupancy of improvements. A judicial declaration voiding an annexation shall not invalidate the levy and collection of any taxes, license fees, or charges collected or imposed by the annexing municipality prior to such final judgment.

(3) The provisions of subsection (2) of this section shall apply with equal force and validity to judicial review of any annexation proceedings which have affected the boundaries of any county or city and county; except that, within ninety days after the effective date of such a final judgment, the county clerk and recorder of the county or city and county to which the area was attempted to be annexed shall transmit to the county clerk and recorder of the county to which the territory was returned as a result of the judicial determination of the invalidity of the annexation proceedings a copy of each approved subdivision plat, which copy shall then be recorded without charge in the records of the county to which the territory was so returned.

(4) The execution of any final judgment by the district court in any judicial review of an annexation proceeding shall automatically be stayed upon the filing of the record on appeal as provided by law and the Colorado appellate rules, and no application for supersedeas shall be necessary. Such stay shall continue in full force and effect pending final disposition of the proceedings on appeal.

Source: L. 75: Entire title R&RE, p. 1090, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-117 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-117 is similar to § 31-8-117 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

Section held constitutional. *Cline v. City of Boulder*, 168 Colo. 112, 450 P.2d 335 (1969).

The general assembly was required to provide the specific guidelines that it did pending review proceedings, lest the disputed territory be left suspended in some no-man's land, with the citizenry of the territory left without clearly defined governmental services or obligations to any governmental entity. *City of Westminster v. District Court*, 167 Colo. 263, 447 P.2d 537 (1968).

Subsection (1) is a proper exercise of legislative authority to establish status of disputed annexed territory pending judicial review. *City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist.*, 181 Colo. 334, 509 P.2d 317 (1973).

And is mandatory. No discretion is afforded the annexing municipality, because subsection (1) of this section is mandatory and therefore, absent a finding of inapplicability or unconstitutionality, the district court lacked jurisdiction to order the city to disobey the clear mandate of the statute. *City of Westminster v. District Court*, 167 Colo. 263, 447 P.2d 537 (1968).

Stay order unavailable. While the courts have power to issue stay orders in certiorari proceedings, statutes may modify or abrogate that power, and in the annexation statutes it is clear that the general assembly intended to preclude the issuance of a stay order pending appeal of the annexation proceedings. In this respect they were not legislating on procedure but declaring by substantive law a legal status. *City*

of Westminster-v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

And while legality of annexation proceedings is being challenged in court, the disputed territory remains in the city subject to city taxes and assessments and is entitled to all city services. *City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist.*, 181 Colo. 334, 509 P.2d 317 (1973).

Until an annexation is finally determined to be void, the disputed territory remains a part of the annexing municipality. *City & County of Denver v. Bd. of Dirs.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

Where the annexation is finally declared void, subsequent annexations which were passed immediately following the voided annexation and which were dependent upon the voided annexation for contiguity, are likewise void. The provisions of subsection (2) merely grant the annexing municipality governmental powers during the period of judicial review and if the annexation is finally declared void, the acts of the annexing municipality can have no further effect on the land in question. *Bd. of County Comm'rs v. City of Lakewood*, 813 P.2d 793 (Colo. App. 1991).

No recovery of taxes. Under the Colorado annexation act, even if the procedures are declared to be unconstitutional, taxes which have been levied cannot be recovered. *Adams v. City of Colo. Springs*, 308 F. Supp. 1397 (D. Colo.), *aff'd mem.*, 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

For collection and distribution of property taxes in disputed area during year in which annexation voided, see *City & County of Denver v. Bd. of County Comm'rs*, 661 P.2d 1185 (Colo. App. 1982).

Applied in *McKee v. City of Louisville*, 200 Colo. 525, 616 P.2d 969 (1980).

31-12-118. Priority of annexation proceedings. (1) The purpose of this section is to give a first priority to annexation proceedings unless certain incorporation proceedings described in this section are commenced for all or part of the area subject to such annexation proceedings.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), when a governing body receives a petition for annexation pursuant to section 31-12-107 (1) or a petition for an election on the question of annexation pursuant to section 31-12-107 (2), no other proceedings shall be commenced or prosecuted for the annexation or incorporation of the same area or any part thereof and no other proceedings shall be commenced or prosecuted for the creation of any quasi-municipal corporation in the same area or any part thereof until the question of annexing such area pursuant to any such petition has been finally determined. Nothing in this subsection (2) shall prevent a duly established special service district lawfully organized under part 5 or 6 of article 25 of this title, article 8 of title

29, C.R.S., part 2 of article 20 of title 30, C.R.S., or title 32 (except article 8), C.R.S., from receiving and prosecuting a petition for the inclusion of the same area or any part thereof within the boundaries of any such special service district during any pending annexation proceeding.

(b) A governing body shall hold annexation proceedings in abeyance if, on or after the date a petition for annexation pursuant to section 31-12-107 (1) or a petition for an election on the question of annexation pursuant to section 31-12-107 (2) is filed, a petition for incorporation of the same area or any part thereof is filed pursuant to part 1 of article 2 of this title and such area contains more than seventy-five thousand inhabitants.

(3) The fact that proceedings for the incorporation of an area have been commenced prior to the filing of a petition for annexation under section 31-12-107 (1) or prior to the filing of a petition for an election on the question of annexation under section 31-12-107 (2) shall in no way affect such proceedings for the annexation of all or part of the same area, and any such incorporation proceedings shall be held in abeyance until the question of annexation has been finally determined. Similarly the fact that proceedings for the creation of a quasi-municipal corporation have been commenced prior to the filing of a petition for annexation under section 31-12-107 (1) or the filing of a petition for an election on the question of annexation under section 31-12-107 (2) shall in no way affect such proceedings for the annexation of all or part of the same area, and any such proceedings for the creation of quasi-municipal corporations shall be held in abeyance until the question of annexation has been finally determined.

(4) This section shall not apply if the petition for annexation under said section 31-12-107 (1) or the petition for an election on the question of annexation under said section 31-12-107 (2) is first filed with the governing body within the ten days next preceding the date set for an election on the question of incorporation or an election on the question of the creation of a quasi-municipal corporation in part or all of the same area, nor shall this section apply to any incorporation petition involving an area which contains more than ten thousand inhabitants.

(5) In the event of any lawsuit challenging the provisions of this section or their applicability to any situation, such legal proceedings shall be advanced on the docket as a matter of immediate public interest and concern and shall be heard at the earliest practical moment.

Source: **L. 75:** Entire title R&RE, p. 1090, § 1, effective July 1. **L. 81:** (2) amended, p. 1614, § 15, effective July 1. **L. 99:** (1) and (2) amended, p. 1, § 2, effective February 1.

Editor's note: This section is similar to former § 31-8-118 as it existed prior to 1975.

ANNOTATION

Subsection (2) of this section, as amended in 1999, is not unconstitutional. The 1999 act does not violate the special legislation, retrospectivity, or impairment of contract provisions of the Colorado Constitution. *Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427 (Colo. 2000).

Section gives annexation proceedings priority over incorporation procedures and thereby expresses a clear preference for consolidation over fragmentation. In re *Incorporation of Town of Eastridge v. City of Aurora*, 198 Colo. 440, 601 P.2d 1374 (1979) (decided prior to 1999 amendment).

Requirements for subsection (2) cessation of proceedings. Unless the petitions for annex-

ation are found to be in compliance with the provisions of the annexation act, they do not trigger a cessation of all other annexation proceedings pursuant to subsection (2). *Slack v. City of Colo. Springs*, 655 P.2d 376 (Colo. 1982).

Rejected petitions may not be revived by amendment. Once petitions are rejected as defective, it is not possible to revive them by subsequent amendment. *Slack v. City of Colo. Springs*, 655 P.2d 376 (Colo. 1982).

Applied in *Bd. of County Comm'rs v. City & County of Denver*, 40 Colo. App. 281, 573 P.2d 568 (1977).

31-12-118.5. Effect of incorporation proceedings in an area of more than seventy-five thousand inhabitants - annexation ordinance - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Incorporation of areas containing more than seventy-five thousand inhabitants into new municipalities furthers the goal of orderly growth of urban communities and achieves the purposes stated in section 31-12-102;

(b) Municipal incorporations of areas containing such population present viable municipal communities and are favored over municipal annexations that may fragment affected communities and reduce or eliminate the ability to provide municipal government, services, and facilities to those communities;

(c) The current municipal annexation and incorporation laws do not adequately expressly address the priority to be given municipal incorporation of areas containing such population;

(d) This section and section 31-12-118 (2) (b) are necessary to provide remedial direction regarding the jurisdiction of municipalities to subject areas containing such population to municipal annexation and, therefore, that each section shall apply on and after February 1, 1999, to all annexation proceedings that are pending or subject to judicial review or appeal commenced pursuant to sections 31-12-116 and 31-12-117 whether or not such review or appeal is sought;

(e) The enactment of this section and section 31-12-118 (2) (b) is not violative of section 11 of article II of the Colorado constitution with respect to annexation proceedings that are pending or subject to judicial review or appeal on February 1, 1999, since:

(I) Section 11 of article II of the Colorado constitution applies solely to statutes that take away or impair a vested right acquired under existing laws or that impose a new duty or create a new obligation with respect to completed transactions or considerations;

(II) No person has a vested right in any annexation proceedings that are pending or subject to judicial review or appeal on February 1, 1999, that will be impaired by this section or section 31-12-118 (2) (b); and

(III) This section and section 31-12-118 (2) (b) do not impose a new duty or create a new obligation with respect to any municipal annexation that is completed and that is final and no longer subject to judicial review or appeal.

(2) (a) If a petition for an incorporation election is filed pursuant to part 1 of article 2 of this title, then no annexation ordinance that annexes all or any part of the area included in such petition shall be deemed final. This subsection (2) shall apply only if such area proposed for incorporation contains more than seventy-five thousand inhabitants and such petition is filed:

(I) Prior to the expiration of the sixty-day limitation on review proceedings contained in section 31-12-116 (2) (a); or

(II) After a review proceeding on such annexation ordinance has been commenced pursuant to section 31-12-116 and prior to the date of a judicial declaration or final judgment, including an appellate judgment, on such review proceeding.

(b) If such incorporation election is approved by a court order entered pursuant to section 31-2-103, then such annexation ordinance shall be deemed void with respect to any area that is incorporated pursuant to such election.

Source: L. 99: Entire section added, p. 2, § 3, effective February 1.

ANNOTATION

This section is not unconstitutional and applies to all conflicting incorporation and annexation cases that were pending when it was enacted. This section does not violate the special legislation, retrospectivity, or impair-

ment of contract provisions of the Colorado Constitution. *Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427 (Colo. 2000).

31-12-119. Disconnection of territory because of failure to serve. The landowners of any tract or contiguous tracts of land aggregating five acres or more located on a boundary

of the municipality at the time of the disconnection action may, three or more years after annexation, petition for disconnection from the municipality if such municipality does not, upon demand, provide the same municipal services on the same general terms and conditions as the rest of the municipality receives. The procedure for such disconnection shall be as set forth in parts 6 and 7 of this article, insofar as consistent with this section. To the extent that such parts are inconsistent with this section, the provisions of this section shall prevail when the action is based on failure of the municipality to serve an annexed area.

Source: L. 75: Entire title R&RE, p. 1091, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-119 as it existed prior to 1975.

ANNOTATION

Annexations "condition" does not relieve municipality of statutory obligations. An annexation "condition", that the municipality would not be required to supply water to the annexed subdivision, does not relieve the municipality of its statutory obligation to provide

the subdivision with "the same municipal services on the same general terms and conditions as the rest of the municipality receives". *Morgan v. Town of Palmer Lake*, 44 Colo. App. 134, 608 P.2d 852 (1980).

31-12-120. Court approval required for certain annexations. (1) Any annexation which would have the effect of detaching part of the area of an existing school district shall not become effective prior to court approval as specified in this section; except that this subsection (1) shall not apply to an enclave area which has five hundred or less inhabitants nor to any annexation the petition for which is signed by one hundred percent of the landowners in the area proposed to be annexed.

(2) In the event of an annexation as set forth in subsection (1) of this section, the annexing municipality, within ten days following the election as provided in section 31-12-107 or the adoption of the ordinance as provided in section 31-12-106, shall give written notice of intention to annex, pursuant to this part 1, to the board of education of the school district from which it is proposed that the area will be detached.

(3) Within thirty days after the notice of annexation proceedings specified in subsection (2) of this section is delivered to the board of education, the annexing municipality shall petition the district court in accordance with the jurisdictional requirements set forth for review of the governing body's actions in section 31-12-116 (1) for the granting or denial of the requisite court approval to consummate annexation. The petition shall name the board of education as party defendant.

(4) The court shall determine:

(a) On the basis of the most recent assessment, the aggregate valuation for assessment of all property in the school district and the aggregate valuation for assessment of all property in the territory proposed to be annexed; and

(b) On the basis of the most recent enrollment records of the school district, the aggregate number of pupils enrolled in the school district and the aggregate number of pupils so enrolled who live in the area proposed to be annexed.

(5) If the pupil percentage (the percentage of all enrolled pupils that is reflected by all enrolled pupils living in the area proposed to be annexed, carried to four decimal places) is less than three-fifths of the property percentage (the percentage of aggregate valuation for assessment of all property that is reflected by property lying within the area proposed to be annexed), the court shall disapprove the proposed annexation, and such annexation shall not become effective; except that the court shall not be required to disapprove a proposed annexation if it finds that ninety percent of the aggregate valuation for assessment of property in the area to be annexed consists of unimproved land. In no event shall the court

approve a proposed annexation which, together with the valuation for assessment of all other property detached from a school district in any one calendar year, exceeds five percent of the aggregate valuation for assessment of all property in the school district.

Source: L. 75: Entire title R&RE, p. 1091, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-120 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-120 is similar to former § 31-8-120 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The legislative intent is clear, and §§ 31-12-113 and 31-12-116 must be read in conjunction with this section. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 347, 547 P.2d 249 (1976).

Court approval was unnecessary where an annexation petition was signed by a tenant-in-common holding an undivided interest in the land annexed. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Applied in Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

31-12-121. Provision of municipal services to outside consumers - agreement to annex. Any municipality, as a condition precedent to the supplying of municipal services pursuant to contract, may require a contemporary agreement by such consumers, who are owners in fee of real property so supplied, to apply for or consent to the annexation of the area to be supplied with such municipal services to the supplying municipality at such future date as the area supplied, or any portion thereof, becomes eligible for annexation pursuant to the provisions of this part 1. The agreement to annex shall be enforceable by an action for specific performance filed in the district court of the judicial district containing all or part of the supplying municipality. A memorandum of such agreement, setting forth the names of the owners in fee of real property supplied and the legal description of such area, shall be recorded in the office of the county clerk and recorder of the county in which such area is located and shall constitute constructive notice of such agreement to all persons not parties thereto. In no event shall the board of directors of any quasi-municipal corporation organized under part 5 or 6 of article 25 of this title, article 8 of title 29, part 2 of article 20 of title 30, or title 32 (except article 8), C.R.S., or any other law of this state be permitted to obligate or require property owners within any such district to sign any such agreement in order to obtain water service from a municipality.

Source: L. 75: Entire title R&RE, p. 1092, § 1, effective July 1. L. 81: Entire section amended, p. 1615, § 16, effective July 1.

Editor's note: This section is similar to former § 31-8-121 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "The Permissible Scope of Compulsory Requirements for Land

Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983).

31-12-122. Relation of this part 1 to other laws. The powers conferred and limitations imposed by this part 1 shall be in addition and supplemental to and not in substitution for powers conferred by any other law.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-122 as it existed prior to 1975.

31-12-123. Applicability to city and county of Denver. Notwithstanding any provisions of this article to the contrary, this article shall not apply to the city and county of Denver.

Source: L. 86: Entire section added, p. 1035, § 2, effective July 1.

PART 2

ANNEXATION OF ADJACENT AREA UPON REORGANIZATION

31-12-201. Including adjacent area upon reorganization. (1) When a city or town incorporated prior to July 3, 1877, proceeds to abandon its prior organization and to reorganize under the provisions of part 3 of article 2 of this title, it may include within the boundaries of such reorganized municipality all or any part of contiguous area if:

(a) The contiguous area has been laid off or platted in accordance with the provisions of this title;

(b) The owner of such area has not constituted the same as an addition to such city or town;

(c) The area is not situate within another municipality.

(2) In such cases, the boundaries of all of such city or town, including such contiguous territory, shall be set forth in the petition described in part 3 of article 2 of this title, and all registered electors residing within those boundaries shall be entitled to vote at the election to be conducted under the provisions of said part 3 of article 2.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-107 as it existed prior to 1975.

PART 3

DISSOLUTION AND ANNEXATION (SPECIAL CHARTERS)

31-12-301. Annexation to charter city. When any city or town is contiguous to any city existing under any special charter of this state or the territory of Colorado, which charter was issued prior to July 3, 1877, and in such special charter it is provided that when any such city or town, in pursuance of any law of this state, is dissolved or becomes annexed to the city existing under a special charter and the area included within such city or town existing under general laws becomes part of the city existing under a special charter, the city or town may be annexed to and become part of the city existing under a special charter in the manner set forth in this part 3.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-201 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Colorado Income Tax Act of 1964", see 41 Den. L. Ctr. J. 337 (1964).

Annotator's note. Since § 31-12-301 is similar to former § 31-8-201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This and the following sections on annexation are not unconstitutional. Valverde v.

Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893).

This and the following sections have a single object - the dissolution of incorporated towns and cities for the purpose of annexing their territory to another city. In a word, the object is annexation, and the dissolution is preliminary to, and inseparable from, annexation; and those provisions which prescribe the means and procedure to be pursued, are incidental or auxiliary to the same end, so, also, the remaining

provisions are dependent upon and follow the accomplishment of the single object, annexation. *Valverde v. Shattuck*, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893).

Proceedings for the annexation of a city to the city and county of Denver are governed

by § 1 of art. XX, Colo. Const., and this section, not § 3 of art. XIV, Colo. Const. *Simon v. Arapahoe County*, 80 Colo. 445, 252 P. 811 (1927).

31-12-302. Petition - order of court. A petition signed by not less than twenty percent of the qualified taxpaying electors of such city or town for the dissolution of such city or town and the annexation of the same to the city existing under a special charter may be filed in the office of the clerk of the district court for the county in which the city or town is situated. The petition, or any part thereof, shall be accompanied by an affidavit of one or more of the petitioners showing that the signers are qualified taxpaying electors of such city or town and shall be prima facie evidence of the matters therein set forth. Upon the filing of such petition and upon the consent of the special charter city being shown by published ordinance, the district court shall make an order reciting the substance of the petition and requiring the governing body of such city or town to submit the question of such dissolution and annexation at the next regular election or at a special election of such city or town, as provided in section 31-12-305, to a vote of the registered electors thereof. The order shall be served by delivering a copy thereof to any member of the governing body of such city or town and shall be filed in the office of the clerk of such city or town.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-202 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-302 is similar to former § 31-8-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Special statutory proceeding. The proceeding which this section requires shall be instituted, carried on, and consummated, as the means of dissolving one municipality and annexing the same to another, is unquestionably a special statutory proceeding as distinguished from an ordinary action at law, or suit in equity, but it is a judicial proceeding, manifestly a proceeding in the court and by the court. *Martin v. Simpkins*, 20 Colo. 438, 38 P. 1092 (1895).

A petition conforming to this section constitutes prima facie evidence of the essential

and controlling facts. Such status continues until overthrown by evidence received in support of the challenge thereof. In re *City of Westwood*, 115 Colo. 224, 171 P.2d 770 (1946).

Validity of signatures. A showing that many of the signers of one small section of a petition were disqualified did not warrant the trial court's conclusion that the petition otherwise, signed by other petitioners and whose competence was supported by affidavits of various affiants, was insufficient. In re *City of Westwood*, 115 Colo. 224, 171 P.2d 770 (1946).

Applied in *Valverde v. Shattuck*, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893); *Perry v. City of Denver*, 27 Colo. 93, 59 P. 747 (1899).

31-12-303. Annexation consented to by ordinance - indebtedness. No order shall be made by any district court requiring the submission of the question of dissolution and annexation to any election held pursuant to this part 3 until the city existing under a special charter to which it is proposed that such annexation be made has consented to such annexation by ordinance duly passed and published. In case of the annexation of any city or town to any city existing under a special charter, as provided in section 31-12-301, neither the indebtedness of the city or town so annexed nor that of the city to which the

same shall be annexed shall become a common indebtedness. Such indebtedness shall be paid by general taxation upon all the taxable property within the city or town in and by which the indebtedness was created.

Source: L. 75: Entire title R&RE, p. 1094, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-210 as it existed prior to 1975.

31-12-304. School districts - annexation of area to another school district - applicability. (1) When the dissolution and annexation of any city or town under the provisions of this part 3 will result in the detachment of an area from any school district and the attachment of such area to another school district, no petition under section 31-12-302 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation. If there are any school facilities located within the detached area, the school district owning such facilities shall receive just compensation from the school district that acquires them. Such compensation shall be determined by mutual agreement of the school boards involved or in accordance with the applicable provisions of articles 1 to 7 of title 38, C.R.S. As used in this section, the term "facilities" is limited to school buildings and the real property on which they are situate. Any moneys received by a school district as compensation for such school facilities shall be treated as proceeds from sales of assets pursuant to section 22-45-112, C.R.S.

(2) The provisions of this section shall apply to any annexation or dissolution and annexation proceedings which have not been completed prior to May 22, 1971.

Source: L. 75: Entire title R&RE, p. 1094, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-211 as it existed prior to 1975.

31-12-305. Question submitted to registered electors. The governing body of such city or town shall, by ordinance and within a reasonable time to be fixed by the court in said order, direct that an election be held to submit the question of the dissolution and annexation to a vote of the registered electors. If the order of the district court is served more than thirty days and less than one hundred twenty days prior to the next regular election of such city or town, the question shall be submitted to a vote of the registered electors at such regular election; otherwise, the question shall be submitted at a special election to be called and held for that purpose. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

Source: L. 75: Entire title R&RE, p. 1094, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-203 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-12-306. Notice of election. Notice of the submission of the question at a regular or special election shall be given by the clerk in the manner provided in the "Colorado Municipal Election Code of 1965" and shall state the substance of the proposition as submitted by the ordinance. The clerk shall forthwith file in the office of the clerk of the district court a certificate under the seal of such city or town, containing a copy of said notice and specifying the time when and the places where such notices were posted and the newspapers in which said notices were published; and the same shall be prima facie evidence of the matters set forth therein.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-204 as it existed prior to 1975.

Cross references: For the “Colorado Municipal Election Code of 1965”, see article 10 of this title.

31-12-307. Ballots. All ballots or voting machine tabs prepared for use pursuant to this part 3 shall contain the propositions “For Annexation” and “Against Annexation”. If the question is submitted on paper ballots, such ballots shall be deposited in a separate ballot box used for that purpose only.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-8-205 as it existed prior to 1975.

ANNOTATION

Annotator’s note. Since § 31-12-307 is similar to former § 31-8-205 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

This section prescribes the only method in which the ballots can be prepared, evidently two simple tickets, one for, the other against, annexation. *Phillips v. Corbin*, 8 Colo. App. 346, 46 P. 224 (1896).

31-12-308. Report - approval by court. (1) Following the canvass and certification of the results of the election, the clerk shall forthwith prepare a report, which shall be signed by the mayor and attested by the clerk under the seal of such city or town, containing a copy of the ordinance under which the question was submitted and of the certified statement and determination of the result of such vote, and he shall file said report in the office of the clerk of the district court.

(2) The court shall examine the report and hear any objections and evidence that may be offered concerning the regularity or irregularity of the proceedings. If the court finds the proceedings irregular, the court shall disapprove said report and order a new election in accordance with the provisions of this part 3. If the court finds that the proceedings were substantially regular, the court shall approve the report. If a majority of the votes cast are against annexation, the question shall not again be submitted at any election held within twelve months thereafter. If a majority of the votes so cast are for annexation, from the approval of such report, such city or town shall be dissolved, and the area then included within the boundaries thereof shall be annexed to and become part of the city existing under a special charter upon the filing of two certified copies of notice of the completion of such action with a legal description accompanied by a map of the area concerned by the special charter city with the county clerk and recorder of the county in which such action has taken place. The county clerk and recorder shall file the second certified copy of such notice with the division of local government of the department of local affairs, as provided by section 24-32-109, C.R.S. Appeals may be made from judgments of the district court in such proceedings as in other civil cases.

(3) When residence or the payment of taxes is required by law as a qualification to vote or to hold office in the city existing under a special charter, residence and the payment of taxes in any area so annexed shall constitute such qualifications to the same extent as if the same had been in the city existing under a special charter during the same period.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-8-206 as it existed prior to 1975.

ANNOTATION

Annotator’s note. Since § 31-12-308 is similar to former § 31-8-206 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a

prior provision has been included in the annotations to this section.

Judicial proceedings. That the section does not expressly require the court’s approval of the

report of the annexation proceedings to be in writing does not militate at all against the view that the proceedings before the court are judicial. *Martin v. Simpkins*, 20 Colo. 438, 38 P. 1092 (1895).

The effect which this section gives to the approval of the report is, in every respect, a most important judgment, because it is a judgment which dissolves a municipal corporation, deprives it of its franchises, annexes its territory to another municipality, and which may subject its inhabitants to increased taxation and other

additional municipal burdens. *Martin v. Simpkins*, 20 Colo. 438, 38 P. 1092 (1895).

Citizens' and taxpayers' standing. Resident citizens and taxpayers of a municipality who sought to be annexed to another under this section, have such an interest in the subject matter of the annexation proceedings that they are entitled to a writ of error from the supreme court to review the judgment of the district court approving such proceedings. *Martin v. Simpkins*, 20 Colo. 438, 38 P. 1092 (1895).

31-12-309. Termination of offices. If the question so submitted is submitted at a regular election of such city or town and it appears from the canvass that a majority of the votes cast at such election upon the question are "For Annexation", all votes for officers of such city or town, or upon any other question submitted at said election, and all certificates of election issued in pursuance thereof shall be of no force or effect. In such case, upon the approval of the report by the district court, the terms of office of the dissolved city or town shall cease.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-207 as it existed prior to 1975.

31-12-310. Rights become property of city enlarged - utilities not curtailed. When in pursuance of this part 3 any city or town is annexed to any city existing under a special charter, all rights, causes of action, records, uncollected revenues, and other property of the city or town so annexed shall accrue to and become the property of the annexing city. At least a proportionate share of the moneys of the annexing city available for water service, lights, and other public improvements shall be expended each year within the area formerly included within the city or town so annexed, based upon the valuation for assessment thereof. The water and light service of any city or town so annexed shall not be curtailed after such annexation.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-208 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-310 is similar to former § 31-8-208 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Assessment property of annexing city. It is conceded that the special assessment made by

the city of Highlands became, by the act of annexation, an asset of the city of Denver, and whatever power exists to enforce collection thereof was transferred to the latter municipality. *City & County of Denver v. Keeler*, 48 Colo. 54, 108 P. 998 (1910).

31-12-311. Validity not questioned after ninety days. The validity of any proceeding to dissolve and annex any city or town by virtue of this part 3 shall not be questioned in any action or proceeding commenced more than ninety days after such dissolution and annexation is effected.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-209 as it existed prior to 1975.

PART 4

CONSOLIDATION AND ANNEXATION -
STATUTORY CITIES AND TOWNS

31-12-401. Consolidation of contiguous cities or towns. (1) When two or more contiguous cities or towns desire to consolidate with each other, the governing body of each such city or town shall appoint from the officers or citizens thereof a total of three commissioners. The commissioners shall confer together and thereafter report to each governing body the terms and conditions of the proposed consolidation. Such report shall contain, in addition to any other matters which the commissioners may desire to insert therein, the following:

- (a) The name for the proposed consolidated city or town;
- (b) The number of wards into which the new city shall be divided, in the case of a proposed consolidated city, together with the boundaries of such wards.

(2) In fixing the number of wards, the commissioners shall not select a number which exceeds the entire number of wards contained in all of the cities and towns proposed to be consolidated; except that one ward may be allowed for each town proposed to be consolidated with a city.

(3) If the governing body of each such city or town approves the terms and conditions contained in the report, it shall so declare by proper ordinance which may be passed at any one regular or special meeting called for the purpose. Thereupon the governing body of each such city or town shall submit, by ordinance, the question of consolidation upon the terms and conditions so proposed to the registered electors of its respective city or town.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-301 as it existed prior to 1975.

ANNOTATION

Applied in *Donahue v. Morgan*, 24 Colo. 389, 50 P. 1038 (1897).

31-12-402. Election - notice - ballot. (1) In case the ordinance of approval is passed by the governing body less than one hundred twenty days and more than thirty days prior to the regular election in such city or town, the submission to the electors shall be at such regular election; otherwise, the governing body, in the ordinance of approval, shall order a special election, to be held not less than thirty days nor more than forty days after that date for the purpose of determining the question of such consolidation. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(2) The mayor or, in case there is no mayor, the presiding officer of the governing body shall cause notice of the election to be given, which notice shall be given in the manner prescribed by the "Colorado Municipal Election Code of 1965".

(3) The form of the ballots or voting machine tabs at such election shall be: "For Consolidation" and "Against Consolidation". If a majority of the votes cast at such election in each of the cities or towns proposed to be consolidated are for consolidation, the proposition shall be carried. If a majority of the votes cast at such election in any of the cities or towns proposed to be consolidated are against consolidation, the proposition shall be defeated, and such question shall not be submitted again for one year.

(4) If any one or more of the cities or towns proposed to be consolidated was a city, the consolidated corporation shall be a city.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-302 as it existed prior to 1975.

Cross references: For the “Colorado Municipal Election Code of 1965”, see article 10 of this title.

ANNOTATION

Applied in *Donahue v. Morgan*, 24 Colo. 389, 50 P. 1038 (1897).

31-12-403. Election of officers after consolidation. In case the proposition for consolidation is carried in all of said cities or towns, the mayor's or presiding officers of the governing bodies shall at once issue a joint proclamation announcing an election of officers of the consolidated city or town. Notice of the election shall be given in the manner prescribed by the “Colorado Municipal Election Code of 1965”. At said election there shall be chosen a board of trustees if the consolidated corporation is a town, and, if it is a city, there shall be chosen a mayor and two councilmen for each ward of the consolidated city. There shall be elected, in addition, such other officers as under the law are or may be elected by the electors in cities or towns. Such election shall be conducted in accordance with the provisions of the “Colorado Municipal Election Code of 1965” insofar as practicable under the direction of the clerks and governing bodies of the cities and towns which were consolidated.

Source: L. 75: Entire title R&RE, p. 1097, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-303 as it existed prior to 1975.

Cross references: For the “Colorado Municipal Election Code of 1965”, see article 10 of this title.

31-12-404. Tenure of officers. All officers chosen at such election, including councilmen, shall hold their respective offices until the next regular election. At the first regular election succeeding the consolidation and at each succeeding regular election thereafter, there shall be elected two councilmen for each ward of said city, each of whom shall hold office for a term of two years.

Source: L. 75: Entire title R&RE, p. 1097, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-304 as it existed prior to 1975.

31-12-405. Consolidation complete. The members of the governing body elected at such election, on the second Monday after the election, shall meet and organize the governing body of the consolidated city or town and shall file two certified copies of the notice of the consolidation with a legal description accompanied by a map of the area concerned by the consolidated city or town with the county clerk and recorder of the county in which such action has taken place, and from that time the consolidation shall be deemed complete. The county clerk and recorder shall file the second certified copy of such notice with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S. The consolidated city or town shall thenceforth exist with the same powers and duties and subject to the same regulations as other cities or towns. The cities or towns so consolidated shall then be merged in the consolidated corporation, and the terms of office of all of the officers of the cities and towns so consolidated shall cease.

Source: L. 75: Entire title R&RE, p. 1097, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-306 as it existed prior to 1975.

31-12-406. First ordinances - appropriation. The governing body of the consolidated city or town may pass, at the first meeting or as soon thereafter as possible, a resolution adopting in a body the ordinances of some one of the cities or towns forming the

consolidated town or city as such ordinances existed at the date of consolidation. Upon the passage of the resolution, the whole of the ordinances of the city or town so designated as they existed at the date of consolidation shall become the ordinances of the consolidated city or town in the same manner as if they had been regularly passed and published by the governing body of the consolidated city or town and shall so remain until amended or repealed. They shall also make appropriation, by ordinance, for the expense of the then unexpired portion of the current fiscal or municipal year. ~

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-307 as it existed prior to 1975.

31-12-407. Licenses. All licenses or other privileges issued or granted by any of the consolidated towns or cities prior to consolidation shall remain in full force and effect until the expiration of the same according to the terms thereof.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-308 as it existed prior to 1975.

31-12-408. Bonded and floating indebtedness. All bonded indebtedness due or owing by any city or town prior to consolidation shall remain, after consolidation, the debt of that portion of the consolidated city or town comprised within the former limits of the city or town which owed such indebtedness prior to consolidation. No tax shall be levied or collected for the payment of the principal and interest of such indebtedness, except upon and from persons or property residing or situated within the former limits of the town or city owing such indebtedness. The governing body of the consolidated city or town shall make such levies and take such other measures for the payment of the principal and interest out of the property within such limits as it would have been the duty or within the power of the governing body of the city or town owing such indebtedness to do had no such consolidation taken place. If any of the cities or towns consolidated owed any floating indebtedness at the date of consolidation, the governing body of the consolidated city or town shall ascertain the amount of such indebtedness owed by each of said cities or towns prior to consolidation and, at the next annual levy of taxes succeeding consolidation, shall make a special levy upon property situated within the former limits of the city or town owing such indebtedness sufficient for the payment of the same. The terms of consolidation may make other provisions for said bonded or floating indebtedness. Any such bonded indebtedness may be refunded by the consolidated city or town under the provisions of the laws of Colorado existing at the time of such refunding providing for the refunding of bonds of cities and towns.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-309 as it existed prior to 1975.

31-12-409. Property belongs to consolidated cities or towns. All property, real or personal, belonging to any of the cities or towns prior to consolidation, unless the agreement for consolidation otherwise provides, immediately upon the accomplishment of consolidation, shall vest in and become the property of the consolidated city or town. All indebtedness, claims, demands, or rights owing or belonging to any of said cities or towns prior to consolidation in like manner shall vest in and become due to the consolidated city or town, which shall thereafter have the right to demand, have, sue for, recover, and enforce the same in its own name.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-310 as it existed prior to 1975.

ANNOTATION

Applied in *Donahue v. Morgan*, 24 Colo. 389, 50 P. 1038 (1897).

31-12-410. Suits - special tax. If any actions, suits, or proceedings are pending against any one of the cities or towns at the time of the consolidation, the consolidated city or town shall be substituted as plaintiff or defendant in such action, suit, or proceeding. The same shall thenceforth proceed as if the claim, right, debt, or demand upon which said action, suit, or proceeding was founded had originally existed in favor of or against such consolidated town or city. In like manner, any person who, at the date of consolidation, has any claim, demand, or right of action against any one or more of the cities or towns so consolidating may bring any action, suit, or proceeding necessary for the collection or enforcement thereof after such consolidation against the consolidated city or town in the same manner as though the claim, demand, or right of action had originally existed against such consolidated city or town. In no case shall any tax be levied upon or liability incurred by any property or persons on account of such actions, suits, proceedings, debts, liabilities, or rights of action, except those persons and property which would have been liable for the same in case no consolidation had taken place. The governing body of the consolidated city or town has the power to levy a special tax upon persons and property within the former limits of the city or town against which such action, suit, proceeding, claim, demand, or right of action existed for the payment, liquidation, or settlement thereof or of any judgment founded thereon. The terms of consolidation may make other provisions for the payment of such demands, liabilities, and judgments.

Source: L. 75: Entire title R&RE, p. 1099, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-311 as it existed prior to 1975.

31-12-411. Collection of prior taxes - disposition. The county treasurer shall proceed to collect all taxes assessed against persons or property within the limits of the cities or towns consolidating prior to such consolidation in the same manner as if no such consolidation had taken place. All moneys in the hands of the county treasurer at the date of consolidation belonging to any of the consolidating cities or towns and all moneys thereafter collected by him on account of any of such consolidating cities or towns shall be turned over by him to the proper officers of the consolidated city or town. In the same manner, if there are, at the date of consolidation, any moneys in the hands of any officer of any of the consolidating cities or towns belonging to his city or town, he shall forthwith turn over such moneys, upon the accomplishment of consolidation, to the proper officers of the consolidated city or town. The moneys thus obtained shall be applied to the payment of the indebtedness of the city or town from which they were derived, and the balance, if any, shall be used for the purpose of the consolidated city or town, unless the terms of consolidation otherwise provide.

Source: L. 75: Entire title R&RE, p. 1099, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-312 as it existed prior to 1975.

31-12-412. Annexing cities and towns. (1) When any city or town desires to be annexed to another contiguous city or town, the governing body of each such city or town shall appoint a total of three commissioners to arrange and report to such governing body respectively the terms and conditions on which the proposed annexation can be made. If the governing body of each such city or town approves of the terms and conditions proposed, it shall so declare by proper ordinance. Thereupon, the governing body of each such city or

town, by ordinance passed at least thirty days prior to the regular election therein or at least thirty days prior to a special election for that specific purpose, may submit the question of such annexation upon the terms and conditions so proposed to the registered electors of its respective city or town. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(2) If a majority of the registered electors of each city or town vote in favor of such annexation, the governing body of each shall so declare by proper ordinance. A certified copy of the whole proceedings for annexation of the city or town to be annexed shall be filed with the clerk of the city or town to which the annexation is made, and the latter shall file two certified copies of the notice of such action with a legal description accompanied by a map of the area concerned with the county clerk and recorder of the county in which such action has taken place. The county clerk and recorder shall file the second certified copy of such notice with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S.

Source: L. 75: Entire title R&RE, p. 1099, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-313 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965, see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-12-412 is similar to former § 31-8-313 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Complies with constitutional requirement. This statutory provision complied with the constitutional requirement that the general assembly provide by general law for the organization of cities and towns. *Griffin v. City of Canon City*, 147 Colo. 15, 362 P.2d 200 (1961).

31-12-413. Annexation complete - rights - liabilities. When certified copies of the proceedings for annexation are filed as contemplated in section 31-12-412, the annexation shall be complete, and the city or town to which the annexation is made has the power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation. Thereafter, the city or town annexed shall be governed as part of the city or town to which it is annexed. Such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and they may be enforced the same as if no such annexation had taken place.

Source: L. 75: Entire title R&RE, p. 1100, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-314 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-413 is similar to former § 31-8-314 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Complies with constitutional requirement. This statutory provision complied with the constitutional requirement that the general assembly provide by general law for the organization of cities and towns. *Griffin v. City of Canon City*, 147 Colo. 15, 362 P.2d 200 (1961).

Collateral attack limited. Unless proceedings for the annexation of territory to a municipal corporation are wholly void for want of authority or jurisdiction, their validity is not subject to collateral attack. *Griffin v. City of Canon City*, 147 Colo. 15, 362 P.2d 200 (1961).

When the annexation has been completed and a de facto, if not a de jure, corporation is created only quo warranto would lie, thereby foreclosing a collateral attack on the validity of the annexation. *Griffin v. City of Canon City*, 147 Colo. 15, 362 P.2d 200 (1961).

31-12-414. School districts - annexation of area to another school district - applicability. (1) When any consolidation under this part 4 will result in the detachment of an area from any school district and the attachment of such area to another district, the provisions of section 31-12-304 shall apply with respect to the approval of the board of directors of the school district to which such area will be attached and with respect to the compensation required to be paid by the school district which acquires school facilities located within the detached area.

(2) The provisions of this section shall apply to any consolidation proceedings which have not been completed prior to May 22, 1971.

Source: L. 75: Entire title R&RE, p. 1100, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-315 as it existed prior to 1975.

PART 5

DISCONNECTION BY ORDINANCE - STATUTORY CITIES AND TOWNS

31-12-501. Application - enactment - filing. When the owner of a tract of land within and adjacent to the boundary of a city or town desires to have said tract disconnected from such city or town, such owner may apply to the governing body of such city or town for the enactment of an ordinance disconnecting such tract of land from such city or town. On receipt of such application, it is the duty of such governing body to give due consideration to such application, and, if such governing body is of the opinion that the best interests of the city or town will not be prejudiced by the disconnection of such tract, it shall enact an ordinance effecting such disconnection. If such an ordinance is enacted, it shall be immediately effective upon the required filing with the county clerk and recorder to accomplish the disconnection, and two certified copies thereof shall be filed by the clerk in the office of the county clerk and recorder of the county in which such tract lies. The county clerk and recorder shall file the second certified copy with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S.

Source: L. 75: Entire title R&RE, p. 1100, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-601 as it existed prior to 1975.

31-12-502. Liability for taxes. The land so disconnected shall not thereby be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of such city or town while such land was within the limits thereof and which remains unpaid and for the payment of which said land could be lawfully taxed.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-602 as it existed prior to 1975.

31-12-503. Future levies - prepayment. When the governing body of such city or town levies a tax upon the property within such city or town for the purpose of paying such indebtedness or any part thereof or interest thereon, such governing body has the authority to levy a tax at the same rate and for the same purpose on the land so disconnected. The county treasurer shall pay over to such city or town all moneys collected by him on account of such tax, to be applied only to the payment of such indebtedness. In case the owner of any land so disconnected pays off and discharges a portion of such indebtedness equal in amount to the same proportion of the indebtedness which the valuation for assessment of his land bears to the entire valuation for assessment of all the property subject to taxation for the payment of such indebtedness, calculated according to the last assessment previous

to such payment, said land shall be exempted from further taxation to pay such indebtedness. Upon such payment being made, the canceled bonds or other evidences of payment of such portion of said indebtedness shall be deposited with the treasurer of such city or town, and a certificate shall be given by him stating that such payment has been made.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-603 as it existed prior to 1975.

PART 6

DISCONNECTION BY COURT DECREE - STATUTORY CITIES

31-12-601. Petition to disconnect territory. When a tract or contiguous tracts of land, aggregating twenty or more acres in area, are embraced within the municipal limits of any city, which are upon or contiguous to the border thereof, the owners of said tracts of land may petition the district court for the county in which such land, or any part thereof, is situated to have the same disconnected from said city.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-401 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-601 is similar to former § 31-8-401 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Procedures specified. The provisions of this section and § 31-12-701 specify the procedure to be followed and the standards which obtain where disconnection is sought. *City of Littleton v. Wagenblast*, 139 Colo. 346, 338 P.2d 1025 (1959).

Mandatory. This section permitting the owner of lands upon the border of the town to procure the disconnection thereof from the town is mandatory. *Hendricks v. Town of Julesburg*, 55 Colo. 59, 132 P. 61 (1913).

This section being mandatory, when the facts required by this section to be established have been established by competent evidence, it becomes the duty of the court to disconnect the territory without regard to its views concerning the justice and equity of the matter. *Anaconda Mining Co. v. Town of Anaconda*, 33 Colo. 70, 80 P. 144 (1905).

The procedures for disconnection by court decree of territory from a city as provided for in this section are mandatory. *Master Kraft Bldrs. Corp. v. City of Lakewood*, 44 Colo. App. 90, 615 P.2d 47 (1980).

The words tracts or tracts apply to the pieces making the aggregate of 20 acres or more in any city and apply to the 20 acres or more as a unit for consideration under the petition. *Gypsum v. Lundgren*, 61 Colo. 332, 157 P. 195 (1916).

The "border" of the city, as used in this section, means the corporate limits of the city and not the area adjacent to that part which is in actual use for municipal purposes. *Anaconda Mining Co. v. Town of Anaconda*, 33 Colo. 70, 80 P. 144 (1905).

This section does not require that each of the separate tracts should be upon or contiguous to the border, if contiguous to each other, that one of them is upon the border brings the case within this section. *Gypsum v. Lundgren*, 61 Colo. 332, 157 P. 195 (1916).

Tract not contiguous. A tract of land of irregular shape of an average width of about 600 feet and an average length of about 1,500 feet, and which extends from the border of an incorporated town several hundred feet into the town and to the platted portion of the town, and only about 150 feet in width of the tract touches the border, is not upon or contiguous to the border of the town within the meaning of this section. *Anaconda Mining Co. v. Town of Anaconda*, 33 Colo. 70, 80 P. 144 (1905).

Court's finding as to acreage presumed legal. In absence of any direct statement as to amount of acreage involved, either in petition or evidence, the court was in position, from legal description of lands before it, to determine acreage, and presumption as to legality of finding and judgment on that point must be followed. *Sheridan v. Fox Metal Prods. Corp.*, 123 Colo. 94, 227 P.2d 1003 (1950).

No review of special statutory proceeding. Because the statute conferring jurisdiction upon the court of appeals to review the final judg-

ments of inferior courts in civil cases applied only to final judgments or decrees in actions at law or suits in equity, and did not apply to special statutory proceedings, the court of appeals had no jurisdiction to review a judgment of the county court in a proceeding under this section providing for the disconnection of outlying territory from cities and towns. *Town of Fletcher v. Smith*, 18 Colo. App. 201, 70 P. 697 (1902); *Martin v. Simpkins*, 20 Colo. 438, 38 P.

1092 (1894); *Phillips v. Corbin*, 25 Colo. 62, 49 P. 279 (1898).

This section does not apply to disconnection from home rule municipalities, because the applicable definition of "city" specifically does not include any city which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution. *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005).

31-12-602. Contents of petition. (1) The petition shall contain the following:

- (a) A description of the land sought to be disconnected;
- (b) An allegation that the land contains in the aggregate an area of twenty or more acres and is located upon or adjacent to the border of the city;
- (c) An allegation that no part of the land has been duly platted into lots and blocks as a part of or addition to the city;
- (d) An acknowledgment that, for a period of six years after the effective date of the disconnection, the land shall not be subdivided into lots or plats of smaller area than is required during such period for lots within the city adjoining the land sought to be disconnected under the applicable ordinances or regulations of such city;
- (e) An acknowledgment that the land shall not be used during said six-year period for industrial or commercial uses if, during such period, the applicable ordinances of the city prohibit such uses upon the area within the city adjoining such land;
- (f) An allegation that all taxes or assessments lawfully due upon the land up to the time of the filing of the petition have been fully paid.

(2) Any decree of disconnection entered pursuant to this part 6 shall restrict the use of the land in the manner set forth in paragraphs (d) and (e) of subsection (1) of this section, but such restrictions shall not continue to apply to any land which, within six years after the effective date of the disconnection, is annexed back into the city.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-402 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-602 is similar to former § 31-8-402 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Procedures for disconnection of territory are mandatory. The procedures for disconnection by court decree of territory from a city as provided for in this section are mandatory. *Master Kraft Bldrs. Corp. v. City of Lakewood*, 44 Colo. App. 90, 615 P.2d 47 (1980).

This section recognizes the 20 acres or more as a unit which is required to be upon or adjacent to the border of the town. *Gypsum v. Lundgren*, 61 Colo. 332, 157 P. 195 (1916).

Section does not prescribe amount of property to qualify land for disconnection. This section does not prescribe the amount or percentage of the subject property which must be located upon the border of the city to qualify a tract of land for disconnection. *Master Kraft*

Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

This section applies only to unplatted lands within the corporate limits, land laid out in blocks and lots with the streets of the city or town running through it is not the character of land contemplated by the section. *Town of Fruita v. Williams*, 33 Colo. 157, 80 P. 132 (1905).

A block in a city is a part of the city enclosed by streets, whether occupied by buildings or composed of vacant lots. *Town of Fruita v. Williams*, 33 Colo. 157, 80 P. 132 (1905).

And the ordinary meaning of the term "lot", when used with reference to town or city property, is a subdivision of a block according to the map or survey of such town or city. *Town of Fruita v. Williams*, 33 Colo. 157, 80 P. 132 (1905).

Proof of contiguity required. In a proceeding to disconnect lands from a city it is not necessary for petitioners to allege the lands to be contiguous, but under § 31-12-601 it is neces-

sary to prove that the lands are contiguous. *Sheridan v. Fox Metal Prods. Corp.*, 123 Colo. 94, 227 P.2d 1003 (1950).

Standing despite failure to pay taxes. Under this section, the owner of a parcel of lands within the description set down in the statute may maintain a petition to disconnect it from the city or town within which it is included, even though taxes levied thereon but not yet due are unpaid. *Hendricks v. Town of Julesburg*, 55 Colo. 59, 132 P. 61 (1913).

Taxes remain a lien on disconnected land. The argument that no land should be taken out of the corporate limits until all claims for taxes against it are adjusted, whether due or not, for such in effect is the contention of defendant in error, is without merit, because it is clear that, in

any event, all taxes lawfully assessed against the land, prior to its disconnection, create a lien against it, and the land would be held for the payment of such taxes, as well after disconnection as before, and the provision that all taxes due at the time of the filing of the petition must be shown to have been paid, was simply to preclude owners from making such application when actually in default, and is a very wise and proper requirement. It was in no sense intended thereby to discriminate against such owners and compel them to pay taxes before other taxpayers are required to do so. *Hendricks v. Town of Julesburg*, 55 Colo. 59, 132 P. 61 (1913).

Applied in *Anaconda Mining Co. v. Town of Anaconda*, 33 Colo. 70, 80 P. 144 (1905); *Brell v. Ovid*, 88 Colo. 198, 293 P. 961 (1930).

31-12-603. Hearing - decree - proviso. (1) Upon the filing of such petition in the district court, the judge thereof shall set a date for a hearing, not less than forty days nor more than sixty days thereafter. It is the duty of the clerk of said court to cause a copy of such petition and a notice of the date and the time set for such hearing to be served upon the mayor of the city. The same shall be served at least thirty days prior to the hearing of such petition by the court. Upon the hearing and proof of the facts set forth in said petition, it shall be determined whether said tracts of land should be disconnected from such city, and the court shall enter an order or decree accordingly. When a city has maintained streets, lights, and other public utilities for a period of three years through or adjoining said tracts of land, the owners shall not be entitled to disconnect the land under the provisions of this part 6.

(2) If an area has been annexed to a city for a period of two years and then successful action is undertaken to disconnect such area, the zoning placed on the area by the city shall remain in force and effect after disconnection unless and until changed by the county.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-403 as it existed prior to 1975.

ANNOTATION

I. General Consideration.

II. Effect of Maintenance of Streets or Public Utilities.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 31-12-603 is similar to former § 31-8-403 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section is unambiguous. *Master Kraft Bldrs. Corp. v. City of Lakewood*, 184 Colo. 254, 519 P.2d 1188 (1974).

Section grants unequivocal right to disconnect property any time prior to three years acceptance of services. *Master Kraft Bldrs. Corp. v. City of Lakewood*, 184 Colo. 254, 519 P.2d 1188 (1974).

No delegation of legislative power. It is settled in this state that laws which vest in courts,

political bodies or the people of the community, authority to determine and change, under the provisions of the law, the boundaries of cities and towns, is not a delegation of the power to make laws, and is therefore not violative of the maxim that the power conferred upon the general assembly cannot be delegated by the department to any other body or authority. *Town of Edgewater v. Liebhardt*, 32 Colo. 307, 76 P. 366 (1904).

Procedures for disconnection of territory are mandatory. The procedures for disconnection by court decree of territory from a city as provided for in this section are mandatory. *Master Kraft Bldrs. Corp. v. City of Lakewood*, 44 Colo. App. 90, 615 P.2d 47 (1980).

Duty of court to order disconnection is mandatory where statutory requisites are met. *Master Kraft Bldrs. Corp. v. City of Lakewood*, 184 Colo. 254, 519 P.2d 1188 (1974).

This section does not authorize the court to do as it pleases, and the section is mandatory. *Town*

of Edgewater v. Liebhardt, 32 Colo. 307, 76 P. 366 (1904).

If, upon the trial, it appears that the conditions required to be established by this section have been established, it becomes the duty of the court to enter a decree disconnecting the territory from the city or town. Town of Edgewater v. Liebhardt, 32 Colo. 307, 76 P. 366 (1904).

Where, after petition in proceeding for disconnection had been filed, petitioners transferred a portion of land, but petitioner's ownership was established by evidence and grantee appeared and was treated as a party to proceeding by trial court, supreme court upheld disconnection. Sheridan v. Fox Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

II. EFFECT OF MAINTENANCE OF STREETS OR PUBLIC UTILITIES.

City need not be incorporated three years.

There is no provision requiring that the city from which disconnection is sought must be incorporated three years. If a city has been incorporated less than three years, it could not have furnished the services for the requisite time and the statute applies. To require three years of incorporation by a city before the petition could be filed would lock the property in and prevent recourse to the statute. Master Kraft Bldrs. Corp. v. City of Lakewood, 184 Colo. 254, 519 P.2d 1188 (1974).

"Adjoining" connotes physical touching or bounding at some point. Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

Street lights and public utilities are not "adjoining". Street lights, public utilities, and streets situated only in close proximity to land sought to be disconnected are not "adjoining". Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

Streets. The streets contemplated by this section are those established by the municipality, or maintained primarily for municipal purposes, and the existence of which depends on the continued existence of the town. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919).

Public utilities. A public utility, to come within this section, must be capable of benefit to a substantial portion of the premises sought to be discontinued. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919).

Street lighting furnished by an independent company under contract with a city is a maintenance of such lighting by the city under the provisions of this section. Town of Englewood v. Jones, 71 Colo. 181, 204 P. 607 (1922).

It is immaterial that the lights are upon the opposite side of the street from the land, that the street was at one time a county road, and that the amount of work done upon it by the city has

been small. Town of Englewood v. Jones, 71 Colo. 181, 204 P. 607 (1922).

Combination of more than one not required. In order to prevent the disconnection of territory from a city or town under this section, it is not necessary that the city or town shall have maintained "streets, lights and other public utilities", all combined and each in the plural, upon the land sought to be disconnected, but it is sufficient to prevent such disconnection if the city or town has for a period of three years exercised supervision over the territory and has in good faith maintained thereon such public improvements or utilities as in the judgment of the town authorities the public interests require, and it is not necessary that more than one street, or more than one light or other public utilities shall have been maintained, if in the judgment of the town authorities the public interests do not require more than one. Anaconda Mining Co. v. Town of Anaconda, 33 Colo. 70, 80 P. 144 (1905).

Uncontradicted evidence of even a slight expenditure of money in improving a street is sufficient to defeat the petition of a landholder seeking to disconnect a tract of land. Adams v. Town of Gunnison, 62 Colo. 114, 160 P. 1033 (1916).

Where more than three years prior to the filing of the petition for disconnection, a portion of one of the streets upon which the land abutted, was graded, and a town ditch, extending for two blocks or more along this street, where the lands abutted, had been cleaned, twice in each of the four preceding years; and both this and another street, upon which the land abutted, had been worked, leveled, and cleaned from time to time for more than three years, it was held that under this section the petition must be denied. Town of Kersey v. Ewing, 59 Colo. 239, 140 P. 619 (1915). See Town of Englewood v. Jones, 71 Colo. 181, 204 P. 607 (1922).

Where what was relied upon as a street was a county road, existing before the incorporation of the town, and used as such ever since, and the only work done upon it by the town was the ordinary work of repair, the petitioner obtained no additional advantage from the road by the incorporation of the town, or anything done by the town authorities. The petitioner was entitled to the disconnection sought. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919); Sheridan v. Fox Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

Water pipe line insufficient. Since the purpose of this section is to permit persons owning real estate lying upon the borders to disconnect it from the town, if no part of such property has been duly platted into lots and blocks, to hold that a water pipe line running up to, or even into, such property without conferring any substantial service or advantage thereto, is such a maintenance of a public utility as to prevent detach-

ment of the land, would be to defeat the main purpose of the section in many proceedings of

this kind. *Morrison v. Town of Lafayette*, 67 Colo. 220, 184 P. 301 (1919).

31-12-604. Lands subject to tax for prior indebtedness. The land so disconnected is not exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of such city while such land was within the limits thereof and which remains unpaid and for the payment of which said land could be lawfully taxed.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-404 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-604 is similar to former § 31-8-404 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Change in form of debt inconsequential. The plaintiff contends that this section is so worded that the change of the form of the indebtedness precludes a taxation of the disconnected land that otherwise was within the contemplation of the section. What possible bearing the change in form of the debt would have, we are unable to conceive. The section says that the disconnected lands shall not be exempt from taxes for the purposes of paying any indebtedness lawfully contracted while the lands are within the limits of the town. The indebtedness now evidenced by the refunding bonds, was

contracted while plaintiff's land was within these limits, and it makes no difference that the original form of the debt has been changed into a judgment, then into funding, and then into refunding bonds. *Town of Aurora v. Watkins*, 77 Colo. 234, 236 P. 556 (1925).

When the purchasers of the original bond issue acquired the water bonds the law was, and the bonds so stated, that all the property within the limits of the town was subject to taxation for raising a fund to pay the bonded debt, and even had the general assembly explicitly enacted a disconnecting statute that property within the town when the debt was contracted shall, after disconnection, be exempt from taxation for the purpose of paying the bonded debt, the act would be unconstitutional. *Town of Aurora v. Watkins*, 77 Colo. 234, 236 P. 556 (1925).

31-12-605. Copy of decree filed. Two copies of the order or decree of said court disconnecting any land described in said petition from any city, certified by the clerk of said court, shall be filed for record in the office of the county clerk and recorder of the county in which such disconnected land, or any part thereof, is situated. The county clerk and recorder shall file the second certified copy with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S. Such record or a copy of such order or decree, certified by the clerk of said court, shall be proof of the disconnection of such land.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-405 as it existed prior to 1975.

PART 7

DISCONNECTION BY COURT DECREE - STATUTORY TOWNS

31-12-701. Part 7 relates to towns only. This part 7 shall relate to towns only and shall not be construed to affect the disconnection of area from cities.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-501 as it existed prior to 1975.

ANNOTATION

Applied in *Burton v. Sheridan*, 80 Colo. 361, 251 P. 725 (1926).

31-12-702. Petition court to disconnect from town. When a tract or two or more contiguous tracts of agricultural or farm land aggregating twenty or more acres in area are embraced within the corporate limits of any town, the outer boundary of which acreage is adjacent to or upon the border of said town, the owners of said tracts of land may petition the district court for the county in which such land is situated to have the same disconnected from said incorporated town. Intersecting highways or intervening railroads shall not render said tracts of land noncontiguous or nonadjacent.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-502 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-702 is similar to former § 31-8-502 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This and the following section are not special or class legislation, and are not in violation of § 25 of art. V, Colo. Const. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932).

Legislative intent. The clear intent of the general assembly was to permit persons owning property lying upon the border to disconnect from the town. *Town of Greenwood Vill. v. Heckendorf*, 126 Colo. 180, 247 P.2d 678 (1952).

This section, permitting a joint petition, prevents a multiplicity of suits, and the causes are not necessarily interdependent. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932).

The word "owners" was intended to have the usual and customary meaning and the party in whom legal title rests is the proper party to maintain an action for disconnection. *Sheridan v. Nesbitt*, 123 Colo. 121, 227 P.2d 1000 (1950); *Town of Greenwood Vill. v. Heckendorf*, 126 Colo. 180, 247 P.2d 678 (1952).

The statute makes no distinction between legal owner and equitable owner. *Town of Greenwood Vill. v. Heckendorf*, 126 Colo. 180, 247 P.2d 678 (1952).

Where an owner of real estate, situated within the boundaries of a town, has entered into a contract for the sale thereof conditioned upon his ability to disconnect said property from the town, he is the "owner" of real estate within the meaning of the statute authorizing withdrawal of farm lands from the corporate limits. *Town of*

Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

Analogous to power to attach. The power to detach territory from the town is analogous to and in the same class with the power to attach. *Town of Greenwood Vill. v. Heckendorf*, 126 Colo. 180, 247 P.2d 678 (1952).

This section authorizes disconnection of farm land. *City of Littleton v. Wagenblast*, 139 Colo. 346, 338 P.2d 1025 (1959).

But there is no requirement that land sought to be disconnected must be in use as a farm, but only that the land is susceptible of being used for agriculture and is not in use for other purposes. *Sheridan v. Nesbitt*, 123 Colo. 121, 227 P.2d 1000 (1950).

This section does not require that each separate tract should be upon or contiguous to the border, and if contiguous to each other, the fact that one of them is upon the border brings the case with the statute. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932).

On the question of contiguity, "intersecting highways or intervening railroads shall not render said tracts of land non-contiguous or non-adjacent". *Sheridan v. Fox Metal Prods. Corp.*, 123 Colo. 94, 227 P.2d 1003 (1950).

Procedures specified. The provisions of this section and § 31-12-601 specify the procedure to be followed and the standards which obtain where disconnection is sought. *City of Littleton v. Wagenblast*, 139 Colo. 346, 338 P.2d 1025 (1959).

Petitioners' rights unaffected by effect on third parties. If the petitioners are within the requirements under this section, their rights will not be defeated because of the effect which the proposed withdrawal will have upon the symmetry of the town, or by any situation with respect to the lands of third parties. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P. 2d 708 (1932).

The disconnection of land from a town cannot be permitted where the result thereof would be to divide the municipality into two areas wholly isolated from each other. *Town of Greenwood Vill. v. Heckendorf*, 126 Colo. 180, 247 P.2d 678 (1952).

Estoppel inapplicable. The rights created by this statute are continuing ones, and estoppel does not arise against the rights of a petitioner to disconnect his land upon the ground that he at one time consented to its inclusion within the town, if he brings himself within the provisions

of the statute which authorizes disconnection, whether the estoppel was based on contract or on a judgment which resulted from a contract (stipulation). *Town of Greenwood Vill. v. Savage*, 172 Colo. 217, 471 P.2d 606 (1970).

No res judicata as to lesser portion of tract. A dismissal or adverse ruling in a prior case is not a bar to resubmission of the question of disconnection of a lesser portion of a tract or tracts of land. *Town of Greenwood Vill. v. Savage*, 172 Colo. 217, 471 P.2d 606 (1970).

31-12-703. Petition - contents. (1) The petition shall contain the following:

(a) An allegation that such tracts of land contain in the aggregate an area of twenty or more acres of agricultural or farm land upon or adjacent to the border of said town;

(b) An allegation that the petitioners are the owners thereof;

(c) The description of the land;

(d) An allegation that no part of such area has been platted into lots or blocks as a part of or an addition to said town or, if so platted, that such plat has been vacated within a period of three years after the area was included within the boundaries of the town. The time limit provided in this paragraph (d) shall not apply to lands within towns that were incorporated prior to January 1, 1930.

(e) An allegation that all taxes or assessments lawfully due and payable upon said land up to the time of the presentation of said petition are fully paid;

(f) A representation that, for a period of six years after the effective date of disconnection, said tracts will not be subdivided into lots or plots of smaller area than is required during said period for lots within said town adjoining said tracts under the applicable ordinances or regulations of the town from which disconnection is sought and will not be used during said period for industrial or commercial use if during said period the applicable ordinances of the town from which disconnection is sought prohibits such use in the area within said town adjoining such tracts.

(2) Any decree of disconnection entered pursuant to this part 7 shall restrict the use of the land in the manner set forth in paragraph (f) of subsection (1) of this section, but such restrictions shall not continue to apply to any land which, within six years after the effective date of the disconnection, is annexed back into the town.

Source: L. 75: Entire title R&RE, p. 1103, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-503 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "One Year Review of Property Law", see 38 *Dicta* 192 (1961).

Annotator's note. Since § 31-12-703 is similar to former § 31-8-503 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

Only territory not platted eligible. Territory may be disconnected from a town under this section only when no part of the area sought to be disconnected has been platted into lots and blocks as a part of or addition to the town. *Weaver v. Town of Littleton*, 95 Colo. 577, 38 P.2d 774 (1934).

Land is platted into lots or blocks when said land is divided into tracts which are surrounded and intersected by streets which have been declared dedicated to the public. *Town of Cherry Hills Vill. v. Shafroth*, 141 Colo. 572, 349 P.2d 368 (1960).

Proof, not allegation, of contiguity required. Town's answer in proceeding for disconnection of agricultural lands that there was no allegation of contiguity of lands in petition was groundless since statutes do not require such an allegation but only proof of contiguity. *Sheridan v. Nesbitt*, 123 Colo. 121, 227 P.2d 1000 (1950).

31-12-704. Hearing - decree - proviso. Upon the filing of such petition in the district court, the judge shall set a date for a hearing, not less than forty days nor more than sixty days thereafter. It is the duty of the clerk of said court to cause a copy of such petition and a notice of the date and the time set for such hearing to be served upon the mayor of the town. The same shall be served at least thirty days prior to the hearing on such petition by the court. Upon the hearing and proof of the facts set forth in such petition, it shall be determined whether such tracts of land should be disconnected from said town, and the judge shall enter an order or decree accordingly. When a town has improved any of the highways passing through or adjoining said tracts of land by the construction and maintenance by said town of any special improvements along, under, or over the same for a period of more than two years prior to the presentation of the petition, the petitioners shall not be entitled to disconnect the land under the provisions of this part 7.

Source: L. 75: Entire title R&RE, p. 1103, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-504 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-704 is similar to former § 31-8-504 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Rule not of symmetry but of contiguity. Although the supreme court has held that no disconnection of land can be upheld which divides a town into two areas wholly isolated from each other, where the creation of a "corridor" has the effect of making the town's boundaries somewhat irregular, but, the area concerned remains contiguous to the rest of the town with the same access to all parts of the town as existed before the disconnection, it is not wholly isolated, the rule is not one of symmetry, but of contiguity. *Town of Greenwood Vill. v. Savage*, 172 Colo. 217, 471 P.2d 606 (1970).

"Special improvements" as used in this section are limited to such improvements as are generally paid for by special assessments, or those which confer special benefit upon the property affected. *Burton v. Town of Sheridan*, 80 Colo. 361, 251 P. 725 (1926).

Limited to highways. This section limits these improvements to highways, it restricts

them to special improvements on the highway "along, under or over the same", etc. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932).

Actions held not to be special improvements. Construction and maintenance of highways, electrical transmission lines, and water mains were held not to constitute "special improvements" as those words are used in this section. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932); *Counce v. Town of Julesburg*, 108 Colo. 317, 116 P.2d 917 (1941).

In an action for disconnecting land from an incorporated town, improvements on a highway in the nature of culverts, a bridge and a slight alteration in the course of the street, are not "special improvements", as that phrase is used in this section. *Burton v. Town of Sheridan*, 80 Colo. 361, 251 P. 725 (1926).

This section uses the words "construction and maintenance", conjointly, as against the word "maintained" in § 31-12-603. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932).

Burden of proof. In a proceeding under this section, the burden of proof, as to defensive matter, rests upon the town. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708 (1932).

31-12-705. Land not exempt from prior taxes. The land so disconnected shall not be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of said town while said land was within the limits thereof and which remains unpaid and for the payment of which said land could be lawfully taxed.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-505 as it existed prior to 1975.

31-12-706. Land subject to tax for prior indebtedness. When the governing body of such town levies a tax upon the property within such town for the purpose of paying such

indebtedness or any part thereof and interest thereon, such governing body shall have the authority to levy a tax at the same rate and for the same purpose on the land so disconnected. The county treasurer shall pay over to such town all moneys collected by him on account of such tax, to be applied only to the payment of such indebtedness. In case the owner of any land so disconnected pays off and discharges a portion of such indebtedness equal in amount to the same proportion of the indebtedness which the valuation for assessment of his land bears to the entire valuation for assessment of all the property subject to taxation for the payment of such indebtedness, calculated according to the last assessment previous to such payment, said land shall be exempted from further taxation to pay such indebtedness. Upon such payment being made, the canceled bonds or other evidences of payment of such portion of said indebtedness shall be deposited with the treasurer of such town, and a certificate shall be given by him stating that such payment has been made.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-8-506 as it existed prior to 1975.

31-12-707. Decree recorded - proof. Two copies of the order or decree of said district court disconnecting any land described in said petition from any town, certified by the clerk of said district court, shall be filed for record in the office of the county clerk and recorder of the county in which such disconnected land is situated. The county clerk and recorder shall file the second certified copy with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S. Such record or a copy of such order or decree, certified by the clerk of said district court, shall be proof of the disconnection of such land.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-8-507 as it existed prior to 1975.

POWERS AND FUNCTIONS OF CITIES AND TOWNS

ARTICLE 15

Exercise of Municipal Powers

Law reviews: For article, “ADR: Important Options for Municipal Government”, see 24 Colo. Law. 1279 (1995).

PART 1		31-15-302.	Financial powers - legislative declaration.
VESTING OF CORPORATE POWERS			
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PART 1

VESTING OF CORPORATE POWERS

31-15-101. Municipalities bodies politic - powers. (1) Municipalities:

- (a) Shall be bodies politic and corporate, under such name as they are organized;
- (b) May sue or be sued;
- (c) May enter into contracts;
- (d) May acquire, hold, lease, and dispose of property, both real and personal;
- (e) May have a common seal which they may alter at their pleasure; and
- (f) May accept the transfer of federal land for public purposes, including but not limited to municipal expansion and residential purposes.

(2) All such municipalities shall have the powers, authority, and privileges granted by this title and by any other law of this state together with such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to the exercise thereof. All such powers, authority, and privileges are subject to the restrictions and limitations provided for in this title and in any other law of this state.

(3) Each municipality may coordinate, pursuant to 43 U.S.C. sec. 1712, the "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop manage-

ment plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, public utilities protection, private property protection, and the protection of air quality on federal lands within such municipality's jurisdiction.

Source: **L. 75:** Entire title R&RE, p. 1104, § 1, effective July 1. **L. 76:** (1)(f) added, p. 697, § 1, effective April 6. **L. 2003:** (3) added, p. 1037, § 11, effective April 17.

Editor's note: This section is similar to former §§ 31-12-201 and 31-12-202 as they existed prior to 1975.

Cross references: For the legislative declaration contained in the 2003 act enacting subsection (3), see section 1 of chapter 145, Session Laws of Colorado 2003.

ANNOTATION

Annotator's note. Since § 31-15-101 is similar to former §§ 31-12-201 and 31-12-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Express powers only. A municipal corporation can exercise only such powers as are granted to it by its charter or by the general law of the state, either in express words or by necessary or reasonable implication, or such as are incidental to the powers expressly granted, or such as are essential to the objects and purposes of the corporation. *City of Durango v. Reinsberg*, 16 Colo. 327, 26 P. 820 (1891); *Hayward v. Bd. of Trustees*, 20 Colo. 33, 36 P. 795 (1894).

May not deal in real estate. Under this section an incorporated town or city may acquire and hold such real and personal property as may be necessary to enable it to carry on its corporate business and exercise its proper municipal functions; but it cannot lawfully engage in the business of buying, selling, or dealing generally in real estate, either as principal or broker. *Hayward v. Bd. of Trustees*, 20 Colo. 33, 36 P. 795 (1894).

Primary function of municipal corporation is to provide government within its territorial limits. *Bailey v. People*, 200 Colo. 549, 617 P.2d 549 (1980).

City employees do not have a vested contractual right in the continuance of a particular rate or method of compensation. A city council, in the exercise of its legislative power, cannot enter into a contract which will bind succeeding city councils and thereby deprive them of the unrestricted exercise of their legis-

lative power. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Plaintiffs' assertion that they detrimentally relied upon the continuation of certain employee benefits was without merit since persons dealing with the city were on constructive notice of the scope of authority possessed by the municipal officials with whom they are dealing, and such constructive notice includes the knowledge that the city council acted pursuant to the authority granted it by the city charter and subject to the limitations provided therein which prohibited the imposition of future liability upon the city, unless prior appropriation was made. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Because municipalities, not their various subsidiary departments, exist as bodies corporate empowered to sue and be sued, naming a municipal department as a defendant is not an appropriate means of pleading a § 1983 action against a municipality. *Stump v. Gates*, 777 F. Supp. 808 (D. Colo. 1991).

Cities have such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to carry out the powers and authority granted to them. Authority of city to enter into intergovernmental agreement with county to operate a mass transit system outside of control of public utilities commission upheld. *Durango Transp., Inc. v. City of Durango*, 824 P.2d 48 (Colo. App. 1991).

The power to appropriate moneys for marketing is not implied by or incidental to the power to appropriate moneys for advertising under § 31-15-901 (1)(b). *Estes Park Chamber of Commerce v. Town of Estes Park*, 199 P.3d 11 (Colo. App. 2007).

31-15-102. Review without bond. In all actions, suits, and proceedings in any court in this state in which a municipality of this state is a party, such municipality may take an appeal, as provided by law and the Colorado appellate rules, without giving bond.

Source: **L. 75:** Entire title R&RE, p. 1105, § 1, effective July 1.

Editor's note: This section is similar to former § 31-19-101 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-102 is similar to former § 31-19-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

This section grants municipalities the right of appeal and permits the appeal to be taken without the giving of bond, and in cases reviewable by the supreme court only on error, it grants the municipalities of the state the right to a supersedeas, whenever a supersedeas is allowed, without the giving bond. *Town of Del Norte v. Weiss*, 38 Colo. 269, 88 P. 581 (1906).

And this section is broad enough to include every cause in which a municipality is a party, in any court of the state. *Town of Del Norte v. Weiss*, 38 Colo. 269, 88 P. 581 (1906).

Thus, this section permitted an appeal from a police court by the city and without filing a bond. *Hummel v. City of Ouray*, 38 Colo. 322, 88 P. 582 (1906).

Appealing party has reasonable time to file necessary papers, since this section does not fix the time within which the transcript and papers must be filed in the county court on appeal. *Hummel v. City of Ouray*, 38 Colo. 322, 88 P. 582 (1906).

31-15-103. Making of ordinances. Municipalities shall have power to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-301 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Municipal Penal Ordinances in Colorado", see 30 *Rocky Mt. L. Rev.* 267 (1958). For article, "One Year Review of Criminal Law and Procedure", see 36 *Dicta* 34 (1959).

Annotator's note. Since § 31-15-103 is similar to former § 31-12-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Ordinance of statutory city that is in conflict with state law of general application is invalid. *Lakewood Pawnbrokers, Inc. v. City of Lakewood*, 183 Colo. 370, 517 P.2d 834 (1973).

A municipal ordinance of a home-rule city that is in clear opposition to the provisions of a general state law is invalid. *Hamilton v. City & County of Denver*, 176 Colo. 6, 490 P.2d 1289 (1971).

Public necessity a state and municipal legislative determination. Whether the recital in a municipal ordinance, what it is "necessary for the immediate preservation of the public peace, health or safety", is true or not is a legislative and not a judicial question, and respecting this matter, there is no distinction between state and municipal legislation. *Shields v. City of Loveland*, 74 Colo. 27, 218 P. 913 (1923).

Standard measuring exercise of police power. If a restriction upon the use of property is to be upheld as a valid exercise of the police power it must bear "a fair relation to the public health, safety, morals, or welfare", and have "a definite tendency to promote or protect the same". In determining the validity of restraints upon freedom imposed by statute or ordinance, the determination to be made is whether the ordinance has a real and substantial relation to the accomplishment of those objectives which form the basis of police regulation. *City of Colo. Springs v. Grueskin*, 161 Colo. 281, 422 P.2d 384 (1966).

Due process, as it applies to cases involving municipal trash ordinances, requires only that a municipal ordinance enacted under the police power shall not be unreasonable, arbitrary, or capricious, and that it bear a rational relation to a proper legislative object sought to be attained. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

A municipal regulation having a fair relation to the protection of human life and the protection of public convenience and welfare constitutes a reasonable application of the police power. *United States Disposal Sys. v. City of*

Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

The standard for determining whether there is a rational basis to uphold the constitutionality of a municipal ordinance is whether the ordinance is rationally related to a legitimate governmental goal. *City of Leadville v. Rood*, 198 Colo. 328, 600 P.2d 62 (1979).

The test of constitutionality for a municipal ordinance is whether there is a rational basis to uphold the classification created by the ordinance. *City of Leadville v. Rood*, 198 Colo. 328, 600 P.2d 62 (1979).

Cannot stifle fundamental personal liberties. Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. *City of Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744 (1972).

Differing treatment of people allowable where differentiation rational. The fact that an ordinance affects different people in different degrees does not invalidate the provision so long as the distinctions have a rational basis. *City of Leadville v. Rood*, 198 Colo. 328, 600 P.2d 62 (1979).

Ordinance must resemble national standards when regulating industry. Local ordinances should have some reasonable resemblance to recognized national standards established by qualified organizations, or otherwise the regulated industry would be at the mercy of every whim and caprice of the many different communities. *City of Colo. Springs v. Grueskin*, 161 Colo. 281, 422 P.2d 384 (1966).

A presumption of reasonableness attaches to ordinances promulgated for the health, safety, and welfare of the public. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977); *City of Leadville v. Rood*, 198 Colo. 328, 600 P.2d 62 (1979).

Determination binding on supreme court. Unless a city council acts arbitrarily or capriciously in adopting an ordinance and in finding it necessary for the preservation of health and safety, such a determination is binding on the state supreme court. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

Finding city standard unreasonable. It is not for the supreme court to substitute its notions as to what is fair and reasonable, but to ascertain under all existing circumstances whether the standard established by the city is in fact reasonable and bears a reasonable relation to the public health, welfare, and safety of the city and its inhabitants. And while it might be desirable to classify service stations as to the capacity of the truck which may make delivery there, or to promulgate some other reasonable regulations applying to retail services stations based on their specific location in certain fire

zones, the supreme court held that an ordinance which requires the tank vehicles to pass through the city to a bulk plant, unload at the bulk plant, and then reload vehicles and a capacity of less than 2,200 gallons for redelivery to retail filling stations throughout the city, necessarily involves a greater exposure to hazard and accident, and therefore a greater danger to the public health, welfare, and safety of the city and its populace. *City of Colo. Springs v. Grueskin*, 161 Colo. 281, 422 P.2d 384 (1966).

Liquor licensing ordinance required. The matter of issuing licenses by a municipality for the sale of liquor, in view of this section, should be governed by ordinance duly passed and published, and not left to the discretion of the city council. *Maurer v. Boggs*, 103 Colo. 72, 82 P.2d 1099 (1938).

And valid. Where an ordinance enumerating many places where men usually assemble or pass, provided that no person "shall drink" certain designated intoxicating liquors, while in any of these places "unless the person occupying the building be duly licensed by the city to sell, etc.", it was held that the manifest purpose of the ordinance is to prevent the drinking of intoxicating liquors in public view, and particularly of children and youth, and thus improve the public morals; that including all of the places of the classes designated it is therefore authorized by this section. *City of Delta v. Charlesworth*, 64 Colo. 216, 170 P. 965 (1918).

Set-back ordinances valid. Ordinances which require structures to be set back from the property line are a valid exercise of police power. *City of Leadville v. Rood*, 198 Colo. 328, 600 P.2d 62 (1979).

Regulation of signs permitted. The powers granted to a statutory city by this section and § 31-23-301 (1) are commodious enough to enable it to promote its safety and aesthetic interests by regulating the number and type of signs permitted in different zoning districts. *City of Lakewood v. Colfax Unlimited Ass'n*, 634 P.2d 52 (Colo. 1981).

City scavenger ordinance valid. Ordinance creating the office of city scavenger and defining his duties and prohibiting others from doing scavenger work without a license is not invalid because it fails to provide the special manner in which the scavenger work must be done. *City of Ouray v. Corson*, 14 Colo. App. 345, 59 P. 876 (1900).

The issuance of town bonds to fund a floating debt should conform with the provisions of this section as to procedure by ordinance. *Nat'l Bank of Commerce v. Town of Granada*, 54 F. 100 (8th Cir. 1893).

City ordinance on possession of deadly weapons held unconstitutionally overbroad. *City of Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744 (1972).

Applied in *City of Denver v. Webber*, 15 Colo. App. 511, 63 P. 804 (1900).

31-15-104. Powers not exclusive. The enumeration of the powers set forth in this title shall not be construed to limit the exercise of any other power granted to municipalities by the provisions of any other law of this state.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Regulation of Cable Television", see 48 U. Colo. L. Rev. 501 (1977).

PART 2

GENERAL ADMINISTRATIVE POWERS

31-15-201. Administrative powers. (1) The governing bodies in municipalities shall have the following general powers in relation to the administration of the municipality's affairs:

(a) To fill, by appointment, any vacancy occurring by death, removal, or resignation of any member of the governing body. Such appointee shall receive a majority vote of the remaining members of the governing body and shall hold his office only until the next regular election when the vacancy shall be filled by election as in other cases.

(b) To provide by ordinance for the appointment, term of office, removal, powers, duties, and compensation of all officers not otherwise provided for and of all employees;

(c) To appoint a board of health and prescribe its powers and duties;

(d) To provide for the taking of the municipal census, but no such census shall be taken by authority of the governing body more often than once between the years prescribed by law for the United States census to be taken;

(e) To provide by ordinance that all the paper, printing, stationery, blanks, fuel, and all the supplies needed for the use of the municipality shall be furnished by contract let to the lowest bidder;

(f) To organize, own, operate, control, direct, manage, contract for, or furnish ambulance service;

(g) To provide for the management and operation of any municipally owned hospital by any entity, public or private, profit or nonprofit, which the municipality determines will provide adequate and efficient administration for the operation of such hospital and to enter into contracts relating to such municipally owned hospital as authorized by part 1 of article 3 of title 25.5, C.R.S.;

(h) To authorize the use of electronic records or signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures pursuant to article 71.3 of title 24, C.R.S.;

(i) To establish an affordable housing dwelling unit advisory board for the municipality in accordance with the requirements of article 26 of title 29, C.R.S.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1. **L. 77:** (1)(f) added, p. 1285, § 4, effective January 1, 1978. **L. 79:** (1)(g) added, p. 836, § 5, effective June 21. **L. 83:** (1)(g) amended, p. 1146, § 4, effective July 1. **L. 89:** (1)(g) amended, p. 1005, § 9, effective October 1. **L. 91:** (1)(g) amended, p. 588, § 12, effective October 1. **L. 99:** (1)(h) added, p. 1348, § 7, effective July 1. **L. 2001:** (1)(i) added, p. 977, § 3, effective August 8. **L. 2002:** (1)(h) amended, p. 858, § 8, effective May 30. **L. 2006:** (1)(g) amended, p. 2022, § 115, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

PART 3

GENERAL FINANCIAL POWERS

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

31-15-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(2) "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of § 31-12-101 (7)(e)(I) and (7)(e)(II) as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-15-302. Financial powers - legislative declaration. (I) The governing bodies in municipalities shall have the following general powers in relation to the finances of the municipality:

- (a) To control the finances and property of the corporation;
- (b) To appropriate money for municipal purposes only and provide for payment of debts and expenses of the municipality;
- (c) To levy and collect taxes for general and special purposes on real and personal property;
- (d) (I) To contract indebtedness on behalf of the municipality and upon the credit thereof by borrowing money or issuing the bonds of the municipality for any public purpose of the municipality, including but not limited to the following purposes: Supplying water, gas, heating and cooling, and electricity; purchasing land; and purchasing, constructing, extending, and improving public streets, buildings, facilities, and equipment; and for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the municipality.

(II) The total amount of indebtedness for all such purposes shall not at any time exceed three percent of the actual value, as determined by the assessor, of the taxable property in the municipality except such debt as may be incurred in supplying water. No loan for any purpose shall be made except by ordinance, which shall be irrevocable until the indebtedness provided for is fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied and providing for the levying of a tax which, together with such other revenue, assets, or funds as may be pledged, is sufficient to pay the annual interest and extinguish the principal of said debt within the time limited for the debt to run, which, except such debt as may be incurred in supplying water, shall not be more than thirty years, and further providing that said tax, when collected, shall only be applied for the purposes specified in said ordinance until the indebtedness is paid and discharged. No debt shall be created, except in supplying water, unless the question of incurring the same is submitted, at a regular or special election of the municipality, to the registered electors thereof as

defined by the "Colorado Municipal Election Code of 1965" and a majority of the registered electors voting upon the question vote in favor of creating such debt.

(III) No statutory provisions of any other law limiting or fixing tax rates shall limit the provisions of this paragraph (d).

(IV) Bonds issued under this paragraph (d) may mature serially during a period of not more than thirty years from the date thereof, in which event the amounts of such annual maturities shall be fixed by the governing body; except that bonds issued to supply water may mature over a longer period. If the governing body so determines, said bonds may be redeemable prior to maturity with or without payment of a premium, not exceeding three percent of the principal thereof. In any event said bonds shall be subject to call commencing not later than fifteen years after the date thereof. The right to redeem all or part of said bonds prior to their maturity and the order of any such redemption shall be reserved in the ordinance authorizing the issuance of bonds and shall be set forth on the face of said bonds.

(V) The ordinance or resolution submitting the question of contracting an indebtedness shall contain a statement of the maximum net effective interest rate at which said indebtedness may be incurred.

(VI) (A) The governing body of any municipality, having received approval at an election to issue bonds and having determined that the limitations of the original election question are too restrictive to permit the advantageous sale of the bonds so authorized, may submit at another regular or special election the question of issuing the bonds or any portion thereof at a higher maximum net effective interest rate than the maximum interest rate or maximum net effective interest rate approved at the original election; the question of issuing the bonds or any portion thereof to mature over a longer period of time than the maximum period of maturity approved at the original election; or both such questions.

(B) An election held pursuant to this subparagraph (VI) shall be held in substantially the same manner as an election to authorize bonds initially except as may be required for the submission of the limited question permitted under this subparagraph (VI).

(C) At an election held pursuant to this subparagraph (VI), if the changes submitted are not approved, such result shall not impair the authority of the governing body at a later time to issue the bonds originally approved within the limitations established at the first election.

(e) To prescribe, by general ordinance, the manner in which the charge on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes so authorized by law. Such charge, when assessed, shall be payable by the owners at the time of the assessment, personally, and also shall be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien enforced by a proceeding at law or in equity, either in the name of such municipality or of any person to whom it has directed payment be made. In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley, or highway or for water rent or gas used. Proceedings may be instituted against all the owners, or any of them, to enforce the lien against all the lots or land, or each lot or parcel, or any number of them embraced in any one assessment; but the judgment or decree shall be entered separately for the amount properly chargeable to each. Any proceedings may be severed in the discretion of the court for the purpose of trial, review, or appeal.

(f) (I) For the purpose of providing and accumulating funds for the construction, acquisition, or improvement of public buildings, water facilities, sewer facilities, heating and cooling works, or other public works or to supplement bond issues for the same purpose, the governing body of each municipality is authorized to create, by resolution, a public works fund, setting forth in such resolution the description and location of the buildings, water facilities, sewer facilities, heating and cooling works, or other public works to be constructed, acquired, or improved; the estimated cost of the same; the annual tax levy required; and the number of years such a levy should be made; and the time of a public hearing. In lieu of an ad valorem levy, the governing body of the municipality may provide for other taxes or revenues authorized by law which will produce equivalent funds.

(II) If the amount needed does not require a tax levy in excess of two mills, the governing body is authorized, after a public hearing, to make such a levy without putting the proposition to a vote of the qualified electors. If a special levy in excess of two mills

for any one fiscal year is required, the governing body, by resolution, in their discretion may submit to the registered electors of such municipality the question of making such a special levy. The special election may be held on the same day as any other special or general election.

(III) In submitting the question to said electors, a ballot shall be printed giving the description and location of the public buildings, water facilities, sewer facilities, or other public works to be constructed, acquired, or improved; the estimated maximum amount to be expended for each single purpose; and the maximum mill levy, if any, required for each specified year. Each project shall be printed separately on the ballot.

(IV) The money derived from the special levy authorized shall be credited by the treasurer of the respective municipality to a special fund to be known as the public works fund. Such funds may be accumulated and held over for expenditure in subsequent years, but they shall be used only for the public works authorized. The governing body may change the purpose for which the fund may be expended after holding a public hearing. When the public works have been constructed, acquired, or improved and paid for, any unexpended balance in the public works fund shall be transferred to the general fund of the municipality.

(g) To deposit any moneys of general or special funds in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the governing body of a municipality may appoint, by written resolution, one or more persons to act as custodians of the moneys of the municipality. Such persons shall give surety bonds in such amounts and form and for such purposes as the governing body requires.

(h) To enter into installment purchase contracts or shared-savings contracts or otherwise incur indebtedness under section 29-12.5-103, C.R.S., to finance energy conservation and energy saving measures and enter into contracts for an analysis and recommendations pertaining to such measures under section 29-12.5-102, C.R.S.;

(i) (I) For a municipality that has a population of twenty thousand or fewer residents, to enter into contracts with a health care provider, who is licensed in this state, to provide health care services to such municipality. Such health care providers shall be known as "community contracted health care providers".

(II) The general assembly hereby finds, determines, and declares that access to health care services in rural areas is an increasing problem in Colorado. Some rural Coloradans do not have access to a primary care provider in their town and are forced to travel. It is the intent of the general assembly to ease the strain on rural Coloradans' health care needs by allowing a municipality with twenty thousand or fewer residents to contract with a health care provider to provide health care services to rural areas.

(III) (Deleted by amendment, L. 2008, p. 212, § 1, effective March 26, 2008.)

Source: **L. 75:** Entire title R&RE, p. 1106, § 1, effective July 1. **L. 79:** (1)(g) added, p. 1618, § 20, effective June 8. **L. 81:** (1)(d)(I) and (1)(f)(I) amended, p. 1454, § 2, effective May 27. **L. 91:** (1)(h) added, p. 733, § 6, effective May 1. **L. 2001:** (1)(i) added, p. 1164, § 13, effective June 5. **L. 2007:** (1)(i)(III) amended, p. 2046, § 85, effective June 1. **L. 2008:** (1)(i) amended, p. 212, § 1, effective March 26.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: (1) For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

(2) For the legislative declaration contained in the 2001 act enacting subsection (1)(i), see section 1 of chapter 300, Session Laws of Colorado 2001.

ANNOTATION

I. General Consideration.
II. Levying and Collecting Taxes.

III. Contracting Indebtedness.
IV. Charges on the land.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 31-15-302 is similar to provisions of former § 31-12-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The governing bodies in cities and towns have the power to control the finances and property of the corporation. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Spending money for newsletters, annual reports and news releases may be for city purposes and is not necessarily personal or political. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

No authority for expenditures relating to proposed constitutional amendment. This section does not empower a city council to make expenditures or contributions to further the defeat of a proposed constitutional amendment. Campbell v. Joint Dist. 28-J, 704 F.2d 501 (10th Cir. 1983).

City employees do not have a vested contractual right in the continuance of a particular rate or method of compensation. A city council, in the exercise of its legislative power, cannot enter into a contract which will bind succeeding city councils and thereby deprive them of the unrestricted exercise of their legislative power. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Plaintiffs' assertion that they detrimentally relied upon the continuation of certain employee benefits was without merit since persons dealing with the city were on constructive notice of the scope of authority possessed by the municipal officials with whom they are dealing, and such constructive notice includes the knowledge that the city council acted pursuant to the authority granted it by the city charter and subject to the limitations provided therein which prohibited the imposition of future liability upon the city, unless prior appropriation was made. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Applied in Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

II. LEVYING AND COLLECTING TAXES.

Among the powers possessed by cities in this state is the power of taxation. Lewis v. State Bd. of Agriculture, 138 Colo. 540, 335 P.2d 546 (1959).

Constitutional and statutory sources of tax power. The source by which a municipality may impose either a general ad valorem tax or special assessment tax upon the properties within its corporate limits is found under the provisions of § 7 of art. X, Colo. Const.; in turn, this power

is specifically amplified or implemented by the provisions of subsection (1)(c) of this section. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When tax unconstitutional. Where taxes result in a flagrant inequality between the burden imposed and the benefit received, such is confiscatory and unconstitutional. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation and assessment are not synonymous terms; each is a separate and distinct exercise of the sovereign power to tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation defined. Taxation, as the word is employed in the Colorado constitution and statutes generally, is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of government. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Assessments defined. Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

An assessment in the nature of a special tax is for purposes of municipal improvement conferring a special benefit upon the property being assessed. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

If a tax is for a "general" purpose it must be an ad valorem tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

If "taxes" are special assessments upon the certain properties, the revenues therefrom cannot be diverted to providing for general town purposes, but will necessarily have to be used and confined to payment for the capital improvement resulting in an equivalent benefit to the properties. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When special assessment improper. So much of an improvement as is designated and utilized for the general benefit of the inhabitants and property within the limits of a municipality is in no sense local, and special assessments to raise funds to construct, purchase, pay for, or maintain that portion of it cannot be lawfully levied. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Special benefits which will sustain a special assessment must be immediate, and of such a character that they can be seen and traced, remote or contingent benefits enjoyed by the general public will not sustain a special assessment. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

To enforce a special assessment for a purpose which does not confer a special benefit upon the

property upon which it is levied would result in taking private property without compensation, and without due process of law. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

When special tax proper. Authority to levy a special frontage tax can only be upheld on the theory that the property upon which it is levied is specially benefited by the purposes to which such tax may be applied. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

III. CONTRACTING INDEBTEDNESS.

Ordinance required. Under subsection (1)(d), no loan can be contracted on behalf of a municipal corporation save by authority of an ordinance. *Town of Aurora v. Hayden*, 23 Colo. App. 1, 126 P. 1109 (1912).

Resolution not sufficient. The general rules are that where authority to exercise a corporate power by ordinance is granted, an attempt to exercise it by resolution is futile, and that where the constitution or this section which permits or grants the right to exercise a corporate power expressly designates the way in which it may be exercised, such designation limits the right to exercise it to the way specified, and renders its attempted exercise in any other way ineffectual. *Bosworthchanute & Co. v. Town of Brighton*, 272 F. 964 (8th Cir. 1921).

Municipal bonds are clothed with all the attributes of negotiable or commercial paper, pass by delivery or endorsement, and are not subject to equities (where the power to issue them exists) in the hands of holder for value, before due, without notice. *Hyden v. Town of Aurora*, 57 Colo. 389, 142 P. 183 (1914).

Statutory recital creates justified reliance by purchasers. Recital in municipal bonds that they were issued in accordance with the provisions of the enabling statute imports that they were sent forth in pursuant of a lawful and proper resolution or ordinance and of just and proper action by the governing board of a municipality. Such relieves the innocent purchaser of all inquiry, notice, or knowledge of the record, action, or omission of the municipal board or council or of the other officers of the municipality, and estops the municipality from denying that a lawful resolution or ordinance was passed and proper action was taken. *Hayden v. Town of Aurora*, 57 Colo. 389, 142 P. 183 (1914).

And estoppel applies. A municipality, a quasi-municipality, or a corporation and its officers, who by the apparent legality of their obligations or by recitals of their validity have induced innocent purchasers to invest in them are estopped from denying their legality on the ground that in some of the preliminary proceedings which led to their execution, or in their

execution itself, they failed to comply with some law or rule of action relative to the mere time or manner of action relative to the mere time or manner of their procedure, with which they might have lawfully complied, but which they carelessly disregarded. *Hayden v. Town of Aurora*, 57 Colo. 389, 142 P. 183 (1914).

A municipality or a quasi-municipality may not, by the recital of certificates in its bonds, estop itself from denying that it is without power to issue them when the laws are such that there can be no state of facts or of circumstances under which it would have authority to emit them. *Town of Aurora v. Gates*, 208 F. 101 (8th Cir. 1913); *Hayden v. Town of Aurora*, 57 Colo. 389, 142 P. 183 (1914).

Municipal actions to which subsection is applicable. Although a contract for the purchase of electrical machinery by a town provides that the price shall be paid from the net revenues of its lighting plant, yet, if the contract creates other obligations which the town must meet, and which cannot be paid out of plant income, or if a diversion of the plant profits will deplete the current revenue of the town, necessitating increased taxation, a debt is thereby created within the meaning of subsection (1)(d). *Reimer v. Holyoke*, 93 Colo. 571, 27 P.2d 1032 (1933).

Authority to issue bonds to purchase water rights. Subsection (1)(d) empowers towns and cities to contract an indebtedness for the purpose of purchasing or constructing waterworks for fire and domestic purposes and for the purpose of constructing or purchasing canals or some suitable system of supplying water for irrigation. When considered in connection with §§ 31-15-708 (1)(a) and (1)(b) and 31-15-707 (1)(e), relating to the condemnation of property, the power to construct and purchase reservoirs, to provide pumps, conducting pipes and ditches, to take water from the public streams, and to purchase water and water rights, it gives authority to such municipalities to issue bonds for the purchase of water rights to secure water for its inhabitants. *City of Cripple Creek v. Adams*, 36 Colo. 320, 85 P. 184 (1906).

But when constant supply involved resubmission to voters not required. Where the court ruled that the money was not for the purpose of purchasing of constructing waterworks, but that such waterworks had already been authorized and the city legislative body found the indebtedness necessary to supply the city with water, it was said that to render the waterworks effective so as to supply the city with water does not require constant submission to the voters for every improvement necessary to handle the water supply. *Hiatt v. City of Manitou*, 154 Colo. 525, 392 P.2d 282 (1964).

Municipal actions to which subsection is inapplicable. An agreement of a municipality, by ordinance, to pay a certain amount annually into a fund to be used for the payment of bonds

to be issued for the constriction of a municipal lighting plant, was held not to be the creation of a debt as that term is used in the constitution and in subsection (1)(d). *Shields v. City of Loveland*, 74 Colo. 27, 218 P. 913 (1923).

Applied In *Nat'l Bank of Commerce v. Town of Granada*, 54 F. 100 (8th Cir 1893).

IV. CHARGES ON THE LAND.

Scope of power. Subsection (1)(e) shows a deliberate intention to invest the city council with ample power over the subject of municipal improvements, not only by means of general and special taxes, but also by means of special charges or assessments, in all cases where the same are applicable and allowable by the constitution and laws of the state, and to authorize the collection thereof by suit in court, or by the county treasurer, in the same manner as other delinquent taxes are collected. *City of Pueblo v. Robinson*, 12 Colo. 593, 21 P. 899 (1889).

Authorized for purposes other than gas or water rents. The provisions of subsection (1)(e) stating that "In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley or highway, or for water rent or gas used" plainly shows that it was the design of this subdivision to authorize special assessments for other purposes than gas or water rents. *City of Pueblo v. Robinson*, 12 Colo. 593, 21 P. 899 (1889).

Apportionment authorized. In cases where special assessments are authorized, the city

council may prescribe the rule of apportionment, having reference to the special benefits accruing to the property by reason of the improvement, the same to be such as will secure an assessment in proportion to the benefits accruing as nearly as practicable. *City of Pueblo v. Robinson*, 12 Colo. 593, 21 P. 899 (1889).

Mode of assessment proper. When the property consists of lots of substantially equal depth abutting the local improvement, and there is nothing in the nature and circumstances of the particular case showing that an assessment in proportion to the frontage of the lots upon the improvement would work manifest injustice, such a mode of assessment should be upheld. *City of Pueblo v. Robinson*, 12 Colo. 593, 21 P. 899 (1889).

Authority for lien must be by ordinance. A municipal corporation cannot acquire a lien on town lots for unpaid water assessments unless and until the adoption of an ordinance authorizing such a lien under this subdivision. *Ordway v. Kaiser*, 90 Colo. 313, 9 P.2d 287 (1932).

Foreclosure of a trust deed cuts out all junior liens, including statutory liens, unless these be specifically excluded, hence the lien of a municipality for water assessments authorized under subsection (1)(e) is not superior to that of a trust deed on the property affected unless it attached under appropriate ordinance prior to the recording of the trust deed. *Ordway v. Kaiser*, 90 Colo. 313, 9 P.2d 287 (1932).

Sewer assessments. By subsection (1)(e) sewer assessments may be collected and the lien thereof enforced by the city council in a proceeding at law or in equity. *City of Highlands v. Johnson*, 24 Colo. 371, 51 P. 1004 (1897).

PART 4

POLICE REGULATIONS

31-15-401. General police powers. (1) In relation to the general police power, the governing bodies of municipalities have the following powers:

(a) To regulate the police of the municipality and pass and enforce all necessary police ordinances;

(b) To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease;

(c) To declare what is a nuisance and abate the same and to impose fines upon parties who may create or continue nuisances or suffer nuisances to exist; except that a municipal ordinance may impose liability on the owner of real property for a nuisance committed on the property by a tenant in lawful possession of the property only if the municipality notifies the property owner and tenant of the nuisance before a fine or other liability is imposed;

(d) (I) To provide for and compel the removal of weeds, brush, and rubbish of all kinds from lots and tracts of land within such municipalities and from the alleys behind and from the sidewalk areas in front of such property at such time, upon such notice, and in such manner as such municipalities prescribe by ordinance, and to assess the whole cost thereof, including five percent for inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the weeds, brush, and rubbish are removed. The assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.

(II) In case such assessment is not paid within a reasonable time specified by ordinance, it may be certified by the clerk to the county treasurer who shall collect the assessment, together with a ten percent penalty for cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of such assessments.

(e) To prevent and suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place;

(f) To prevent fighting, quarreling, dog fights, cock fights, and all disorderly conduct;

(g) To suppress bawdy and disorderly houses and houses of ill fame or assignation within the limits of the municipality or within three miles beyond, except where the boundaries of two municipalities adjoin the outer boundaries of the municipality; to suppress gaming and gambling houses, lotteries, and fraudulent devices and practices for the purpose of gaining or obtaining money or property; and to regulate the promotion or wholesale promotion of obscene material and obscene performances, as defined in part 1 of article 7 of title 18, C.R.S.;

(h) To restrain and punish loiterers, mendicants, and prostitutes;

(i) To prohibit and punish for cruelty to animals;

(j) To establish and erect jails, correction centers, and reform schools for the reformation and confinement of loiterers and disorderly persons and persons convicted of violating any municipal ordinance, to make rules and regulations for the government of the same, and to appoint necessary officers and assistants therefor;

(k) To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners;

(l) To authorize the acceptance of a bail bond when any person has been arrested for the violation of any ordinance and a continuance or postponement of trial is granted. When such bond is accepted, it shall have the same validity and effect as bail bonds provided for under the criminal statutes of this state.

(m) (I) To regulate and to prohibit the running at large and keeping of animals, including fowl, within the municipality and to otherwise provide for the regulation and control of such animals including, but not limited to, licensing, impoundment, and disposition of impounded animals.

(II) In case any municipality neglects or refuses to pass an ordinance in conformity with this paragraph (m), anyone impounding an animal running at large within the limits of said municipality shall notify the state board of stock inspection commissioners, and said animal shall be disposed of by said board as provided in article 44 of title 35, C.R.S.

(n) To regulate and license pawnbrokers as provided in section 12-56-102, C.R.S.;

(o) To enact and enforce ordinances prohibiting gambling and the use of any gambling device, as said terms are defined in section 18-10-102, C.R.S., in a park, on a public way, or on a street; except that in enacting and enforcing said ordinances, a municipality, notwithstanding any other provision of law to the contrary, may also prohibit social gambling in or on parks, public ways, or streets. Nothing in this paragraph (o) shall be construed as prohibiting pari-mutuel betting or wagering under article 60 of title 12, C.R.S.

(p) (I) To adopt reasonable regulations for the operation of establishments open to the public in which persons appear in a state of nudity for the purpose of entertaining the patrons of such establishment; except that such regulations shall not be tantamount to a complete prohibition of such operation. Such regulations may include the following:

(A) Minimum age requirements for admittance to such establishments;

(B) Limitations on the hours during which such establishments may be open for business; and

(C) Restrictions on the location of such establishments with regard to schools, churches, and residential areas.

(II) The governing body of the municipality may enact ordinances which provide that any establishment which engages in repeated or continuing violations of regulations adopted by the governing body shall constitute a public nuisance. In addition to the power provided for in paragraph (c) of this subsection (I) the governing body of the municipality

may bring an action for an injunction against the operation of such establishment in a manner which violates such regulations.

(III) Nothing in the regulations adopted by the governing body of the municipality pursuant to this paragraph (p) shall be construed to apply to the presentation, showing, or performance of any play, drama, ballet, or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher education, or other similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

(q) (I) To control and limit fires, including but not limited to the prohibition, banning, restriction, or other regulation of fires and the designation of places where fires are permitted, restricted, or prohibited.

(II) Nothing in this paragraph (q) shall be construed to preempt or supercede state, tribal, or federal law concerning the control, limitation, or other regulation of fires described in this paragraph (q).

Source: **L. 75:** Entire title R&RE, p. 1108, § 1, effective July 1. **L. 76:** (1)(g) amended, p. 559, § 3, effective July 1. **L. 77:** (1)(g) amended, p. 985, § 2, effective July 1. **L. 82:** (1)(g) amended, p. 627, § 34, effective April 2. **L. 84:** (1)(o) added, p. 838, § 1, effective April 2; (1)(n) added, p. 443, § 3, effective July 1. **L. 85:** (1)(p) added, p. 1060, § 2, effective May 10. **L. 86:** (1)(g) amended, p. 784, § 7, effective April 21. **L. 2002, 3rd Ex. Sess.:** (1)(q) added, p. 38, § 4, effective July 17. **L. 2005:** (1)(c) amended, p. 550, § 1, effective January 1, 2006.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For requirement that a municipality be made a party in any proceeding involving the validity of an ordinance or franchise and that the attorney general be served with a copy in any proceeding involving the constitutionality of an ordinance or franchise, see § 13-51-115 and C.R.C.P. 57(j); for the authority of counties to adopt regulations pursuant to their police powers, see § 30-15-401; for the penalty for livestock grazing on roads and in municipalities, see § 35-46-105.

ANNOTATION

- I. General Consideration.
- II. Regulating Municipal Police.
- III. Public Health.
- IV. Declaring and Abating Nuisances.
 - A. In General.
 - B. What Constitutes a Nuisance.
 - C. Abatement.
- V. Estrays and Impounding.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Colorado Municipal Government Authority to Regulate Obscene Materials", see 51 Den. L.J. 75 (1974). For article, "Civil Enforcement of Building and Zoning Codes in Municipal Court", see 19 Colo. Law. 469 (1990).

Annotator's note. Since § 31-15-401 is similar to provisions of former §§ 31-12-101 and 31-12-701 through 31-12-706 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

II. REGULATING MUNICIPAL POLICE.

No local regulation in areas preempted by state. No limitation is implied upon the traditional but statutory rights of municipalities to prevent disturbances of the peace and to maintain law and order by appropriate police action, but it is only when the city's acts or regulations attempt to interfere with or cover a field preempted by the state or which is of statewide concern that they must fail, and it makes no difference whether the attempted exercise of power by a city is reasonable, or is wholly prohibitory. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

No authority to pass ordinance regulating labor dispute. Express delegations of power to municipalities to pass and enforce all necessary police ordinances, to regulate streets, or to prevent and suppress riots, routs, affrays, noises, disturbances, disorderly assemblies in any public or private place are not express delegations to cities and town to adopt an ordinance regulating the conduct of parties to a labor dispute which on its face covers matters of statewide concern

already treated by state statute, the labor peace act. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

Applied in *City of Colo. Springs v. Smith*, 19 Colo. 554, 36 P. 540 (1894).

III. PUBLIC HEALTH.

Due process requirements. Due process, as it applies to cases involving municipal trash ordinances, requires only that a municipal ordinance enacted under the police power shall not be unreasonable, arbitrary, or capricious, and that it bear a rational relation to a proper legislative object sought to be attained. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

A municipal regulation having a fair relation to the protection of human life and the protection of public convenience and welfare constitutes a reasonable application of the police power. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

A presumption of reasonableness attaches to ordinances promulgated for the health, safety, and welfare of the public. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

Authority for scavenger ordinance. Subsection (1)(b) gives to cities and towns ample power to pass an ordinance creating the office of city or town scavenger and providing that no other person shall do scavenger work for the citizens of the city or town without the payment of a license fee, fixed by the ordinance, and procuring a license, and fixing a penalty for the violation of the ordinance. *Ouray v. Corson*, 14 Colo. App. 345, 59 P. 876 (1900).

Authority to prevent sewer disconnections for nonpayment. Under subsection (1)(b) and §§ 31-15-702 (1)(a) and 31-15-709 (1)(a), where there is no other sewer to connect with, the necessity for the protection of the public health certainly gives to the city the right, temporarily at least, to prevent the digging up of its streets and alleys to disconnect private users who refuse to pay during the pendency of the quo warranto suit, regardless of who is right in that action. *City of Leadville v. Leadville Sewer Co.*, 47 Colo. 118, 107 P. 801 (1909).

Basis for judicial interference limited. A court of equity should not interfere with the officials of a city in efforts directed to the preservation of the public health under this section, unless the right of the applicant is free from doubt, and then only in an extreme and exceptional case. *City of Leadville v. Leadville Sewer Co.*, 47 Colo. 118, 107 P. 801 (1909).

Determination binding on supreme court. Unless a city council acts arbitrarily or capriciously in adopting an ordinance and in finding it necessary for the preservation of health and

safety, such a determination is binding on the state supreme court. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

IV. DECLARING AND ABATING NUISANCES.

A. In General.

Constitutionality of conferring discretionary power of enforcement. The conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation within the police power of the state is not violative of rights secured by the fourteenth amendment of the federal constitution, and where the marshal was the agent of the city government when he issued the citation and impounded the steers, the ordinance is valid, and the execution thereof is strict compliance with its abatement provision is not within the ambit of the civil rights act. *Martin v. King*, 417 F.2d 458 (10th Cir. 1969).

Subsection (1)(c) is not self-executing. See *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1912).

Ordinance pursuant to delegated police power. Where the title indicated that the ordinance defined nuisances and provided for the abatement, removal, or suppression of the same, and paragraph (c) authorizes municipalities under the police power section to declare what shall be a nuisance and to abate the same, accordingly, legislative authority existed for enacting the ordinance under the police power delegated by the state legislative body to the municipality. *Martin v. King*, 417 F.2d 458 (10th Cir. 1969).

Subsection (1)(c) requires an ordinance to make it effective. *Houston v. Walton*, 23 Colo. App. 282, 129 P. 263 (1913).

But not outside boundaries. Assuming, under subsection (1)(c), a town has power to declare it a nuisance for one to sell or keep for sale intoxicating liquor inside the corporate limits, and, by ordinance regulating the procedure, to abate the nuisance, this does not confer power to declare what shall constitute a nuisance within a mile beyond the outer boundaries, and abate it. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

Denoting nuisance insufficient unless city had power to punish conduct. The fact that a municipal ordinance which prohibits the solicitation of orders for merchandise from residents without invitation denominates such practice a nuisance, which it may not be in fact, is immaterial in a consideration of the validity of the ordinance, the real question being whether the city had power to punish the prescribed conduct, not whether it had the right to name it.

McCormick v. City of Montrose, 105 Colo. 493, 99 P.2d 969 (1939).

City had authority to abate nuisance and to recoup its remediation expenses through liens if so provided in the nuisance ordinance. *Gold Vein LLC v. Cripple Creek*, 973 P.2d 1286 (Colo. App. 1999).

Municipality may not impose a priority lien for abatement expenses except as specifically authorized in subsection (1)(d) for weed, brush, and rubbish removal. *Gold Vein LLC v. Cripple Creek*, 973 P.2d 1286 (Colo. App. 1999).

Licensing ordinance repugnantly discriminatory. The attempt of a city council, by ordinance, to prevent the prosecution of lawful business avocations, not declared by any ordinance to be nuisances, within the city limits without a permit or license from the city council is not authorized by subsection (1)(c), and such an ordinance is repugnant to fundamental rights in that it is susceptible of being used to unjustly discriminate between individuals equally worthy and respectable by permitting certain individuals to pursue the avocations mentioned while denying the privilege to other persons of the same class, or by making acts done by one person penal and imposing no penalty for the same act when done under like circumstances by another. *May v. People*, 1 Colo. App. 152, 27 P. 1010 (1891).

Applied in *Brophy v. Hyatt*, 10 Colo. 223, 15 P. 399 (1887).

B. What Constitutes a Nuisance.

Animals. Under subsection (1)(c), the city council of a city or the board of trustees of a town may declare horses, cattle, sheep, swine, goats, or other like animals running at large within the corporate limits, a nuisance, and impose a fine on any person permitting it. *Haldeman v. Colo. City*, 52 Colo. 233, 120 P. 1041 (1911).

An ordinance was a valid nuisance abatement ordinance which lawfully declared maintenance of cattle within the town limits a nuisance and provided for abatement thereof unless a permit allowing such maintenance had been granted. *Martin v. King*, 417 F.2d 458 (10th Cir. 1969).

Liquor. The mere sale of, or keeping for sale, intoxicating liquors is not a nuisance per se, but the town council may by ordinance declare it a nuisance. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

An ordinance prohibiting the sale of intoxicating liquors within the limits of the city, and declaring that "a place kept for such sale, and the business, and the liquor kept" is a nuisance "to be abated as any other nuisance" is conclusive in its effect, and the provision that the nuisance shall be abated "as any other nuisance" can be held to mean only as any other

nuisance may lawfully be abated. *Houston v. Walton*, 23 Colo. App. 282, 129 P. 263 (1913).

Privies. Cities may have the power to declare a privy in an established sewer district a nuisance per se, and to abate it, and fine the party suffering it to exist, but the proceeding would have to be under an ordinance based upon the power conferred by the statutes, and the ordinance must provide the manner of abatement. *Gault v. City of Ft. Collins*, 57 Colo. 324, 142 P. 171 (1914).

Nuisance per accidents. Even though zoning regulations permit an act to be done, and the act is being done with reasonable care and skill, the courts may grant relief where it is found that the acts complained of constitute a nuisance per accidents; to hold otherwise would be to state that the legislative body may license a nuisance. *Hobbs v. Smith*, 177 Colo. 299, 493 P.2d 1352 (1972).

C. Abatement.

The abatement procedure should be regulated by an ordinance, and the manner of abatement not left to the discretion of the officer executing the order. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

Enjoining nuisance. Regardless of compliance with zoning ordinances or regulations, both business and residential uses may be enjoined if they constitute a nuisance to an adjoining property owner or resident. *Hobbs v. Smith*, 177 Colo. 299, 493 P.2d 1352 (1972).

Manner of arrest and destruction unwarranted. The arrest with unnecessary force of one found in possession of a stock of intoxicating liquors, the destruction of the liquors with other legitimate merchandise, all in a disorderly and tumultuous manner, in disturbance of the peace of the Sabbath day, was not justified by ordinance prohibiting the sale or keeping for sale of such liquors, and declaring that the sale or keeping for sale of such liquors was a nuisance; nor by a vote or resolution of the city council directing the city marshal to seize and bring before the police magistrate all such liquors, with the persons of those found upon the premises. *Houston v. Walton*, 23 Colo. App. 282, 129 P. 263 (1913).

As to nuisances which may at common law be summarily abated, e.g., the obstruction of the public highway, it may be that the municipal authorities may proceed without the aid or adjudication of any court, otherwise, in the absence of statute, as to other nuisances, or where the existence of the nuisance depends upon proof that the law has been violated. *Houston v. Walton*, 23 Colo. App. 282, 129 P. 263 (1913).

V. ESTRAYS AND IMPOUNDING.

Constitutional basis for power. A city organized under art. XX, Colo. Const., has the power

to impound animals running at large, within its bounds, and to charge owner a reasonable amount for discharging this duty, and such an imposition is a matter of local concern. *City of Pueblo v. Kurtz*, 66 Colo. 447, 182 P. 884 (1919).

Denver municipal ordinance prohibiting pit bulls held constitutional. Colo. Dog Fanciers v. Denver, 820 P.2d 644 (Colo. 1991).

Applied in *Brophy v. Hyatt*, 10 Colo. 223, 15 P. 399 (1887).

31-15-402. Liability for violation of nuisance ordinance. (1) If a municipality serves upon an owner and tenant of real property notice of a violation of a nuisance ordinance committed by a tenant on property that the owner rents or leases to a tenant, the owner shall have the right to deliver written notice to the tenant to abate the nuisance. If the tenant does not abate the nuisance within five days after delivery of the notice, the owner may enter the exterior area of the property and abate the nuisance.

(2) This section shall not be construed to prohibit a property owner from entering any area of the property under the terms of the lease with the tenant.

(3) If the abatement of a nuisance pursuant to this section requires the removal of a motor vehicle from the property, the property owner may abate the nuisance only by hiring a towing carrier, as defined in section 40-10.1-101, C.R.S., to take the vehicle to a lot for storage under appropriate protection.

(4) Unless the lease provides otherwise, the tenant shall be liable to the owner of the real property for the amount of the owner's direct costs in abating a nuisance pursuant to this section and for the amount of the fine imposed upon the owner on and after the date on which the tenant received notice of the nuisance from the municipality pursuant to section 31-15-401 (1) (c).

(5) Nothing in this section shall be construed to limit a tenant's legal remedies for harm caused by a property owner to the tenant's person or to the tenant's property other than the property that is the subject of an abatement pursuant to this section.

Source: L. 2005: Entire section added, p. 550, § 2, effective January 1, 2006. **L. 2011:** (3) amended, (HB 11-1198), ch. 127, p. 418, § 10, effective August 10.

31-15-403. Prohibition against the use of restraints on pregnant women in custody. A municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1) (j), shall comply with the provisions of section 17-26-104.7, C.R.S., concerning the use of restraints on pregnant women in custody.

Source: L. 2010: Entire section added, (SB 10-193), ch. 312, p. 1468, § 5, effective January 1, 2011.

PART 5

REGULATION OF BUSINESSES

31-15-501. Powers to regulate businesses. (1) The governing bodies of municipalities have the following powers to regulate businesses:

(a) To prohibit within the limits of the municipality any offensive or unwholesome business or establishment and also to prohibit the carrying on of any business or establishment in an offensive and unwholesome manner within the limits of the municipality;

(b) To compel the owner of any grocery, cellar, soap or tallow candlery, tannery, stable, pigsty, privy, sewer, or other unwholesome or nauseous house or place to cleanse, abate, or remove the same, and to regulate the location thereof;

(c) To license, regulate, and tax, subject to any law of this state, any lawful occupation, business place, amusement, or place of amusements and to fix the amount, terms, and manner of issuing and revoking licenses issued therefor; except that, for purposes of the application of any occupational privilege tax, oil and gas wells and their associated production facilities have not been, are not, and shall not be considered an occupation or business place subject to such tax;

(d) To direct the location and regulate the management and construction of slaughterhouses, packing houses, renderies, tallow candleries, bone factories, soap factories, tanneries, and dairies within the limits of the municipality;

(e) To direct the location and regulate the use and construction of breweries, distilleries, livery stables, blacksmith shops, and foundries within the limits of the municipality;

(f) (I) To license, regulate, and control the laying of railroad tracks, to provide for and change the location, grade, and crossing of any railroad, and to control, regulate, and prohibit the use of steam engines and locomotives propelled by steam power within the corporate limits;

(II) To require railroad companies to fence their respective railroads or any portion of the same and to construct cattle guards at crossings of streets and public roads and keep the same in repair within the limits of the municipality;

(III) To require railroad companies to keep flagmen at railroad crossings of streets and to provide protection against injury to persons and property in the use of such railroads;

(IV) To compel such railroads to raise or lower their railroad tracks to conform to any grade which may at any time be established by such municipality and, when such tracks run lengthwise of any street, alley, or highway, to keep their tracks on a level with the street surface so that such tracks may be crossed at any place on such street, alley, or highway;

(V) To compel and require railroad companies to make, keep open, and keep in repair ditches, drains, sewers, and culverts along and under their railroad tracks so that filthy or stagnant pools of water cannot stand on their grounds or rights-of-way and so that the natural drainage of adjacent property shall not be impeded;

(g) To license, tax, regulate, suppress, and prohibit hucksters, peddlers, pawnbrokers, and keepers of ordinaries, theatrical and other exhibitions, shows, and amusements and to revoke such license at pleasure;

(h) To license, tax, and regulate hackmen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations and to prescribe the compensation;

(i) To license, regulate, tax, and restrain runners for stages, cars, public houses, or other things or persons;

(j) To license, regulate, tax, or prohibit and suppress billiard, bagatelle, pigeonhole, or any other tables or implements kept or used for a similar purpose in any place of public resort and pin alleys and ball alleys;

(k) To regulate the sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions and to provide for the place and manner of selling the same. It is unlawful for any municipality to impose by ordinance or otherwise any license, assessment, or other charge upon any person bringing food products to such municipality for sale, either in bulk or by retail, from house to house if said food products were grown or raised by the person so having them for sale and are products of the state of Colorado.

(l) To regulate the sale of bread in the municipality and to prescribe the weight and quality of the bread in the loaf;

(m) To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal, and other provisions;

(n) To provide for the inspection and sealing of weights and measures;

(o) To enforce the keeping and use of proper weights and measures by vendors;

(p) To tax, license, and regulate auctioneers, lumberyards, livery stables, public scales, money changers, and brokers; except that the exercise of their powers shall not interfere with sales made by sheriffs, tax collectors, coroners, marshals, executors, guardians, any assignees of insolvent debtors, bankrupts, or debtors under the federal bankruptcy code of 1978 (title 11 of the United States Code), or any other persons required by law to sell real or personal property at auction;

(q) To tax, license, and regulate secondhand and junk stores, to forbid their purchasing or receiving from minors without the written consent of their parents or guardians any article, and to compel a record of purchases to be kept, subject at all times to the inspection by the police.

(2) (a) Subject to the exemptions found in 8 U.S.C. sec. 1621 (c) (2), to the extent that any license, permit, certificate, or other authorization to conduct business issued by a municipality constitutes a professional license or commercial license regulated by 8 U.S.C.

sec. 1621, the governing body of a municipality may issue such authorization to an individual only if the individual is lawfully present in the United States, and shall immediately deny any such authorization or renewal thereof upon determining that the individual is unlawfully present in the United States. The individual shall prove his or her identity with a secure and verifiable document, as that term is defined in section 24-72.1-102, C.R.S. A municipality shall not sell or utilize for any purpose other than those specified in law the information contained in the secure and verifiable document, and shall keep such information confidential unless disclosure is required by law; except that nothing in this paragraph (a) shall be construed to limit public access to records that are available for public inspection pursuant to article 72 of title 24, C.R.S.

(b) For purposes of this subsection (2), an individual is unlawfully present in the United States if the individual is an alien who is not:

(I) A qualified alien as defined in 8 U.S.C. sec. 1641;

(II) A nonimmigrant under the "Immigration and Nationality Act", federal Public Law 82-414, as amended; or

(III) An alien who is paroled into the United States under 8 U.S.C. sec. 1182 (d) (5) for less than one year.

(c) This subsection (2) shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Source: **L. 75:** Entire title R&RE, p. 1110, § 1, effective July 1. **L. 80:** (1)(p) amended, p. 785, § 12, effective June 5. **L. 96:** (1)(c) amended, p. 346, § 2, effective April 17. **L. 99:** (1)(a) and (1)(d) amended, p. 63, § 1, effective July 1. **L. 2006, 1st Ex. Sess.:** (2) added, p. 29, § 3, effective January 1, 2007.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

- I. General Consideration.
- II. Subsection (1)(c).
- III. Subsection (1)(g).
- IV. Subsection (1)(j).

I. GENERAL CONSIDERATION.

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

Annotator's note. Since § 31-15-501 is similar to former §§ 31-12-101 and 31-15-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Application of subsection (1)(a) to privies. Subsection (1)(a) gave the city sufficient authority to compel all buildings embraced within the power to connect with the sewer. It also confers ample power to prohibit the keeping of any privy within a sewer district, or within 400 feet of the sewer; but this does not mean the city has power to compel one who does not desire to make the connection to connect an outside or open privy or vault with the sewer. It can prohibit the maintenance and use of the privy, and

can fine the keeper and abate the nuisance, if it is a nuisance, and can compel owners of buildings to connect with the sewer. This would seem sufficient power to rid any sewer district of all privies and vaults, and to compel owners to connect all buildings with the sewer. *Gault v. City of Ft. Collins*, 57 Colo. 324, 142 P. 171 (1914).

Subsection (1)(b) was intended to apply to those things which are offensive to the senses, or unwholesome in the sense in which the terms are ordinarily used, and they refer to such things as dead carcasses, offensive and unwholesome slaughterhouses, privy vaults, pig sties, feeding pens, and the like. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

Not as nuisances. Subsection (1)(b) does not confer upon towns and cities the power by ordinance to prohibit and abate a nuisance within a mile beyond the outer boundaries. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

Enforced through fine and imprisonment. The town must prohibit the things mentioned in subsection (1)(b), and enforced the prohibition by fine and imprisonment. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

Subsection (1)(b) does not apply to liquor, and if it did, there is no power given to declare

the enumerated matters a nuisance with power to abate the same. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

Valid subsection (1)(h) ordinance. A city ordinance providing that hotel runners, stage and omnibus drivers, hackmen, and expressmen, plying their respective vocations at any passenger depot of any railroad in such city on the arrival and departure of trains, should occupy no part of the depot grounds or premises except that portion allotted and designated to them by the station agent of such depot is not to be construed as giving a railroad company the right to exclude from its depot grounds or premises any person lawfully engaged in serving the traveling public either with or without vehicles, nor to confer upon such company the power to grant exclusive rights and privileges to persons engaged in such occupations; but such ordinance, being authorized by subsection (1)(h), is to be upheld as a reasonable regulation to promote the convenience of the traveling public and to prevent disorder at railway stations. *City of Colo. Springs v. Smith*, 19 Colo. 554, 36 P. 540 (1894).

Municipal weights and measures divisions authorized. There is no conflict between the 1877 grant of powers to cities and towns with the weights and measures statute because the general assembly, in enacting the weights and measures statute, expressly recognized that cities and towns may have established and maintained weights and measures divisions pursuant to statutory consent of 1877. *Blackman v. County Court*, 169 Colo. 345, 455 P.2d 885 (1969).

Matter of both state and local concern. The regulation of weights and measures to prevent misrepresentations and frauds in commercial transactions between vendor and vendee is a matter of both statewide and local concern and may be regulated under the police power at the state level and concurrently at the municipal level, providing there are no conflicting regulatory provisions. *Blackman v. County Court*, 169 Colo. 345, 455 P.2d 885 (1969).

Ticket brokers subject to subsection (1)(p). The power to license ticket brokers has been conferred by subsection (1)(p). Upon the city council of cities, but that body may not relinquish the delegated power, or any essential part of it, to a private person or corporation or a purely voluntary private association, or confer upon any such association power to perform any municipal function whatever. *Munson v. City of Colo. Springs*, 35 Colo. 506, 84 P. 683 (1906).

Unreasonable city ordinance as to ticket brokers. A city ordinance regulating the licensing of railroad ticket brokers which requires an applicant for license to file with the city clerk a certificate of membership in some reputable ticket brokers' association before a license will be issued is unreasonable and invalid. *Munson*

v. City of Colo. Springs, 35 Colo. 506, 84 P. 683 (1906).

Railroad crossings may be abolished by public utilities commission. This section does not prohibit the public utilities commission from abolishing railroad crossings in the interest of public safety, pursuant to section 40-4-106. *City of Craig v. Pub. Utils. Comm'n*, 656 P.2d 1313 (Colo. 1983).

Applied in *City of Colo. Springs v. Smith*, 19 Colo. 554, 36 P. 540 (1894); *Rancho Colo., Inc. v. City of Broomfield*, 196 Colo. 444, 586 P.2d 659 (1978); *Central City Opera House Ass'n v. City of Central*, 650 P.2d 1349 (Colo. App. 1982).

II. SUBSECTION (1)(c).

A tax on income is in excess of the powers delegated to Colorado municipalities. *Bd. of Trustees v. Foster Lumber Co.*, 190 Colo. 479, 548 P.2d 1276 (1976).

Income and occupation tax differentiated. An income tax, whether net or gross, bears a direct relation to the income or receipts of a business. An occupation tax bears no such relationship. The latter is a tax upon the very privilege of doing business, and does not fluctuate from month to month depending upon the financial success or sales of the enterprise. *Bd. of Trustees v. Foster Lumber Co.*, 190 Colo. 479, 548 P.2d 1276 (1976).

An occupation tax is a tax on the privilege of doing business and does not fluctuate from month to month depending upon the financial success or sales of the enterprise. *Mountain States Tel. & Tel. Co. v. City of Colo. Springs*, 194 Colo. 404, 572 P.2d 834 (1977).

A true business or occupational tax is not an income tax nor a tax on real property, and the fact that the business necessarily involves and concerns realty does not change the nature of the tax. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

Gross income and net income taxes are both 'income taxes' and their difference is a matter of degree. *Bd. of Trustees v. Foster Lumber Co.*, 190 Colo. 479, 548 P.2d 1276 (1976).

Admissions tax not tax on privilege of doing business. An admissions tax imposed upon persons patronizing businesses is not a tax on the privilege of doing business as authorized by this section. *City of Sheridan v. City of Englewood*, 199 Colo. 348, 609 P.2d 108 (1980).

Occupation tax authorized. The general assembly has given the power to impose an occupation privilege tax at a fixed rate regardless of the nature of the employment, to tax the privilege of all to engage in occupations within the municipality's territorial limits. *City & County of Denver v. Duffy Storage & Moving Co.*, 168 Colo. 91, 450 P.2d 339, appeal dismissed per

curiam, 369 U.S. 2, 90 S. Ct. 23, 24 L. Ed.2d 1 (1969).

Subsection (1)(c) authorized municipalities to impose occupation taxes on local businesses. *Bd. of Trustees v. Foster Lumber Co.*, 190 Colo. 479, 548 P.2d 1276 (1976).

The purpose of an occupation tax is to tax the owners of businesses for the privilege of conducting various classes of businesses within the boundaries of the city. *Bd. of Trustees v. Foster Lumber Co.*, 190 Colo. 479, 548 P.2d 1276 (1976).

As revenue measure. A home-rule city has the undoubted power to impose a business or occupational tax for the sole purpose of raising revenue. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

Language denoting tax not indicative of true nature. The language used by the legislative body in denominating the nature of a tax assessed is not determinative of its true character. *Bd. of Trustees v. Foster Lumber Co.*, 190 Colo. 479, 548 P.2d 1276 (1976).

Business defined. Business is a very comprehensive term and embraces everything about which a person can be employed, that which occupies the time, attention, and labor of men for the purpose of livelihood or profit, and corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

The renting of residential or commercial property is a "business" and as such is subject to the power to impose a business or occupational tax. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

One who acquires realty and then improves, subdivides, and sells the land for building sites is also engaged in a business which can be subjected to an occupational tax. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

Those who purchase land at tax sales are subject to a business or occupational tax. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

Tax of two dollars per day for each room rented is a valid occupation tax. This roughly approximates the amount of use that the hotels, through their employees and customers, make of the town's services and facilities. Variation in the amount of tax paid during each taxing period caused by calculations based on factors other than income is not fatal to a valid occupation tax. *Town of Eagle v. Scheibe*, 10 P.3d 648 (Colo. 2000).

A city ordinance passed by a city of the second class making any sale in the furtherance of business taxable, and imposing a tax on businesses and professions graduated according to the number of employees in each business or profession, did not contravene the right to acquire property without undue interference and so did not violate § 3 of art. II, Colo. Const. *Jackson v. City of Glenwood Springs*, 122 Colo. 323, 221 P.2d 1083 (1950).

Exercise of licensing power subject to judicial review. While the general power to license is conferred by this subdivision of this section, the mode of its exercise is not prescribed, hence the reasonableness, as well as the constitutionality, of an ordinance prescribing the mode of exercise of the power is a matter of judicial cognizance. *Munson v. City of Colo. Springs*, 35 Colo. 506, 84 P. 683 (1906).

Applied in *Orman v. City of Pueblo*, 8 Colo. 292, 6 P. 931 (1885).

III. SUBSECTION (1)(g).

Subsection (1)(g) ordinances constitutional. The adoption of a municipal ordinance restricting the operations of peddlers and solicitors at private residences is an authorized and reasonable exercise of police powers of the state delegated to municipal legislative bodies; such ordinances do not deprive the parties affected of any right guaranteed by either the fourteenth amendment to the federal constitution or provisions of the state fundamental law. *McCormick v. City of Montrose*, 105 Colo. 493, 99 P.2d 969 (1939).

And not a burden on interstate commerce. A restrictive municipal ordinance concerning the operations of peddlers and solicitors is not a regulation of, or burden upon, interstate commerce within the intent and meaning of the interstate commerce clause of the federal constitution. *McCormick v. City of Montrose*, 105 Colo. 493, 99 P.2d 969 (1939).

Peddler defined. To constitute a peddler within the meaning of subsection (1)(g), the trader must be one who carries with him the goods which he intends to sell. *Kennedy v. People ex rel. La Junta*, 9 Colo. App. 490, 49 P. 373 (1897).

One who sells by sample merely, for future delivery, is not a peddler. *Kennedy v. People ex rel. La Junta*, 9 Colo. App. 490, 49 P. 373 (1897).

No exclusive power to license shows, etc. There is nothing in subsection (1)(g) which shows any intention to take away from the county its power, or to grant unto cities and towns the exclusive power to license shows and amusements within their respective limits. *Godfrey v. Bd. of Comm'rs*, 53 Colo. 196, 124 P. 190 (1912).

Statutory licensing power only. Under subsection (1)(g) and the other pertinent provisions of this subsection, the authority of municipal corporations to grant licenses for occupations carried on within their limits exists by force of the statute alone, and they cannot legally exact license fees from those engaged in business pursuits not included or covered by the statute. *Bernheimer v. City of Leadville*, 14 Colo. 518, 24 P. 332 (1890).

The general assembly did not intend to deprive the county of any of its revenue by enacting subsection (1)(g). *Godfrey v. Bd. of Comm'rs*, 53 Colo. 196, 124 P. 190 (1912).

Licensing ordinance allowing too much discretion violative of fundamental law. An ordinance passed under the authority of paragraph (g) requiring one peddling artesian water within the city limits to have a license, and giving the city council power to give or withhold such license at its discretion, is void in that it is violative of the fundamental law of the state and nation, because the right to pursue a lawful calling is a natural right, subject only to such restrictions as the legislative authority may impose upon all alike, and it is not dependent upon the will or caprice, or the pleasure or prejudice or discretion of a city council. *City of La Junta v. Heath*, 38 Colo. 372, 88 P. 459 (1906).

IV. SUBSECTION (1)(j).

No constitutional right. Section 3 of art. II, Colo. Const., does not confer upon the citizen a

constitutional right to conduct a business which may be inimical to the public morals, such as the use of pinball machines as gambling devices. *Bunzel v. City of Golden*, 150 Colo. 276, 372 P.2d 161 (1962).

Discouragement or prohibition proper. With respect to those occupations or forms of business, however, that are not useful, but are inherently harmful and dangerous to society or the public welfare, license requirements and exactions may be so imposed as to discourage and even amount to a prohibition of them. *Bunzel v. City of Golden*, 150 Colo. 276, 372 P.2d 161 (1962).

Pinball machines. The supreme court has held that pinball machines may be used as gambling devices and has refused to enjoin officers from seizing them under the terms of local ordinances. *Bunzel v. City of Golden*, 150 Colo. 276, 372 P.2d 161 (1962).

A city is specifically authorized to prohibit entirely the use of such pinball machines. *Bunzel v. City of Golden*, 150 Colo. 276, 372 P.2d 161 (1962).

License fee, etc., constitutional. An ordinance exacting a license fee of \$100 per machine from a person who owns and operates four or more machines in his own place of business, and a lesser fee for those operating fewer than four machines, does not deprive the former of equal protection of the law. *Bunzel v. City of Golden*, 150 Colo. 276, 372 P.2d 161 (1962).

PART 6

BUILDING AND FIRE REGULATIONS

31-15-601. Building and fire regulations - emission performance standards required. (1) The governing bodies of municipalities have the following powers in relation to building and fire regulations:

(a) To regulate the construction, repairs, and use of vaults, cisterns, areas, hydrants, pumps, sewers, and gutters;

(b) To regulate partition fences and party walls;

(c) To prescribe the thickness and strength of, and the manner of constructing, stone, brick, and other buildings and to prescribe the construction of fire escapes therein;

(d) To prescribe the limits within which wooden buildings shall not be erected, or moved into from outside said limits or placed in or repaired without permission, to direct that any buildings within the fire limits, when the same have been damaged by fire, decay, or otherwise to the extent of fifty percent of the value, be torn down or removed, and to prescribe the manner of ascertaining such damage;

(e) (I) To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, and apparatus used in and about any factory and to cause the same to be removed or placed in a safe condition when considered dangerous;

(II) To regulate and prevent the carrying on of manufacturing which causes and promotes fires;

(III) To prevent the deposit of ashes in unsafe places and to cause all such buildings and enclosures as may be in a dangerous state to be put in a safe condition;

(f) To provide for the inspection of steam boilers;

(g) To compel the owners and occupants of houses and other buildings to have scuttles on the roof and stairs or ladders leading to the same and to compel the owners of all buildings over two stories in height to provide fire escapes;

(h) To regulate the size, number, and manner of the construction of the doors and stairways of theaters, tenement houses, audience rooms, and all buildings used for the gathering of a large number of people, to provide convenient, safe, and speedy exits in case of fire;

(i) To compel the owners of all lots with a building fronting on the street to provide a number on said building;

(j) To regulate or prevent the storage and transportation of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, gasoline, nitroglycerine, petroleum, or any of the products thereof, and other combustible or explosive material within the municipal limits and to prescribe the limits within which any such regulations shall apply; to regulate the use of lights in garages, shops, and other places; to regulate or prevent the storage of gunpowder and other high explosives within the municipal limits or within one mile of the outer boundaries thereof; and to regulate and restrain the use of fireworks, firecrackers, torpedoes, roman candles, skyrockets, and other pyrotechnic displays;

(j.5) To regulate fires consistent with the provisions of section 31-15-401 (1) (q);

(k) To regulate and prohibit the keeping of any lumberyard and the placing, piling, or selling of any lumber, timber, wood, or other combustible material within the fire limits of the municipality and to regulate the storage of any combustible material at any place within the limits of the municipality;

(l) To erect engine houses and provide fire engines, hose, hose carts, hooks and ladders, and other implements for the extinguishing of fires and provide for the use and management of the same by volunteer fire companies or otherwise; to determine the powers and duties of the members of the fire department in taking charge of property to the extent necessary to bring under control and extinguish any fire; to preserve and protect property not destroyed by fire; and to restrain persons from interfering with the discharge of the duties of the members of the fire department in connection with the fighting of any fire.

(2) By the date established in section 25-7-407, C.R.S., every governing body of a municipality which has enacted a building code, and thereafter every governing body which enacts a building code, shall enact a building code provision to regulate the construction and installation of fireplaces in order to minimize emission levels. Such building code provision shall contain standards which shall be the same as or stricter than the approved emission performance standards for fireplaces established by the air quality control commission in the department of public health and environment pursuant to section 25-7-407, C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1111, § 1, effective July 1. **L. 84:** (2) added, p. 782, § 3, effective April 12. **L. 87:** (2) amended, p. 1144, § 9, effective June 16. **L. 94:** (2) amended, p. 2802, § 564, effective July 1. **L. 2002, 3rd Ex. Sess.:** (1)(j) amended and (1)(j.5) added, p. 38, § 5, effective July 17. **L. 2005:** (2) amended, p. 774, § 59, effective June 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-15-602. Energy-efficient building codes - legislative declaration - definitions - repeal. (1) The general assembly hereby finds and declares that there is statewide interest in requiring an effective energy efficient building code for the following reasons:

(a) Excessive energy consumption creates effects beyond the boundaries of the local government within which the energy is consumed because the production of power occurs in centralized locations.

(b) Air pollutant emissions from energy consumption affects the health of the citizens throughout Colorado.

(c) The strain on the grid from peak electric power demands is not confined to jurisdictional boundaries.

(d) There is statewide interest in the reliability of the electrical grid and an adequate supply of heating oil and natural gas.

(e) Controlling energy costs for residents and businesses furthers a statewide interest in a strong economy and reducing the cost of housing in Colorado.

(2) As used in this section, unless the context otherwise requires:

(a) "Building code" means regulations related to energy performance, electrical systems, mechanical systems, plumbing systems, or other elements of residential or commercial buildings.

(b) "Energy code" means, at a minimum, the 2003 international energy conservation code, or any successor edition, published by the international code council or any other code determined by the Colorado energy office created in section 24-38.5-101, C.R.S., to be more appropriate for local conditions.

(c) "Office" means the Colorado energy office created in section 24-38.5-101, C.R.S.

(3) Within one year of July 1, 2007, the governing body of any municipality that has enacted a building code shall adopt an energy code that shall apply to the construction of, and renovations and additions to, all commercial and residential buildings in the municipality.

(4) (a) The energy code shall apply to any commercial or residential building in the municipality for which a building permit application is received subsequent to the adoption of the energy code.

(b) (I) A municipality shall not charge permit, plan review, or other fees to install an active solar electric or solar thermal device or system that, in aggregate, exceed the lesser of the municipality's actual costs in issuing the permit or five hundred dollars for a residential application or one thousand dollars for a nonresidential application if the device or system produces fewer than two megawatts of direct current electricity or an equivalent-sized thermal energy system, or that exceed the municipality's actual costs in issuing the permit if the device or system produces at least two megawatts of direct current electricity or an equivalent-sized thermal energy system. The municipality shall clearly and individually identify all fees and taxes assessed on an application subject to this subparagraph (I) on the invoice. The general assembly hereby finds that there is a statewide need for certainty regarding the fees that can be assessed for permitting such devices or systems, and therefore declares that this paragraph (b) is a matter of statewide concern.

(II) This paragraph (b) is repealed, effective July 1, 2018.

(5) The following buildings are exempt from the provisions of subsection (4) of this section:

(a) Any building that is otherwise exempt from the provisions of the building code adopted by the governing body of the municipality in which the building is located and buildings that do not contain a conditioned space;

(b) Any building that does not use either electricity or fossil fuels for comfort heating. A building will be presumed to be heated by electricity even in the absence of equipment used for electric comfort heating if the building is provided with electrical service in excess of one hundred amps, unless the code enforcement official of the municipality determines that the electrical service is necessary for a purpose other than for providing electric comfort heating.

(c) Historic buildings that are listed on the national register of historic places or Colorado state register of historic properties and buildings that have been designated as historically significant or that have been deemed eligible for designation by a local governing body that is authorized to make such designations; and

(d) Any building that is exempt pursuant to the energy code.

(6) Notwithstanding any other provisions of this section, the governing body of any municipality that is required to adopt an energy code may make any amendments to the energy code that the governing body deems appropriate for local conditions, so long as the amendments do not decrease the effectiveness of the energy code.

(7) (a) The office shall ensure that information explaining the requirements of the energy code and describing acceptable methods of compliance is available to builders, designers, engineers, and architects.

(b) The office shall provide the governing body of any municipality with technical assistance concerning the implementation and enforcement of the energy code.

Source: **L. 2007:** Entire section added, p. 697, § 3, effective July 1. **L. 2008:** (2)(b) and (2)(c) amended, p. 72, § 11, effective March 18; (4) amended, p. 893, § 2, effective May 20. **L. 2011:** (4)(b) amended, (HB 11-1199), ch. 311, p. 1519, § 3, effective June 10. **L. 2012:** (2)(b) and (2)(c) amended, (HB 12-1315), ch. 224, p. 975, § 38, effective July 1.

Cross references: In 2011, subsection (4)(b) was amended by the “Fair Permit Act”. For the short title, see section 1 of chapter 311, Session Laws of Colorado 2011.

PART 7

PUBLIC PROPERTY AND IMPROVEMENTS

31-15-701. Necessary buildings. The governing body of each municipality has the power to erect and care for all necessary public buildings for the use of the municipality.

Source: **L. 75:** Entire title R&RE, p. 1113, § 1, effective July 1.

Editor’s note: The provisions of this section are similar to several former provisions of § 31-12-101 (19) as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-15-702. Streets and alleys. (1) The governing body of each municipality has the power:

(a) (I) To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, parks, and public grounds and vacate the same and to direct and regulate the planting of ornamental and shade trees in such streets, parks, and public grounds; to plant trees upon the same; to regulate the use of the same; to prevent and remove encroachments or obstructions upon the same; to provide for the lighting of the same; and to provide for the cleansing of the same;

(II) To regulate the openings therein for the laying-out of gas or water mains and pipes, the building and repairing of sewers, tunnels, and drains, and the erecting of utility poles. Any company organized under the general laws of this state or any association of persons organized for the purpose of manufacturing energy to supply municipalities or the inhabitants thereof with the same has the right by consent of the governing body, but not without such consent, subject to existing rights, to erect factories and lay down pipes in the streets or alleys of any municipality in the state, subject to such regulations as any such municipality by ordinance may impose.

(III) To regulate the use of sidewalks along the streets and alleys and all structures thereunder and to require the owner or occupant of any premises to keep the sidewalks, or along the same, free from snow and other obstructions;

(IV) To regulate and prevent the throwing or depositing of ashes, garbage, or any offensive matter in and to prevent any injury to any street, park, or public ground;

(V) To provide for and regulate crosswalks, curbs, and gutters;

(VI) To regulate and prevent the use of streets, parks, and public grounds for signs, signposts, awnings, awning posts, and power and communications poles, and for posting handbills and advertisements; to regulate and prohibit the exhibition or carrying of banners, placards, advertisements, or handbills in the streets or public grounds or upon the sidewalks; and to regulate and prevent the flying of flags, banners, or signs across the streets or from houses;

(VII) To regulate traffic and sales upon the streets, sidewalks, and public places and to regulate the speed of vehicles, cars, and locomotives within the limits of the municipality;

(VIII) To regulate the numbering of houses and lots and to name and change the name of any street or other public place;

(b) (I) To provide for the construction and maintenance of sidewalks, curbs, and gutters of such material and in such manner as shall be designated and to provide for paying the expenses thereof by special assessments upon the adjacent or abutting property, which assessments shall constitute a lien as provided in section 31-15-401 (1) (d) (I);

(II) To grade, grade or gravel, or otherwise surface or improve streets and alleys and to assess the costs of such improvements upon the lots or lands adjacent to or abutting upon any street or alley or portion thereof so improved, which assessments shall constitute a lien as provided in section 31-15-401 (1) (d);

(c) To grant, by ordinance and upon such terms and conditions as may be prescribed therein, to other municipalities the right-of-way through, over, across, and under streets and alleys for the purpose of laying, constructing, operating, maintaining, and repairing waterworks and all pipelines connected therewith;

(d) To authorize the construction of mills and mill races, irrigating or mining ditches, and feeders on, through, or across the streets of the municipality at such places and under such restrictions as deemed proper.

Source: L. 75: Entire title R&RE, p. 1113, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For article, "Regulation of Cable Television", see 48 U. Colo. L. Rev. 501 (1977). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983).

Annotator's note. Since § 31-15-702 is similar to former § 31-12-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

No constitutional limit. Under this section, municipalities have power to regulate the use of their public streets within constitutional limitations. *Trujillo v. City of Walsenburg*, 108 Colo. 427, 118 P.2d 1081 (1941).

Due process requirements regarding trash ordinances. Due process, as it applies to cases involving municipal trash ordinances, requires only that a municipal ordinance enacted under the police power shall not be unreasonable, arbitrary or capricious, and that it bear a rational relation to a proper legislative object sought to be attained. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

A presumption of reasonableness attaches to ordinances promulgated for the health, safety, and welfare of the public. *United States Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

Police power prevails over proprietary powers. As between the proprietary powers given to a district organized under section 32-4-101 and the police power to protect its citizens

and streets given to a city by this section, the police power prevails. *People v. Haase*, 198 Colo. 47, 596 P.2d 392 (1979).

Immune from liability. In regulating public streets, the town, as such, acts within its governmental capacity and falls within the rule of immunity against liability in connection with the enforcement of its ordinances. *Walker v. Tucker*, 131 Colo. 198, 280 P.2d 649 (1955).

Under this section, the city is authorized to establish and improve streets and sidewalks and prevent and remove obstructions therefrom and the execution of this power may be required as public duty. *People ex rel. Stonebraker v. Wood*, 90 Colo. 506, 10 P.2d 331 (1932).

A municipality has broad power to vacate streets or roadways within its boundaries. *City of Colo. Springs v. Crumb*, 148 Colo. 32, 364 P.2d 1053 (1961).

The broad power of a municipality to vacate streets or roadways within its boundaries is subject only to the limitations of the constitution and the authority delegated by statute, and a court of equity will not review its action in the absence of fraud or a plain abuse of power. *City of Colo. Springs v. Crumb*, 148 Colo. 32, 364 P.2d 1053 (1961).

Scope of powers under paragraph (a). Paragraph (a), giving to municipal authorities power to vacate parks and public grounds, does not empower such authorities to alienate a plat of ground dedicated to the use of the people of a city for a public park, or to appropriate it, or any part of it, for a use inconsistent with the purpose of the dedication. *McIntyre v. Bd. of Comm'rs*, 15 Colo. App. 78, 61 P. 237 (1900).

Street cut permit may be required by municipality. A municipality, acting reasonably, has the right to require a water and sanitation district, or those acting in its behalf, to obtain a permit to effect a street cut to repair the district's water lines located below the surface of a street. *People v. Haase*, 198 Colo. 47, 596 P.2d 392 (1979).

Theory upon which owner of property abutting street may be required to pay costs of public improvements, such as streets, street paving, curbs, gutters and sidewalks, is that the property is especially benefited by the improvements over and above the general benefit to the public at large. *Bethlehem Evangelical Lutheran Church v. City of Lakewood*, 626 P.2d 668 (Colo. 1981).

Refuse and litter control is clearly within the framework of legitimate municipal concern. *Mosgrove v. Town of Federal Heights*, 190 Colo. 1, 543 P.2d 715 (1975).

A city has the power to regulate traffic by municipal ordinance within its boundaries only. *Svaldi v. City of Lakewood*, 36 Colo. App. 155, 536 P.2d 331 (1975).

A town was empowered by the Colorado constitution to adopt an ordinance that restricted truck traffic on two major streets in the town. *Carl Ainsworth, Inc. v. Town of Morrison*, 189 Colo. 223, 539 P.2d 1267 (1975).

The enforcement of a town ordinance prohibiting truck traffic on two major streets in the town did not operate as an unreasonable, arbitrary, and discriminatory exercise of police power in violation of amendment 14, U.S. Const. and § 25 of art. II, Colo. Const. *Carl Ainsworth, Inc. v. Town of Morrison*, 189 Colo. 223, 539 P.2d 1267 (1975).

A town has the right to regulate curb cuts under its police power. *Heckendorf v. Town of Littleton*, 132 Colo. 108, 286 P.2d 615 (1955).

Unconstitutional fee on use of curb cut. A town ordinance requiring a license and an annual fee to be paid by an abutting property owner using a curb cut as a means of ingress and egress to his property, where regulation under such ordinance amounted to nothing more than a billing of the property owner, such fee is a tax on the right of ingress and egress and not a regulatory fee, and as such is unconstitutional. *Heckendorf v. Town of Littleton*, 132 Colo. 108, 286 P.2d 615 (1955).

The privilege of a citizen to use the streets of a municipality may be regulated in the

interest of all, however, such privilege is not absolute, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order, but it must not, under the guise of regulation, be abridged or denied. *Trujillo v. City of Walsenburg*, 108 Colo. 427, 118 P.2d 1081 (1941).

But not in violation of fourteenth amendment. A municipal ordinance which leaves to the uncontrolled official discretion of a chief of police the right to say who shall, and who shall not, use its streets for parades or assemblages is authorization of the exercise of arbitrary power by a governmental agency, is in violation of the fourteenth amendment of the federal constitution, and void on its face. *Trujillo v. City of Walsenburg*, 108 Colo. 427, 118 P.2d 1081 (1941).

Delegation of ministerial duties. A city cannot delegate the authority given by this section to establish the grade of a sidewalk, however it may delegate mere ministerial power, e.g., surveying, investigation, computation, and may take the advice of professional people, but the final determination must be made by the council. *City of Leadville v. McDonald*, 67 Colo. 131, 186 P. 715 (1919).

Ordinance preventing removal of buildings not within authority of section. An ordinance imposing on the moving of buildings outside the corporate limits of the town a license tax so high as to be prohibitive, which ordinance was plainly passed to prevent the removal of buildings from the town, is not a regulation of the use of the streets authorized by this section but is a pure prohibition, and it is on its face unjust, unreasonable, discriminative, oppressive, and resorted to for an illegal purpose; hence it is unconstitutional and void. *Town of Eckley v. Meyers*, 116 Colo. 536, 181 P.2d 1014 (1947).

Ordinance prohibiting utilities from requiring municipalities to pay for the relocation of a utility facility is valid as a reasonable exercise of police power and the power to regulate streets and utility poles. *U S West Commc'ns v. City of Longmont*, 948 P.2d 509 (Colo. 1997).

Applied In *Lewis v. Denver Waterworks Co.*, 19 Colo. 236, 34 P. 993 (1893); *Mitchell v. Titus*, 33 Colo. 385, 80 P. 1042 (1905); *City of Colo. Springs v. Colo. & S. Ry.*, 38 Colo. 107, 89 P. 820 (1906); *Bittle v. Brunetti*, 750 P.2d 49 (Colo. 1988).

31-15-703. Improvements - petition - construction. (1) When the owners of sixty percent of the frontage of the lots or lands adjacent to or abutting upon any street or alley or designated portion thereof petition the governing body in writing to construct a sewer, including a storm sewer, in said street or alley or require sidewalks to be constructed along said street or alley or designated portion thereof, it is the duty of the governing body to order said improvement to be made, to assess the cost of said improvement against the lots or lands adjacent to or abutting upon said sidewalk, street, or alley so improved, and to collect

the assessment as provided in sections 31-15-401 (1) (d) and 31-15-704.

(2) When the governing body deems it necessary that any sewer, including a storm sewer, should be constructed, it shall construct the same, assess the cost thereof against the adjacent property, and collect the assessment as provided in sections 31-15-401 (1) (d) and 31-15-704. When the governing body deems it necessary that any portion of a sidewalk, curb, and gutter be constructed or repaired, it may, on its own motion, order the same to be done, and if not constructed or repaired by the owner upon notice, the municipality may construct or repair the same, assess the costs thereof against the adjacent property owner, and collect the assessment as provided in sections 31-15-401 (1) (d) and 31-15-704.

Source: L. 75: Entire title R&RE, p. 1114, § 1, effective July 1.

Editor's note: This section is similar to former § 31-15-302 as it existed prior to 1975.

31-15-704. Collection of assessments. When the cost of any improvement provided for in sections 31-15-702 (1) (b) and 31-15-703 is assessed against the owners of adjacent or abutting property and the assessment is not paid within thirty days, the clerk shall certify said assessment to the treasurer of the county who shall extend said assessment upon his tax roll and collect it in the same manner as other taxes assessed upon said property.

Source: L. 75: Entire title R&RE, p. 1114, § 1, effective July 1.

Editor's note: This section is similar to former § 31-15-303 as it existed prior to 1975.

31-15-705. Construction of highway - petition - notice - election - tax. Any municipality may aid in the construction and repair of any highway leading thereto by appropriating a portion of the highway tax belonging to said municipality, not exceeding fifty percent thereof annually, as provided in this section. When a petition signed by twenty of the registered electors of said municipality asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the registered electors thereof is presented to the governing body, the governing body immediately shall give notice of a special election. Said notice shall specify the date of such election, the particular highway proposed to be aided, and the proportion of the highway tax then levied and not expended or next thereafter to be levied to be appropriated. The election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The question on the ballot or voting machine tabs shall be "Appropriation" or "No appropriation". If a majority of the votes polled are for appropriation, the governing body may aid in the construction and repair of said highway to the extent of the appropriation in the same manner as they otherwise would if said highway were within the municipal limits of said municipality. No part of such highway tax shall be expended more than two miles from the limits of such municipality.

Source: L. 75: Entire title R&RE, p. 1114, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-103 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-15-706. Railroad track. (1) The governing body of each municipality has the power to grant the use of, or the right to lay down, any railroad track in any street of the municipality to any steam or street railroad company operating its cars, by any kind of mechanical motive power, only upon the written consent of the owners of the land representing more than one-half of the frontage of the street or so much thereof as is sought to be used for railroad purposes. No franchise shall be granted on that part of any street upon which any other company is operating cars without the written consent of a majority of the frontage owners in every block abutting the track already down upon said street.

(2) The governing body of each municipality has the power to extend, by condemnation or otherwise, any street, alley, or highway over or across or to construct any sewer under or through any railroad track, right-of-way, or land of any railroad company within the corporate limits, but where no compensation is made to such railroad company, the municipality shall restore such railroad track, right-of-way, or land to its former state or in a sufficient manner not to have impaired its usefulness.

Source: L. 75: Entire title R&RE, p. 1115, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-101 (75) and (76) as it existed prior to 1975.

ANNOTATION

Abolition of railroad crossings by public utilities commission. This section does not prohibit the public utilities commission from abolishing railroad crossings in the interest of public

safety, pursuant to § 40-4-106. *City of Craig v. Pub. Utils. Comm'n*, 656 P.2d 1313 (Colo. 1983).

31-15-707. Municipal utilities. (1) The governing body of each municipality has the power:

(a) (I) To acquire waterworks, gasworks, and gas distribution systems for the distribution of gas of any kind or electric light and power works and distribution systems, or heating and cooling works and distribution systems for the distribution of heat and cooling obtained from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat, and all appurtenances necessary to any of said works or systems or to authorize the erection, ownership, operation, and maintenance of such works and systems by others. No such works or systems, except waterworks, shall be acquired or erected by a municipality until the question of acquiring or erecting the same is submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1) (d) and in accordance with the requirements of law, including requirements of law relating to the acquisition and financing of public utilities by municipalities. The question of acquiring or erecting a waterworks need not be so submitted and approved at an election.

(II) All such works or systems authorized by any municipality to be erected by others or the franchise of which is extended or renewed shall be authorized, extended, or renewed upon the express condition that such municipality has the right and power to purchase or condemn any such works or systems at their fair market value at the time of purchasing or condemning such works or systems, excluding all value of the franchise or right-of-way through the streets and also excluding any value by virtue of any contract for hydrant or private rental or otherwise entered into with the municipality in excess of the fair market value of the works or systems. If, after an election conducted in the manner prescribed in section 31-15-302 (1) (d), the municipality is authorized to acquire any of said works or systems after granting a franchise therefor to any person, the municipality shall purchase or condemn such works or systems within the municipal limits then utilized in serving the inhabitants of such municipality at their fair market value. Nothing in this subparagraph (II) shall require such municipality to purchase or condemn all or any part of such works or systems which is obsolete or which has outworn its usefulness.

(III) If the municipality elects to purchase such works or systems and if the parties in interest cannot agree on the purchase price, they shall enter into a written agreement to arbitrate the matter and to abide by the award of the arbitrators, in which event each party shall choose an arbitrator to determine their fair market value. If the two arbitrators cannot agree on the fair market value, they shall choose a third disinterested arbitrator, and the award of any two arbitrators shall be final and binding upon the parties.

(IV) Nothing in this paragraph (a) shall authorize the condemnation or purchase of any such works or systems within twenty years after the granting of any franchise therefor,

except at periods of ten or fifteen years thereafter, without the consent of the owner of the franchise.

(b) To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect;

(c) To make such grant to inure for a term of not more than twenty-five years when the right to build and operate such water, gas, heating and cooling, or electric light works is granted to a person by said municipality and to authorize such person to charge and collect from each person supplied by them with water, gas, heat, cooling, or electric light such water, gas, heat, cooling, or electric light rent as may be agreed upon between the person building said works and said municipality; and to enter into a contract with the person constructing said works to supply said municipality with water for fire purposes and for such other purposes as may be necessary for the health and safety thereof and also with gas, heat, cooling, and electric light and to pay therefor such sums as may be agreed upon between said contracting parties;

(d) To assess from time to time, when constructing such water, gas, heating and cooling, or electric light works and in such manner as it deems equitable, upon each tenement or other place supplied with water, gas, heat, cooling, or electric light, such water, gas, heat, cooling, or electric light rent as may be agreed upon by the governing body. Gas, heat, cooling, and electric light shall be charged for according to use. At the regular time for levying taxes in each year, said municipality is empowered to levy and cause to be collected, in addition to the other taxes authorized to be levied, a special tax on taxable property in said municipality. Such tax, with the water, gas, heat, cooling, or electric light rents hereby authorized, shall be sufficient to pay the expenses of running, repairing, and operating such works. If the right to build, maintain, and operate such works is granted to a person by a municipality and the municipality contracts with said person for the supplying of water, gas, heat, cooling, or electric light for any purpose, such municipality shall levy each year and cause to be collected a special tax, as provided for in this paragraph (d), sufficient to pay off such water, gas, heat, cooling, or electric light rents so agreed to be paid to said person constructing said works. The tax shall not exceed the sum of three mills on the dollar for any one year.

(e) To condemn and appropriate so much private property as is necessary for the construction and operation of water, gas, heating and cooling, or electric light works in such manner as may be prescribed by law; and to condemn and appropriate any water, gas, heating and cooling, or electric light works not owned by such municipality in such manner as may be prescribed by law for the condemnation of real estate.

Source: **L. 75:** Entire title R&RE, p. 1115, § 1, effective July 1. **L. 77:** (1)(a)(I) amended, p. 1462, § 1, effective May 16. **L. 81:** (1)(a)(I) and (1)(c) to (1)(e) amended, p. 1455, § 3, effective May 27.

Editor's note: This section is similar to former § 31-12-101 as it existed prior to 1975.

ANNOTATION

- I. General Consideration.
- II. Water, Gas, and Electric Works.
- III. Franchises and Assessments.
- IV. Condemnation for Utilities.

I. GENERAL CONSIDERATION.

Law reviews. For article, "May Regulated Utilities Monopolize the Sun", see 56 U. Den-

ver L.J. 31 (1979). For article, "Utility Use of Renewable Resources: Legal and Economic Implications", see 59 U. Den. L.J. 663 (1982). For article, "Quality Versus Quantity: The Continued Right to Appropriate — Part I", see 15 Colo. Law. 1035 (1986).

Annotator's note. Since § 31-15-707 is similar to former § 31-12-101 prior to the 1975 repeal and reenactment of this title, and laws

antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Under subsection (1)(b), municipalities may either construct their own system of water works, or may grant a franchise therefor to a private company. *Donahue v. Morgan*, 24 Colo. 389, 50 P. 1038 (1897).

Applied in *Greene v. City of Loveland*, 51 Colo. 593, 119 P. 622 (1911); *City of Colo. Springs v. Pikes Peak Hydro-Electric Co.*, 57 Colo. 169, 140 P. 921 (1914); *City of Thornton v. Pub. Utils. Comm'n*, 157 Colo. 188, 402 P.2d 194 (1965).

II. WATER, GAS, AND ELECTRIC WORKS.

Primary object of subsection (1)(a) is to permit the inhabitants of towns and cities to secure an adequate supply of pure water, a paramount necessity more important than all other public utilities and absolutely necessary for the sustenance of life, the preservation of health, and the protection of property. The general assembly desired to invest the people, who were themselves to bear the burdens of the expense, with every power necessary to supply this imperative want, but the general assembly itself could not determine and fix upon some one invariable mode or manner by which this supply was to be obtained, for the obvious reasons that too many conditions were to be considered; that what would be proper, necessary, and entirely satisfactory at one town would be entirely impracticable in another, and the inhabitants of one municipality might feel perfectly able to supply their own wants, while those of another might feel wholly unable to assume this burden. *Thomas v. City of Grand Junction*, 13 Colo. App. 80, 56 P. 665 (1899).

Scope of city council's powers. From subsections (1)(a) and (1)(b) and § 31-15-708 (1)(a), it will be seen that the city council has had plenary authority to manage and control the water system and all the property of the city, and to distribute and apply its water not only to ordinary municipal uses, but to "irrigation and other purposes". *Pikes Peak Power Co. v. City of Colo. Springs*, 105 F. 1 (8th Cir. 1900).

Discretionary power. Subsection (1)(a) was intended to vest, and does vest in the authorities of cities and towns, entire discretion as to the use of any and all of the means specified in the statute to supply the city or town with water, and the fact that a city or town has granted to a private party or corporation a franchise to construct waterworks to supply the city or town does not preclude the city or town from afterwards constructing waterworks of its own. *Thomas v. City of Grand Junction*, 13 Colo. App. 80, 56 P. 665 (1899).

Antitrust statute not violated. City ordinance requiring permit to construct or operate a natural gas pipeline within city was a foreseeable consequence of the power granted municipalities by this section to acquire gas distribution systems and was shielded from antitrust liability under the state action exemption. *Sterling Beef Co. v. Ft. Morgan*, 810 F.2d 961 (10th Cir. 1987).

The operation of an electric plant by a town is the performance of a municipal function specifically authorized by subsection (1)(a). *Holyoke v. Smith*, 75 Colo. 286, 226 P. 158 (1924); *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926); *Cook v. City of Delta*, 100 Colo. 7, 64 P.2d 1257 (1937).

Subsection (1)(a) expressly reserves the right of the city or town to condemn. *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

Although an ordinance granting the right to a private corporation to operate a lighting plant in the city by its terms fails to reserve the right to the city to purchase or condemn the plant, nevertheless, the provision of subsection (1)(a) to that effect will be read into and made a part of the ordinance. *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

Inapplicable to private plants. Subsection (1)(a) has no application to electric light plants erected by private parties for their own business purposes; it applies only to waterworks, gas works, and electric light works purchased or erected by cities, or build for cities, under contracts with them, by other parties. *Pikes Peak Power Co. v. City of Colo. Springs*, 105 F. 1 (8th Cir. 1910).

It was not the intention of the general assembly to require the approving vote of the majority of the taxpayers of a city every time its council issued a license to a corporation, partnership, or person to erect or install a gas plant or an electric light plant upon its premises for domestic or business uses. *Pikes Peak Power Co. v. City of Colo. Springs*, 105 F. 1 (8th Cir. 1910).

III. FRANCHISES AND ASSESSMENTS.

The words "as may be agreed upon" used in subsection (1)(d) refer to the authority contained in subsection (1)(c), which leaves the amounts to the unrestricted agreement of the parties, and the intention is to provide a method by which the city might discharge its obligation. *Grand Junction Water Co. v. City of Grand Junction*, 14 Colo. App. 424, 60 P. 196 (1900).

The power of a municipality to levy assessments depends on express provision of charter or statute and the extent to which the power may be exercised is to be determined by the proper construction of such provision. *City of Delta v. Lamb*, 55 Colo. 483, 136 P. 77 (1913).

Reasonable exercise of power to limit compensation required. The general power of the legislative department to regulate the compensation of a corporation for performing public services, in the absence of a contract regulating it, is subject to the limitation that it must be reasonably exercised, and the reasonableness of the regulation is a proper subject of judicial inquiry; but where the corporation rendering the services and the municipality have mutually agreed upon a method for determining such compensation, and the latter has complied therewith, the former may not insist upon its constitutional rights and disregard the contract without showing the unreasonableness or nonenforceability thereof. *Leadville Water Co. v. City of Leadville*, 22 Colo. 297, 45 P. 362 (1896).

Contract for higher fee valid. Under subsection (1)(c), authorizing cities and towns to contract with individuals or companies constructing waterworks, to supply said cities or towns with water and to pay therefor such sum as may be agreed upon between the contracting parties, and subsection (1)(d), providing that if such contract is made, such city or town shall levy each year and cause to be collected a special tax sufficient to pay off the amount agreed to be paid for such water supply, not to exceed three mills on the dollar for any one year, the amount that the city or town may contract to pay is not limited by the limit placed on the amount of special tax that may be levied and collected, and a city or town may contract to pay more than the three-mill levy will cover and pay the deficiency from its general revenue. The failure of a city or town to collect for any one or more years a sufficient sum to discharge its obligation for water rents could not extinguish its liability on the contract. *Grand Junction Water Co. v. City of Grand Junction*, 14 Colo. App. 424, 60 P. 196 (1900).

Amount of levy to pay back rents. Under subsection (1)(d), where a city is indebted to a water company for back rents and no levy has been made for several years to meet such rents, the city may levy a tax to pay such rents in excess of 3 mills provided the levy is not in excess of 3 mills for each year for which no levy was made. *Bowen v. West*, 10 Colo. App. 322, 50 P. 1085 (1897).

Statute of limitations. If an ordinance of a city whereby a water company was permitted to lay water mains on condition that the citizens of the city be permitted to make connections with the mains for domestic supply of water at the prevailing scheduled rates in another city created a perpetual term and was a municipal franchise agreement, the city was foreclosed by

virtue of subsection (1)(c) from asserting its rights, more than 25 years after the passage of the ordinance, against the other city, successor to the properties of the water company. *City of Englewood v. City & County of Denver*, 123 Colo. 290, 229 P.2d 667 (1951).

IV. CONDEMNATION FOR UTILITIES.

Subsection (1)(e) is not unconstitutional by reason of the title of the act being defective, and it applies to plants acquired before, as well as after, its passage. *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

It is the province of the town authorities to determine what property shall be taken and condemned upon which to construct a plant to operate a waterworks system belonging to the town. *Lavelle v. Town of Julesburg*, 49 Colo. 290, 112 P. 774 (1910); *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

Discretionary power conclusive. Under subsection (1)(e) the exercise of discretionary power and judgment of municipal officers, when acting within the scope of their authority, is conclusive unless it clearly appears their action was fraudulent or unreasonable. *Lavelle v. Town of Julesburg*, 49 Colo. 290, 112 P. 774 (1910); *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

A municipality may condemn for public use private property which lies outside of the city limits. *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926); *Colo. Cent. Power Co. v. City of Englewood*, 89 F.2d 233 (10th Cir. 1937).

Applicable to private property. There is no authority extended to the city, in either subsection (1)(d) or § 38-1-102, to condemn property dedicated to public use. Both statutes relate to private property, and the authority given under subsection (1)(d) to cities and towns for condemnation for private property is regulated by the laws prescribed for the condemnation for real estate, which is clearly and unmistakably set out in § 38-1-102. *Beth Medrosh Hagodol v. City of Aurora*, 126 Colo. 267, 248 P.2d 732 (1952).

Take only necessities and reimburse. Where a city, for public purposes, condemns a lighting plant of a private corporation, it has to take only such portions of the system as its necessities required, reimbursing the corporation for damages to the residue. *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

The compensation for land taken under subsection (1)(e) is to be paid by the town. *Lavelle v. Town of Julesburg*, 49 Colo. 290, 112 P. 774 (1910).

31-15-708. Water and water systems. (1) The governing body of each municipality has the power:

(a) To construct public wells, cisterns, and reservoirs in the streets and other public and

private places within the municipality or beyond the limits thereof for the purpose of supplying the same with water, to provide proper pumps and conducting pipes or ditches, to regulate the distribution of water for irrigating and other purposes, and to levy an equitable and just tax upon all consumers of water for the purpose of defraying the expense of such improvements;

(b) (I) To take water in sufficient quantity, for the purpose provided in paragraph (a) of this subsection (1), from any stream, creek, gulch, or spring in this state. If the taking of such water in such quantity materially interferes with or impairs the vested right of any person residing upon such creek, gulch, or stream or doing any milling or manufacturing business thereon, the governing body shall first obtain the consent of such person or acquire the right of domain by condemnation as prescribed by law and make full compensation or satisfaction for all the damages thereby occasioned to such person.

(II) When it is deemed necessary by any municipality to enter upon or take private property for any of the uses set forth in this section, the property shall be examined and appraised and the damages thereon assessed. The proceedings shall be in all respects the same as provided by articles 1 to 7 of title 38, C.R.S., for the taking of private property for public or private use.

(c) To regulate the water supply used in said municipality for domestic or household purposes and to prohibit and condemn the use of any and all surface wells and the waters thereof for domestic or household purposes when the same are found injurious to the health of said municipality or of the inhabitants thereof;

(d) To supply water from its water system to consumers outside the municipal limits of the municipality and to collect such charges upon such conditions and limitations as said municipality may impose by ordinance.

Source: L. 75: Entire title R&RE, p. 1117, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For comment, "Water: State-wide or Local Concern? City of Thornton v. Farmers Reservoir & Irrigation Co.", see 56 Den. L.J. 625 (1979).

Annotator's note. Since § 31-15-708 is similar to former § 31-12-101 (39) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Denver authorized to provide water to users outside boundaries. Subsection (1)(d) necessarily provides that Denver has the power to appropriate water for such purposes. City and County of Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985).

Operation and maintenance of water facilities power. The general assembly has empowered municipalities to operate and maintain water facilities for the benefit of users within and without their territorial boundaries. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

The right of a city to divert water for the use of its inhabitants is not superior to the

right of an individual, or a farming community, to divert water for domestic or other purposes, in the sense that the city may take water for that purpose from those who have previously appropriated it for the same, or some other, beneficial use, without compensating the senior appropriators. Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908).

And a city or town cannot take water for domestic purposes which have been previously appropriated for some other beneficial purpose by virtue of this section without fully compensating the owner. Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908).

Sale of water. The general assembly has specifically defined selling water by a municipality both within and without its territorial boundaries to be a proper exercise of its powers. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Subsection (1)(d) and the 1913 public utility act are not inconsistent, for the act did not expressly or impliedly repeal this section. City of Englewood v. City & County of Denver, 123 Colo. 290, 229 P.2d 667 (1951).

Applied in *Strickler v. City of Colo. Springs*, 16 Colo. 61, 26 P. 313 (1891); *City of Thornton*

v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978).

31-15-709. Sewers and sewer systems. (1) The governing body of each municipality has the power:

(a) To construct and keep in repair culverts, drains, sewers, water mains, and cesspools and to regulate their use; and to assess, either in whole or in part, the cost of the construction of sewers, water mains, and drains upon the lots or lands adjacent to and opposite the improvements in proportion to the frontage of such lots or lands abutting upon the street in which such sewer, water main, or drain is to be laid. The cost of such sewer, water main, or drain at street intersections or crossings shall be wholly paid for by the municipality. The benefit to the public generally, if any, shall be determined by ordinance and shall be assessed against such municipality, and the balance shall be assessed against the lots or lands and the owners thereof according to the frontage.

(b) To establish a system of sewerage and for that purpose to divide the municipality into districts; to impose a special assessment or tax to defray the expense of constructing such sewers upon private property within such district or upon the lots or lands adjacent to or abutting upon the street where said sewer is laid; to compel the owners of any buildings located in said district and on blocks abutting on any established sewer to connect with such sewer; to prohibit the keeping or maintaining of any vault, closet, privy, or cesspool within said district or within four hundred feet of any established sewer; and to regulate the construction, maintenance, and use of all vaults, closets, privies, and cesspools within the municipal limits and not within said prohibited districts or in proximity to an established sewer.

Source: L. 75: Entire title R&RE, p. 1118, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-12-101 (22) and 31-15-301 (1)(f) as they existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-709 is similar to former §§ 31-12-101 (22) and 31-15-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Exercise of legislative police power. A city council, in establishing a sewer district, exercises a legislative power for police purposes, having its origin in the taxing power. *Wolff v. City of Denver*, 20 Colo. App. 135, 77 P. 364 (1904).

Subsection (1)(a) limits the powers of municipal corporations in relation to sewers to those expressed in said paragraph and an ordinance purporting to grant to a private person an exclusive right and privilege to construct and operate a system of sewers within the limits of a municipal corporation and to collect from all persons using the same a reasonable annual compensation for connecting therewith is absolutely void, and one constructing a sewer system under such ordinance cannot maintain an action against an inhabitant of the city for the use of the same. *Weaver v. Canon Sewer Co.*, 18 Colo. App. 242, 70 P. 953 (1902).

Ownership and control of sewers, except in the municipality, would be inconsistent with

the terms of subsection (1)(a). *Weaver v. Canon Sewer Co.*, 18 Colo. App. 242, 70 P. 953 (1902).

Judgment of city council conclusive. The judgment of the city council as to the extent of a sewer district and the properties to be included therein, when acting within the scope of the authority conferred by subsection (1)(a), is conclusive, unless it clearly appears that their action was fraudulent or unreasonable, and whoever assails the action of the city council has the burden of proof. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

Power to subject outside lands to eminent domain not implied. Under subsection (1)(a), the giving of the right to construct sewers does not also grant authority to subject outside lands to the operation of eminent domain, because such power is not implied because there is nothing in our statutes to even indicate, much less imply, such purpose. *Mack v. Town of Craig*, 68 Colo. 337, 191 P. 101 (1920).

Subsection (1)(b) delegates to the city four general powers: First, to establish a sewer system and divide the city into sewer districts; second, to compel owners of buildings in a sewer district, or within 400 feet of a sewer, to connect with the sewer; third, to prohibit privies

within a sewer district; and fourth, to regulate, within the city limits, privies not within a sewer district. *Gault v. City of Ft. Collins*, 57 Colo. 324, 142 P. 171 (1914).

Subsection (1)(b) confers power to compel owners of buildings to connect them with the sewer. *Gault v. City of Ft. Collins*, 57 Colo. 324, 142 P. 171 (1914).

But no power is given in subsection (1)(b) to compel parties to connect outside vaults or privies with the sewer. *Gault v. City of Ft. Collins*, 57 Colo. 324, 142 P. 171 (1914).

The power regarding privies is to prohibit them, within the sewer district, or within 400 feet of a sewer, not to compel them to connect, if not within the prohibited district, the power then is to regulate the construction, maintenance,

and use of privies. *Gault v. City of Ft. Collins*, 57 Colo. 324, 142 P. 171 (1914).

Liability for ministerial acts. Whenever the duty as respects drains and sewers ceases to be legislative or judicial or quasi-judicial, and becomes ministerial, then, although there be no statute giving the action, a municipal corporation is liable to the same extent and on the same principle as a private person or corporation would be under like circumstances for the negligent discharge or the negligent omission to discharge such duty, resulting in an injury to others. *McCord v. City of Pueblo*, 5 Colo. App. 48, 36 P. 1109 (1894).

Applied in *City of Pueblo v. Robinson*, 12 Colo. 593, 21 P. 899 (1889).

31-15-710. Water pollution control. (1) The governing body of each municipality has the power:

(a) To provide for the cleansing and purification of water, watercourses, and canals and the draining or filling of ponds on private property when necessary to prevent or abate nuisances; and for the purpose of aiding in the prevention and abatement of water pollution all municipalities are authorized:

(I) To apply for and to accept grants or loans or any other aid from the United States or any agency or instrumentality thereof under any federal law in force;

(II) To construct, reconstruct, lease, improve, better, and extend sewerage facilities and sewage treatment works wholly within or wholly without the municipality or partially within and partially without the municipality;

(III) To issue its general obligation bonds or other general obligations for said purpose pursuant to and within the limitations prescribed by section 31-15-302 (1) (d) and to issue its revenue bonds or obligations for such purpose pursuant to law;

(IV) To provide that such bonds or obligations or any part thereof may be sold to the state of Colorado, the United States, or any agency or instrumentality of either at private sale and without advertisement;

(V) To cooperate with other local public bodies and with state agencies and institutions by contract for the joint construction and financing of sewerage facilities and sewage treatment works and the maintenance and operation thereof;

(VI) To enter into joint operating agreements with industrial enterprises and to accept gifts or contributions from such industrial enterprises for the construction, reconstruction, improvement, betterment, and extension of sewerage facilities and sewage treatment works. When determined by its governing body to be in the public interest and necessary for the protection of public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such industrial establishment. The powers set forth in this subparagraph (VI) may only be exercised after approval of the state board of health.

Source: L. 75: Entire title R&RE, p. 1118, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-101 (24) as it existed prior to 1975.

31-15-711. Other public improvements. (1) The governing body of each municipality has the power:

(a) To deepen, widen, dock, cover, wall, alter, or change the channel of watercourses;

(b) To establish markets and market houses and provide for the regulation and use thereof. No charge or assessments of any kind shall be levied on any truck or other vehicle, or on the owner thereof, bringing produce or provisions to any of the markets in the municipality, for standing in or occupying a place in any of the marketplaces of the municipality or in the streets contiguous thereto on market days and evenings previous thereto. The governing body has full power to prevent forestalling, to prohibit or regulate huckstering in the markets, and to prescribe the kind and description of articles which may be sold and the stands and places to be occupied by the vendors. The governing body may authorize the immediate seizure, arrest, or removal from the markets of any person violating its regulations as established by ordinance, together with any article of produce in his possession, and additionally may authorize the immediate seizure and destruction of tainted or unsound meat or other provisions.

(c) To establish and operate at public expense municipal slaughterhouses and cold storage plants where animals may be slaughtered at the cost of labor and other necessary expense, held in cold storage, and delivered to the owners or sold. Any municipality establishing and operating such slaughterhouse shall charge a reasonable fee for the slaughter of animals and the storage of meat, and said fees shall be used to pay the necessary expenses of conducting the business.

(d) To provide for and regulate public scales and to require the vendors of coal, hay, and like articles of merchandise, when requested to do so by the purchaser of such articles, to weigh the same upon the public scales before delivering the same to their customer or vendees;

(e) To erect, establish, and maintain public hospitals, medical dispensaries, and other suitable places of relief. No such hospitals, medical dispensaries, or other suitable places of relief shall be established, acquired, or erected by a municipality unless the question is submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1) (d) and unless such municipality does not have a general licensed medical and surgical hospital in operation within its municipal limits within the twelve months immediately preceding said election.

(f) To provide by ordinance for the construction, maintenance, and operation of public parking facilities, buildings, stations, or lots and to pay for their cost by general tax levy or otherwise or by the issuance of bonds of such municipality, which bonds may be retired by revenues assessed and collected as rentals, fees, or charges from the operation of such facilities or from parking meter rentals or charges;

(g) To develop, maintain, and operate mass transportation systems, either individually or jointly with any government, county, or other political subdivision, pursuant to the provisions of part 2 of article 1 of title 29, C.R.S.;

(h) To construct and keep in repair bridges, viaducts, and tunnels and regulate their use and to establish within the municipal limits all toll bridges and ferries, license and regulate the same, and, from time to time, fix tolls thereon;

(i) To construct, maintain, and operate safety measures that are necessary to allow the municipality to restrict the sounding of locomotive horns at highway-rail grade crossings in compliance with 49 U.S.C. sec. 20153, as amended, and the applicable rules of the federal railroad administration. The governing body of the municipality shall construct, maintain, and operate the safety measures in accordance with the provisions of section 40-4-106, C.R.S., and the standards of safety prescribed by the public utilities commission pursuant to section 40-29-110, C.R.S.

(j) To provide in the municipal budget for programs that support education and outreach on environmental sustainability and for financing capital improvements for energy efficiency retrofits and the installation of renewable energy fixtures, as defined in section 30-11-107.3, C.R.S., for private residences and commercial property within the municipality but that do not exempt the municipality from the requirements of any other statute;

(k) To encourage homeowners to participate in utility demand-side management programs where applicable.

Source: **L. 75:** Entire title R&RE, p. 1119, § 1, effective July 1. **L. 2006:** (1)(i) added, p. 348, § 3, effective August 7. **L. 2008:** (1)(j) and (1)(k) added, p. 1299, § 20, effective May 27.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. Since § 31-15-711 (1)(a) is similar to former § 31-12-101 (23) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Discretionary power in subsection (1)(a). The privilege, the right, the power given under subsection (1)(a) is given to be exercised or not, at the discretion of the city, and there is nothing obligatory; no compulsory legislation. *McCord v. City of Pueblo*, 5 Colo. App. 48, 36 P. 1109 (1894).

Contractual work ministerial. When a corporation has adopted a plan and enters upon the

construction of a public work, the work is then ministerial, and the plan must be followed in detail, and any departure or negligence causing damage to an individual furnishes a cause of action. *McCord v. City of Pueblo*, 5 Colo. App. 48, 36 P. 1109 (1894).

A municipal corporation is liable for injuries caused by negligence in the construction of improvements under subsection (1)(a) to the same extent a private person or corporation would be, under like circumstances, for the negligent omission to discharge such duty resulting in an injury to others. *McCord v. City of Pueblo*, 5 Colo. App. 48, 36 P. 1109 (1894).

31-15-711.5. Municipal jails - sanitary standards. Any municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1) (j), that begins operations on or after August 30, 1999, may establish sanitary standards for such jail relating to space requirements, furnishing requirements, required special use areas or special management housing, and environmental condition requirements, including but not limited to standards pertaining to light, ventilation, temperature, and noise level. If a municipality does not adopt standards pursuant to this section, the jail operated by or under contract with the municipality shall be subject to the standards adopted by the department of public health and environment pursuant to section 25-1.5-101 (1) (i), C.R.S. In establishing such standards, the municipality is strongly encouraged to consult with national associations that specialize in policies relating to correctional institutions.

Source: **L. 2000:** Entire section added, p. 803, § 3, effective May 24. **L. 2003:** Entire section amended, p. 715, § 57, effective July 1.

31-15-712. Public improvements by contract - cities. All work done by the city in the construction of works of public improvement of five thousand dollars or more shall be done by contract to the lowest responsible bidder on open bids after ample advertisement. It shall be unlawful for any person to divide a works of public improvement construction into two or more separate projects for the sole purpose of evading or attempting to evade the requirement that works of public improvement construction costing five thousand dollars or more be submitted to open bidding, unless the total cost of any such project would be less if divided into two or more projects than if submitted to open bidding as one project. If no bids are received or if, in the opinion of the city council, all bids received are too high, the city may enter into negotiations concerning the contract. No negotiated price shall exceed the lowest responsible bid previously received. The city is not required to advertise for and receive bids for such technical, professional, or incidental assistance as it may deem wise to employ in guarding the interest of the city against the neglect of contractors in the performance of such work.

Source: **L. 75:** Entire title R&RE, p. 1120, § 1, effective July 1. **L. 79:** Entire section amended, p. 1186, § 1, effective May 18.

Editor's note: This section is similar to former § 31-15-103 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-712 is similar to former § 31-15-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

And is not unconstitutional because not germane to the title of the act. *Dalby v. City of Longmont*, 81 Colo. 271, 256 P. 310 (1927).

Public policy. The general assembly has by this mandatory section declared as public policy of this state that all work in the construction of public improvements, without reference to its character shall be by express contract, upon open bids, and that the superintending of the construction of a public building is not an exception. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

Intent of the general assembly was to require competitive bidding for only the construction work done in public improvement contracts. *Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981).

This section refers to all cities. *Dalby v. City of Longmont*, 81 Colo. 271, 256 P. 310 (1927).

This section provides for a contract to be let to the lowest responsible bidder on open bids after advertisement. *Deti v. City of Durango*, 136 Colo. 272, 316 P.2d 579 (1957).

And a public improvement to be paid out of revenues derived from taxes must be constructed and the contract let to the lowest responsible bidder. *Deti v. City of Durango*, 136 Colo. 272, 316 P.2d 579 (1957).

For protection of public. This section was not made for the benefit of the city council, nor of contractors, but for the protection of the public against both. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

Secures competition. It cannot be doubted that the true intent of the act is to secure to the city the benefit and advantage of fair and just competition between bidders, and at the same time close, as far as possible, every avenue to favoritism and fraud in its varied forms. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

Mandatory. A provision in a charter, statute, or ordinance requiring a contract to be let by competitive bidding is mandatory. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

A broad discretion in the selection among bidders is included within a reasonable construction of this section as to "responsible" bidders, because the word "responsible" is not limited to the meaning of pecuniary liability or responsibility, but includes as well skill, experi-

ence, and integrity; and if the character of the work be such that only one person can be found competent to perform the services, there is no reason to believe that the courts will interfere with the exercise in good faith by a city council of its selection upon the bids submitted. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

Unless this section is complied with, the contract is void. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

Where there is no opportunity afforded for submitting competitive bids on a common standard of comparison, both as to quantities and qualities of the many and varied types of materials called for, there is a violation of this section. *Colo. Cent. Power Co. v. Municipal Power Dev. Co.*, 1 F. Supp. 961 (D. Colo. 1932).

Nontechnical employment contract void for lack of bidding. Under this section a contract of a city to employ a person for nontechnical work is invalid where no bids are asked for. *Dalby v. City of Longmont*, 81 Colo. 271, 256 P. 310 (1927).

Lack of formalities cuts off action against municipality. Services rendered in the construction of a public improvement under a contract entered into without the formalities required by this section afford no action against the municipality, no matter how valuable such services may be, and through the corporation retains the results thereof. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

There is no apparent necessity for exempting superintendents of construction from the statutory rule, because it is a matter of common knowledge among people who deal in such matters that architects and engineers of unquestioned ability and high reputation frequently, if not usually, offer their services as superintendents of construction — upon a percentage of the contract price, or upon some other basis. *Johnson-Olmsted Realty Co. v. City & County of Denver*, 89 Colo. 250, 1 P.2d 928 (1931).

This section has no application to such work as is performed by salaried officers under a statute or charter which provides that such officers as the city engineer or his assistants and deputies shall supervise and superintend, because the statute and charters are coexistent and not conflicting. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914).

Nor to certain technical, etc., jobs. The general assembly did not intend, by the enactment of this section, that a municipality should advertise for and receive bids for such technical, professional, or incidental assistance as it may deem wise to employ in guarding the interest of

the city against the neglect of contractors in the performance of their undertakings. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914)(concurring opinion).

By this section the general assembly did not contemplate as coming within its provisions as to competitive bidding after advertisement, any person employed by the city to render services calling for special skill, knowledge, or experience. *City of Colo. Springs v. Coray*, 25 Colo. App. 460, 139 P. 1031 (1914)(concurring opinion).

Contracts with legal counsel, financial advisors, and banks are not subject to the competitive bidding requirement. *Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981).

Procurement violative of section. Where a city adopted without question the very sketchy and incomplete specifications submitted by a development company and the development company was in reality the only bidder and obtained the contract, such procedure not only violates this section requiring the work to be given to the "lowest responsible bidder" after "ample advertisement", but is contrary to the plainest dictates of public business practice. *Colo. Cent. Power Co. v. Municipal Power Dev. Co.*, 1 F. Supp. 961 (D. Colo. 1932).

Effect of Denver charter provisions. Under pertinent Denver charter provisions, contracts for architectural services in connection with the erection of public buildings must be awarded under competitive bidding, otherwise they are void, and the contractor cannot recover for services rendered either under his contract or on quantum meruit. *City & County of Denver v. Moorman*, 95 Colo. 111, 33 P.2d 749 (1934).

Award of contract when a mistake in the formation of the contract exists. This section does not by its terms require a municipality to award a construction contract to the lowest bidder when such bidder inadvertently makes a substantial computational error. *Powder Horn Constructors v. City of Florence*, 754 P.2d 356 (Colo. 1988).

No private cause of action for the recovery of damages by a disappointed bidder exists where such bidder failed to show that it was within the class of persons for whose benefit the statute was created and where there is no indication in the statutory language that the general assembly intended to create a private cause of action. *L & M Enterprises v. City of Golden*, 852 P.2d 1337 (Colo. App. 1993).

Applied in *Corn Constr. Co. v. Aetna Cas. & Sur. Co.*, 295 F.2d 685 (10th Cir. 1961).

31-15-713. Power to sell public works - real property. (1) The governing body of each municipality has the power:

(a) To sell and dispose of waterworks, ditches, gasworks, geothermal systems, solar systems, electric light works, or other public utilities, public buildings, real property used or held for park purposes, or any other real property used or held for any governmental purpose. Before any such sale is made, the question of said sale and the terms and consideration thereof shall be submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1) (d).

(b) To sell and dispose of, by ordinance, any other real estate, including land acquired from the federal government, owned by the municipality upon such terms and conditions as the governing body may determine at a regular or special meeting. With respect to such land acquired from the federal government, which land is located within or contiguous to the municipality, such terms and conditions shall be designed to prevent speculation and assure that benefits accrue to the municipality when the sale or disposition of said land is for municipal expansion or residential purposes. Nothing in this paragraph (b) or in section 31-15-101 (1) shall be construed to invalidate the acceptance of federal land by a municipality or the sale and disposal by a municipality of land acquired from the federal government, where such acceptance or disposal was consummated prior to April 1, 1976, and municipal authority for any such acceptance or disposal is hereby confirmed.

(c) To lease any real estate, together with any facilities thereon, owned by the municipality when deemed by the governing body to be in the best interest of the municipality. Any lease for a period of more than one year shall be by ordinance. Any lease for one year or less than one year shall be by resolution or ordinance.

(2) All leases and deeds of conveyance executed and acknowledged by the proper officers of such municipalities and purporting to have been made pursuant to the provisions of this section shall be deemed prima facie evidence of due compliance with all the requirements of this section.

(3) Any town holding title to any land settled and occupied as the site of such town pursuant to and by virtue of the act of congress entitled "An Act for the relief of the inhabitants of cities and towns upon the public lands.", approved March 2, 1867, 43 U.S.C.

sections 718-723, and an act of congress entitled "An Act respecting the limits of reservations for town sites upon the public domain."; 43 U.S.C. sections 725-727, and any amendments thereto may dispose of and convey the title to such land in the manner provided in this section.

Source: **L. 75:** Entire title R&RE, p. 1120, § 1, effective July 1. **L. 76:** (1)(b) amended, p. 697, § 2, effective April 6.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

(2) 43 U.S.C. secs. 718-723 and 725-727, referenced in subsection (3), were repealed, effective October 21, 1976. A savings provisions was contained in the act repealing said sections, stating "repeal by Pub. L. 94-579 not to be construed as terminating any valid lease, permit, patent . . . existing on Oct. 21, 1976", and said references have been left in this section for historical reference.

ANNOTATION

Annotator's note. Since § 31-15-713 is similar to former § 31-12-102 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The only power formerly possessed by a town over property was the power "to sell and dispose of" it and nothing short of a deed of conveyance was a compliance with the statute because the term "sell and dispose of" as used in this statute meant to get rid of, to finish with, to fully relinquish all interest in the property, to transfer and convey the same. *Centennial Props., Inc. v. City of Littleton*, 154 Colo. 191, 390 P.2d 471 (1964); *City of Idaho Springs v. Golden Sav. & Loan Ass'n*, 29 Colo. App. 119, 480 P.2d 847 (1970).

But a city could properly convey real property, yet retain a possibility of reverter to it, because possibility of reverter is merely the possibility that the land will come back to the grantor, and the holder of a bare possibility of reverter did not have a present "vested" interest or "estate" in the land. *City of Idaho Springs v. Golden Sav. & Loan Ass'n*, 29 Colo. App. 119, 480 P.2d 847 (1970).

Subsections (1)(a) and (1)(b) demonstrate a legislative intent to distinguish between property held or used for any governmental purpose, the sale of which must be approved by election, and any other real estate, which may be sold by ordinance. Although town held subject property for several years, it did not use or hold it for any governmental purpose. Although town entered into lease and option agreement in

the context of relocating town hall to the subject property, the contingencies for construction failed to materialize. Therefore, the applicable statutory provision was subsection (1)(b), which applies to "any other real estate", and not subsection (1)(a), which applies to property held for "any governmental purpose". Because town did not use or hold subject property for any governmental purpose, no election was required for the approval of its sale. *New Stanley Assocs., LLLP v. Town of Estes Park*, 200 P.3d 1118 (Colo. App. 2008).

Consideration of potential uses for subject property, without any dedication to a particular use, is not a governmental purpose within the meaning of subsection (1)(a). Moreover, town's retention of subject property for the purpose of using its sale proceeds for construction of infrastructure for a performing arts center site is not a governmental purpose. The relevant statutory provisions address the use or purpose for which real estate is held and not the use or purpose of the proceeds from its sale. Further, appropriation of public funds for the acquisition of subject property does not mean the property is held for a governmental purpose. The general assembly has recognized two types of property in subsection (1), and the distinction is not based on the method of appropriation of funds for the property. Equating the acquisition of property by means of appropriated municipal funds pursuant to § 31-15-302 with "any governmental purpose" under subsection (1)(a) would render meaningless the distinction between subsections (1)(a) and (1)(b). *New Stanley Assocs., LLLP v. Town of Estes Park*, 200 P.3d 1118 (Colo. App. 2008).

31-15-714. Oil and gas leases - unit agreements. (1) The governing body of each municipality has the power:

(a) To lease any real estate or any interest therein owned by the municipality for oil and gas exploration, development, and production purposes, upon such terms and conditions as may be prescribed and contracted by the governing body in the exercise of its best judgment

and as such governing body deems to be in the best interests of the municipality. Any such lease of oil and gas rights shall be for a term not to exceed ten years and as long thereafter as oil or gas is produced and shall provide for a royalty of not less than twelve and one-half percent of all oil or gas produced, saved, and marketed or the equivalent market value thereof, which royalty may be reduced proportionately under appropriate provision in such lease if the interest of the municipality is less than a full interest in the land or oil and gas rights in the land described in such lease. When, in the opinion of the governing body and because of the size, shape, or current use of any tract of real estate owned by said municipality, the best interest of the municipality so requires, any such lease of such tract may provide that no drilling shall be conducted on the land covered thereby, in which case such lease shall be for a term not to exceed ten years and so long thereafter as the municipality may share in royalties payable on account of production of oil or gas from lands adjacent to such tract so leased.

(b) To enter into, on behalf of the municipality, when deemed by the governing body to be in the best interest of the municipality, any agreement providing for the pooling, unitization, or consolidation of acreage covered by any oil and gas lease executed by such municipality with other acreage for oil and gas exploration, development, and production purposes and providing for the apportionment or allocation of royalties among the separate tracts of land included in such unit or pooling agreement on an acreage or other equitable basis and, by such agreement, with the consent of the lessee under such lease, to change any of the provisions of any such lease issued by such municipality, including the term of years for which such lease was originally granted and any drilling requirements contained therein, in order to conform such lease to the terms and provisions of such unit or pooling agreement and to facilitate the efficient and economic production of oil and gas from the unit lands.

(2) All leases of oil and gas or rights therein and all unit agreements relating to or dealing with oil and gas and containing provisions similar to those set forth in this section affecting municipal lands made or entered into by any municipality prior to April 16, 1953, acting by its governing body, are hereby confirmed, validated, and declared to be legal and valid in all respects.

Source: L. 75: Entire title R&RE, p. 1121, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-104 as it existed prior to 1975.

31-15-715. Legislative declaration concerning landfill gas. The general assembly hereby declares that landfill gas constitutes a hazard to the health, welfare, and safety of the people of this state, whether such gas has accumulated as a result of a public or private landfill operation, and that the extraction of landfill gas will ameliorate this dangerous condition, and further declares that the development of landfill gas will provide a valuable, alternate energy resource to the citizens of this state. In order to diminish this hazard and utilize this energy resource, the powers of municipalities are hereby expanded to authorize landfill gas exploration, development, and production; the financing thereof; the marketing and sale of landfill gas to any public or private person or entity; and the municipal use thereof for any purpose.

Source: L. 80: Entire section added, p. 653, § 5, effective July 1.

31-15-716. Municipal authority relating to landfill gas. (1) To accomplish the purposes specified in section 31-15-715, municipalities are granted the following powers:

(a) To acquire, hold, use, transfer and convey any real property or any interest therein, in fee or a leasehold interest, for purposes of landfill gas exploration, production, and development;

(b) To engage in any and all activities respecting the exploration, development, production, distribution, marketing, and sale of landfill gas to any person or public or private entity, or for municipal uses;

(c) (I) To acquire by gift, purchase, or condemnation necessary easements and rights-of-way, for ingress and egress and for the installation of facilities related to collection and distribution of landfill gas; except that the power of condemnation granted in this paragraph (c) shall not extend to acquisition of landfill gas in place nor shall such power be available to a municipality until the municipality has entered into a contract with the owner of such landfill gas for the development, extraction, and purchase of such landfill gas, and except that such condemnation shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use or upon which landfill gas abatement or recovery facilities have been placed in operation and shall be limited to the maximum reasonable width or area necessary to install, operate, and maintain such rights-of-way, ingress and egress, and collection and distribution facilities.

(II) Any interest in real property acquired by condemnation pursuant to this paragraph (c) shall terminate upon the completion of use of such real property, or any interest therein, for landfill gas operations, and any such condemnation shall be in the manner provided in part 1 of article 6 of title 38, C.R.S.

(d) To enter into contracts, including intergovernmental contracts, and to perform all acts necessary to produce, distribute, and market landfill gas;

(e) To issue general obligation bonds, after approval of the qualified electors of the municipality, for purposes of financing the exploration, development, production, distribution, and marketing of landfill gas;

(f) To issue revenue bonds authorized by action of the city council or comparable legislative body, without the approval of the qualified electors of the municipality, for purposes of financing the exploration, development, production, distribution, and marketing of landfill gas. Such revenue bonds shall be issued in the manner provided in part 4 of article 35 of this title for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the municipality, in its discretion, shall determine. Such revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(2) For the purposes of this section, "landfill-generated methane gas" means those gases resulting from the biological decomposition of landfilled solid wastes, including methane, carbon dioxide, hydrogen, and traces of other gases, and shall be referred to in this part 7 as "landfill gas".

Source: L. 80: Entire section added, p. 653, § 5, effective July 1.

Cross references: For county provisions concerning landfill gas, see §§ 30-11-306 and 30-11-307.

PART 8

LONG-TERM RENTALS AND LEASEHOLDS

31-15-801. Agreements - ordinance - financing. In order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, any municipality is authorized to enter into long-term rental or leasehold agreements, but in no event shall this be construed as authorizing the use by any municipality of leasehold agreements to finance residential housing. Such agreements may include an option to purchase and acquire title to such leased or rented property within a period not exceeding the useful life of such property and in no case exceeding thirty years. Each such agreement and the terms thereof shall be concluded by an ordinance duly enacted by the municipality. No such ordinance shall take effect before thirty days after its passage and publication. The governing body of any municipality is authorized to provide for the payment of said rentals from a general levy imposed upon both personal and real property included within the

boundaries of the municipality; by imposing rates, tolls, and service charges for the use of such property or any part thereof by others; from any other available municipal income; or from any one or more of the said sources. The obligation to pay such rentals shall not constitute an indebtedness of said municipality within the meaning of the constitutional limitations on contracting of indebtedness by municipalities.

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-501 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-801 is similar to former § 31-12-501 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Section 22-30-124 and this section make it clear that the school board had the power "to

enter into long term rental or leasehold agreements" which should not exceed 30 years in duration. Bd. of Dirs. of Summit Sch. Dist. No. RE-1 v. Jeffrey, 149 Colo. 579, 370 P.2d 447 (1962).

Applied in Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

31-15-802. Tax exemption. Property acquired or occupied pursuant to this part 8 shall be exempt from taxation so long as used for authorized governmental or proprietary functions of municipalities.

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-502 as it existed prior to 1975.

31-15-803. Enforceability. Purchase or leasehold agreements entered into by any municipality pursuant to this part 8 shall be enforceable in any court of competent jurisdiction.

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-503 as it existed prior to 1975.

PART 9

MISCELLANEOUS POWERS

31-15-901. Miscellaneous powers. (1) The governing body of each municipality has the power:

(a) To appropriate money in an amount not exceeding six-tenths of one mill on the valuation for assessment for the purpose of giving public concerts and entertainments by such municipality;

(b) To appropriate moneys for the purpose of advertising or marketing the business, social, and educational advantages, the natural resources, and the scenic attractions of such municipality;

(c) To aid and foster, by all lawful measures, associated charity organizations by appropriations and to grant the use of suitable rooms in the municipal buildings. No portion of any money so appropriated shall be given or loaned to any society, corporation, association, or institution that may be wholly or in part under sectarian or denominational control.

(d) Repealed.

Source: **L. 75:** Entire title R&RE, p. 1122, § 1, effective July 1. **L. 93:** (1)(d) added, p. 347, § 5, effective April 12. **L. 98:** (1)(c) amended, p. 334, § 1, effective April 17; (1)(d) repealed, p. 826, § 42, effective August 5. **L. 2008:** (1)(b) amended, p. 5, § 2, effective July 1.

Editor's note: This section is similar to former §§ 31-12-101 and 31-15-201 as they existed prior to 1975.

ANNOTATION

The power to appropriate moneys for the purpose of advertising under subsection (1)(b) does not include the power to appropriate money for marketing. Marketing is a broader

term than advertising. *Estes Park Chamber of Commerce v. Town of Estes Park*, 199 P.3d 11 (Colo. App. 2007).

31-15-902. Deferred compensation plans. (1) Notwithstanding any other provision of law, a municipality and its employees may participate in the deferred compensation plan of the international city management association retirement corporation, a nonprofit corporation approved by the United States internal revenue service for establishing a retirement plan. No statute restricting the deposit or investment of municipal money shall be applicable to moneys in such plan.

(2) In addition to the authority granted in subsection (1) of this section, any municipality may otherwise provide a deferred compensation plan for its employees and may, by contract, agree with an employee to defer all or a part of the employee's salary or wages. Funds of such plan may be used to purchase fixed or variable annuities from any life insurance company duly authorized to do an insurance and annuity business in this state or may otherwise be deposited and invested in accordance with any statute applicable to the deposit or investment of municipal money.

(3) If a municipality participates in or establishes a deferred compensation plan for its employees pursuant to this section and if such plan is in addition to any other pension or retirement plan provided by the municipality, the amount of an employee's deferred compensation shall continue to be counted as part of his total salary or wages for the purpose of computing any other pension or retirement contributions or benefits which are based on total salary or wages.

Source: **L. 77:** Entire section added, p. 1464, § 1, effective May 24.

31-15-903. Legislative declaration - municipalities - new business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation. (1) (a) The general assembly hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the attraction of new private enterprise as well as the retention and expansion of existing private enterprise; that incentives are often necessary in order to attract private enterprise; and that providing such incentives stimulates economic development in the state and results in the creation and maintenance of new jobs.

(b) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who establishes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., in the municipality. In no instance shall any negotiation result in an annual incentive payment or credit that is greater than the amount of taxes levied by the municipality upon the taxable personal property located at or within the new business facility and used in connection with the operation of the new business facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; except that the term of any agreement made or renewed on or after June 3, 2002, may extend to as many as ten years, including the term of any original agreement being renewed.

(2) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section

39-30-105 (7) (c), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., and that is located in the municipality. In no instance shall any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the municipality upon the taxable personal property directly attributable to the expansion, located at or within the expanded facility, and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; except that the terms of any agreement made or renewed on or after June 3, 2002, may extend to as many as ten years, including the term of any original agreement being renewed.

(3) (Deleted by amendment, L. 94, p. 2834, § 4, effective January 1, 1995.)

(4) Any municipality which negotiates any agreement pursuant to the provisions of this section shall inform any county and any school district in which a new business facility would be located or an expanded business facility is located, whichever is applicable, of such negotiations.

(5) Any municipality may adjust the amount of its tax levy authorized pursuant to the provisions of section 29-1-301, C.R.S., or pursuant to a municipal home rule charter, whichever is applicable, by an additional amount which does not exceed the total amount of annual incentive payments or credits made by such municipality in accordance with any agreements negotiated pursuant to the provisions of this section or section 39-30-107.5, C.R.S.

Source: **L. 90:** Entire section added, p. 1455, § 2, effective April 24. **L. 91:** (1) amended and (5) added, p. 724, § 2, effective May 24. **L. 94:** (1)(b), (2), (3), and (5) amended, p. 2834, § 4, effective January 1, 1995. **L. 2002:** (1)(b) and (2) amended, p. 1120, § 4, effective June 3. **L. 2007:** (1)(b) and (2) amended, p. 350, § 5, effective August 3. **L. 2012:** (1)(b) and (2) amended, (HB 12-1029), ch. 61, p. 220, § 4, effective August 8.

Cross references: (1) For similar provisions for school districts and counties, see §§ 22-32-110 and 30-11-123.

(2) In 2012, subsections (1)(b) and (2) were amended by the “Save Colorado Jobs Act”. For the short title and the legislative declaration, see sections 1 and 2 of chapter 61, Session Laws of Colorado 2012.

PART 10

SOLID WASTE-TO-ENERGY INCINERATION SYSTEMS

Cross references: For the calculation by the public utilities commission of avoided cost information prior to construction of a solid waste-to-energy incineration system, see § 40-3-112; for authority for counties to develop solid waste-to-energy systems, see part 9 of article 20 of title 30.

Law reviews: For article, “The Legal Structure and Financing of Waste-to-Energy Projects - Part 1”, see 14 Colo. Law. 574 (1985).

31-15-1001. Legislative declaration. The general assembly hereby finds and declares that methods for the efficient and economical production of usable energy should be achieved whenever possible and that the use of flammable waste material for the conversion of heat into steam, electrical power, or any other form of energy could provide energy in an efficient and economical manner. For such purposes, the provisions of this part 10 are enacted to authorize municipalities to develop this type of energy for their own use and the use of the public.

Source: **L. 83:** Entire part added, p. 1243, § 3, effective May 31.

31-15-1002. Definitions. As used in this part 10, unless the context otherwise requires:

(1) “Solid waste-to-energy incineration system” means the use of flammable waste material as a primary or supplemental fuel for the conversion of heat into steam, electrical power, or any other form of energy.

Source: L. 83: Entire part added, p. 1243, § 3, effective May 31.

31-15-1003. Municipal authority relating to solid waste-to-energy incineration systems. (1) The governing body of any municipality has the power to:

(a) Acquire, hold, use, transfer, and convey any real or personal property for the purpose of developing and operating a solid waste-to-energy incineration system;

(b) Engage in any activities relating to the siting, development, and operation of a solid waste-to-energy incineration system and to the production, distribution, and sale of energy from such system;

(c) Issue revenue bonds authorized by action of the city council or comparable legislative body, without the approval of the qualified electors of the municipality, for purposes of financing the siting and development of a solid waste-to-energy incineration system and the production, distribution, and marketing of energy from such systems. Such revenue bonds shall be issued in the manner provided in part 4 of article 35 of this title for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the municipality, in its discretion, shall determine. Such revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(d) Enter into contracts, including intergovernmental contracts pursuant to section 29-1-203, C.R.S., relating to the acts authorized by this part 10;

(e) Establish such terms and conditions by contract, ordinance, or any other method for the siting, development, and operation of a solid waste-to-energy incineration system and the production, distribution, and sale of energy from such system;

(f) Set, maintain, and revise charges for the disposal of solid waste at a solid waste-to-energy incineration system facility and for the distribution and sale of energy from such system for the purpose of financing the property, facilities, and operation of the system;

(g) Exercise any other powers which are essential in performing the acts authorized by this part 10;

(h) Perform any nonlegislative acts authorized by this part 10 by means of an agent or by contract with any person, firm, or corporation.

Source: L. 83: Entire part added, p. 1243, § 3, effective May 31.

31-15-1004. Department of public health and environment rules. The department of public health and environment may promulgate rules for the engineering design and operation of solid waste-to-energy incineration systems, and any such system shall comply with such rules before beginning operations.

Source: L. 83: Entire part added, p. 1244, § 3, effective May 24. **L. 94:** Entire section amended, p. 2802, § 565, effective July 1.

ARTICLE 16

Ordinances - Penalties

PART 1		31-16-110.	County officers may serve process.
PROCEDURE FOR ADOPTION		31-16-111.	One-year limitation of suits.
31-16-101.	Ordinance powers - penalty.	PART 2	
31-16-102.	Style of ordinances.	ORDINANCE CODES ADOPTED BY REFERENCE	
31-16-103.	Majority must vote for appropriations - proving ordinances.	31-16-201.	Definitions.
31-16-104.	Ordinances approved by mayor.	31-16-202.	Adoption by reference - title.
31-16-105.	Record and publication of ordinances.	31-16-203.	Notice - hearing.
31-16-106.	Reading before city council - publication.	31-16-204.	Adopting ordinance - adoption of penalty clauses by reference prohibited.
31-16-107.	Reading - adoption of code.	31-16-205.	Publication of ordinance.
31-16-108.	Majority of all members required - record.	31-16-206.	Filing of public record - sale of copies.
31-16-109.	Disposition of fines and forfeitures.	31-16-207.	Amendments.
		31-16-208.	Use as evidence.

PART 1

PROCEDURE FOR ADOPTION

31-16-101. Ordinance powers - penalty. (1) The governing body of each municipality has power to provide for enforcement of ordinances adopted by it by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) Notwithstanding subsection (1) of this section, the governing body of each municipality which implements an industrial wastewater pretreatment program pursuant to the federal act, as defined in section 25-8-103 (8), C.R.S., may seek such relief and impose such penalties as are required by such federal act and its implementing regulations for such programs.

Source: **L. 75:** Entire title R&RE, p. 1123, § 1, effective July 1. **L. 90:** Entire section amended, p. 1345, § 7, effective July 1. **L. 91:** (1) amended, p. 756, § 28, effective April 4.

Editor's note: This section is similar to former §§ 31-12-101 (79) and 31-12-301 as they existed prior to 1975.

ANNOTATION

When interpreting an ordinance, a court may review its other provisions in order to construe the disputed section in context. *Humana, Inc. v. Bd. of Adjustment*, 537 P.2d 741 (Colo. 1975); *Abbott v. Bd. of County Comm'rs of Weld County*, 895 P.2d 1165 (Colo. App. 1995).

The construction of an ordinance by administrative officials charged with its enforce-

ment should be given deference by the courts and if there is a reasonable basis for the administrative agency's application of the law, the decision may not be set aside on review. *Abbott v. Bd. of County Comm'rs of Weld County*, 895 P.2d 1165 (Colo. App. 1995).

31-16-102. Style of ordinances. The style of the ordinances in cities and towns shall be: "Be it ordained by the city council or board of trustees of"

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-302 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-16-102 is similar to former § 31-12-302 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Directory. The requirements of this section are directory, and not imperative, and a substantial compliance herewith fulfills the law's demand. People ex rel. Town of Sterling v. Chipman, 31 Colo. 90, 71 P. 1108 (1903).

The words "town council" and the words "board of trustees", when used in relation to municipal corporations of this state, have practically the same meaning, and in view of this section it is immaterial which form is used as the "style" of the enacting clause of an ordinance. People ex rel. Town of Sterling v. Chipman, 31 Colo. 90, 71 P. 1108 (1903).

Applied in Reimer v. Town of Holyoke, 93 Colo. 571, 27 P.2d 1032 (1933).

31-16-103. Majority must vote for appropriations - proving ordinances. Ordinances, resolutions, and orders for the appropriation of money shall require for their passage or adoption the concurrence of a majority of the governing body of any city or town. Unless otherwise specifically provided by statute or ordinance, all other actions of the governing body upon which a vote is taken shall require for adoption the concurrence of a majority of those present if a quorum exists. All ordinances may be proven by the seal of the city or town, and, when printed in book or pamphlet form and purporting to be printed and published by authority of the city or town, the same shall be received in evidence in all courts and places without further proof.

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1. L. 89: Entire section amended, p. 1292, § 14, effective April 6. L. 91: Entire section amended, p. 756, § 29, effective April 4.

Editor's note: This section is similar to former § 31-12-303 as it existed prior to 1975.

ANNOTATION

Applied in Rhodes v. People ex rel. Town of Haxtun, 67 Colo. 4, 185 P. 264 (1919).

31-16-104. Ordinances approved by mayor. Only if an ordinance adopted pursuant to section 31-4-102 (3) or 31-4-302 so provides, any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract require the approval and signature of the mayor before they become valid, except as otherwise provided in this section. Such ordinance or resolution shall be presented to the mayor within forty-eight hours after the action of the governing body for his signature approving the same. If he disapproves, he shall return such ordinance or resolution to the governing body at its next regular meeting with his objections in writing. The governing body shall cause such objections to be entered at large upon the record and shall proceed at the same or next subsequent meeting to consider the question: "Shall the ordinance or resolution, notwithstanding the mayor's objections, be passed?" If two-thirds of the members of the governing body vote in the affirmative, such resolution shall be valid, and such ordinance shall become a law the same as if it had been approved by the mayor. If the mayor fails to return to the

next subsequent meeting of the governing body any resolution or ordinance presented to him for his approval, the same shall become a valid ordinance or resolution, as the case may be, in like manner as if it had been approved by him.

Source: **L. 75:** Entire title R&RE, p. 1123, § 1, effective July 1. **L. 81:** Entire section amended, p. 1495, § 9, effective May 28. **L. 89:** Entire section amended, p. 1293, § 15, effective April 6.

Editor's note: This section is similar to former § 31-12-304 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since 31-16-104 is similar to former § 31-12-304 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The duty of the mayor with respect to validating or attesting the ordinances of the town is directory and ministerial, and under this section an ordinance adopted by a majority of all the members elected to the council, and

presented to the mayor for his approval, but not returned by him at the next meeting of the council, is, if regularly recorded and published, a valid ordinance, without the mayor's signature. *Rhodes v. People ex rel. Town of Haxtun*, 67 Colo. 4, 185 P. 264 (1919).

The clerk of a town has no authority to subscribe the mayor's name to an ordinance, and an ordinance so subscribed is not subscribed at all. *Rhodes v. People ex rel. Town of Haxtun*, 67 Colo. 4, 185 P. 264 (1919).

31-16-105. Record and publication of ordinances. All ordinances, as soon as may be after their adoption, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the governing body and the clerk. All ordinances of a general or permanent nature and those imposing any fine, penalty, or forfeiture, following adoption and, if required by ordinance adopted pursuant to section 31-4-102 (3) or 31-4-302, compliance with the provisions of section 31-16-104, shall be published in some newspaper published within the limits of the city or town or, if there are none, in some newspaper of general circulation in the city or town. It is a sufficient defense to any suit or prosecution for such fine, penalty, or forfeiture to show that no publication was made. If there is no newspaper published or having a general circulation within the limits of the city or town, then, upon a resolution being passed by the governing body to that effect, ordinances may be published by posting copies thereof in three public places within the limits of the city or town, to be designated by the governing body. Except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary in a separate section, such ordinances shall not take effect and be in force before thirty days after they have been so published. The excepted ordinances shall take effect upon adoption and, if required by ordinance adopted pursuant to section 31-4-102 (3) or 31-4-302, compliance with the provisions of section 31-16-104 if they are adopted by an affirmative vote of three-fourths of the members of the governing body of the city or town. The book of ordinances provided for in this section shall be taken and considered in all courts of this state as prima facie evidence that such ordinances have been published as provided by law. Any municipality may determine at a regular or special election to meet the requirements of this section and section 31-16-106 by publishing ordinances by title only rather than by publishing the ordinance in full. No municipality shall call a special election for the sole purpose of determining the issue of whether the municipality should publish new ordinances in full or by title only.

Source: **L. 75:** Entire title R&RE, p. 1123, § 1, effective July 1. **L. 81:** Entire section amended, p. 1496, § 10, effective May 28. **L. 92:** Entire section amended, p. 1053, § 3, effective January 1, 1993.

Editor's note: This section is similar to former § 31-12-305 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Adoption by Reference in Municipal Ordinances", see 22 Rocky Mt. L. Rev. 69 (1949). For article, "Publication of Legal Notices by Colorado Municipalities", see 22 Colo. Law. 59 (1993).

Annotator's note. Since 31-16-105 is similar to former § 31-12-305 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

If a party litigant raised the objection that the ordinance has been changed, the burden is upon him to prove it, and such proof requires more than merely casting a doubt or suspicion upon the validity of the ordinance. *Handler v. City & County of Denver*, 102 Colo. 53, 77 P.2d 132 (1938).

This section was intended to provide a convenient method of proving the fact that an ordinance had been published as required by law, and not for the purpose of making the book of ordinances the only and exclusive evidence of such fact. *LaFitte v. City of Ft. Collins*, 42 Colo. 293, 93 P. 1098 (1908).

This section does not require the signature of the mayor, or the attestation of the clerk, to give effect to the ordinance, but only requires that the ordinance, as soon as may be after its passage, shall be recorded in a book, etc., and be authenticated by the signature of the presiding officer, etc., thus clearly implying that the signature is not essential to the passing of the ordinance, but is merely for the purpose of evidencing its authentication, because apparently the signing is after the recording, and the recording is only to occur as soon as may be after the passage. *Nat'l Bank of Commerce v. Town of Granada*, 41 F. 87 (8th Cir. 1891).

All bylaws of a general or permanent nature had to be published as required by this

section. *Nat'l Bank of Commerce v. Town of Granada*, 48 F. 278 (8th Cir. 1891).

This section is mandatory and an ordinance without the requisite publication is a nullity, and consequently of no force or validity. *Nat'l Bank of Commerce v. Town of Granada*, 48 F. 278 (8th Cir. 1891).

Publication or posting of ordinances is an essential condition precedent to their validity. *People ex rel. Town of Wray v. Grant*, 48 Colo. 156, 111 P. 69 (1910).

Conviction based on unpublished ordinance. Where an ordinance declared the keeping for sale of any intoxicating liquors a nuisance, and that the same "may be abated as any other nuisance", but the provision quoted was never published, it was held that such provision never became of force, and a judgment convicting the accused party of maintaining a nuisance, and directing the abatement of such nuisance, is no justification for acts done pursuant thereto. *Wolfe v. Abbott*, 54 Colo. 531, 131 P. 386 (1913).

This section is not mandatory as to the manner of proving the publication of an ordinance. *LaFitte v. City of Ft. Collins*, 42 Colo. 293, 93 P. 1098 (1908).

The recital in and certificate to bonds, stating full compliance with all preliminary requirements, estops the issuer of the bonds from subsequently denying that the ordinance authorizing the bond purchase was duly published. *Hayden v. Town of Aurora*, 57 Colo. 389 (1914).

Prima facie evidence of legal publication. This section makes the record of an ordinance in the "book of ordinances" to be kept for that purpose prima facie evidence of its lawful publication and in view of this fact, courts ought not to permit this salutary presumption of regularity to be overcome by anything less than substantial proof of irregularity. *Town of Fletcher v. Hickman*, 165 F. 403 (8th Cir. 1908).

31-16-106. Reading before city council - publication. No ordinance shall be adopted by any city council of any city unless the same has been previously introduced and read at a preceding regular or special meeting of such city council and published in full in the manner provided in section 31-16-105 at least ten days before its adoption. The previous introduction of the ordinance at such preceding meeting of the city council and the fact of its publication shall appear in the certificate and the attestation of the clerk on the ordinance after its adoption. The provisions of section 31-16-105 shall apply to any ordinance adopted by a city council; except that, if publication after introduction was in a newspaper, publication after adoption may be in the same newspaper by title only and shall contain the date of the initial publication and shall reprint in full any section, subsection, or paragraph of the ordinance which was amended following the initial publication. Publication following adoption may be in full at the discretion of the city council.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1. L. 77: Entire section amended, p. 1466, § 1, effective May 20.

Editor's note: This section is similar to former § 31-15-104 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since 31-16-106 is similar to former § 31-15-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section, by its terms, applies only to ordinances of a city and not to a town. People ex rel. Town of Wray v. Grant, 48 Colo. 156, 111 P. 69 (1910).

The term "unless the same has been previously ... published in full" imports but one

occurrence in the running of time. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950).

Compliance found. Where a proposed city ordinance was published only once in a newspaper but at least 10 days before its passage, it was held that this complied with the requirements of this section. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950).

31-16-107. Reading - adoption of code. Whenever the reading of an ordinance or of a code which is to be adopted by reference is required by statute, any such requirement shall be deemed to be satisfied if the title of the proposed ordinance is read and the entire text of the proposed ordinance or of any code which is to be adopted by reference is submitted in writing to the governing body before adoption.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1.

31-16-108. Majority of all members required - record. On the adoption of an ordinance, resolution, or order for the appropriation of money or the entering into of a contract by the governing body of any city or town, the yeas and nays shall be called and recorded, and the concurrence of a majority of the governing body shall be required.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1. **L. 89:** Entire section amended, p. 1293, § 16, effective April 6. **L. 91:** Entire section amended, p. 756, § 30, effective April 4.

Editor's note: This section is similar to former § 31-12-306 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-16-108 is similar to former § 31-12-306 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The provisions of this section are mandatory in cases where they apply. People ex rel. Sanders v. Hendrick, 93 Colo. 512, 27 P.2d 493 (1933); City of Greeley v. Hamman, 17 Colo. 30, 28 P. 460 (1891); Kinzie v. Incorporated Town of Haxtun, 99 Colo. 588, 63 P.2d 511 (1937).

And this section cannot be effectually waived; every contract must be expressed. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

The power conferred is limited and can only be exercised in the manner prescribed. Tracey v. People, 6 Colo. 151 (1882).

The object of this section is to fix the individual responsibility for municipal legislation, of each member voting, by a permanent record. Any mode by which the vote of each

member is clearly and definitely ascertained for the purposes of the record is sufficient, and a call of the roll is not regarded as essential. Brophy v. Hyatt, 10 Colo. 223, 15 P. 399 (1887).

Thus, it contemplates that the vote must be taken in a certain way and a record thereof made and that the record shall be the only evidence. City of Denver v. Spencer, 34 Colo. 270, 82 P. 590 (1905).

This is the only section which contains general provisions prescribing the vote necessary to pass ordinances, and the manner of taking and recording the votes. Tracey v. People, 6 Colo. 151 (1882).

A member of the board of trustees of an incorporated town while presiding over the sessions of the board as mayor pro tem is entitled to vote upon all questions whether or not there is a tie. Harris v. People ex rel. Squires, 18 Colo. App. 160, 70 P. 699 (1902).

This section specifies no cases wherein contracts are required to be entered into. Town of Durango v. Pennington, 8 Colo. 257, 7 P. 14 (1885).

Minutes as evidence of contract execution. On the issue of whether or not a contract has been executed by a town, recorded minutes of the council meeting relating thereto constitute the only permissible evidence. *Kinzie v. Incorporated Town of Haxtun*, 99 Colo. 588, 63 P.2d 511 (1937).

Compliance shown. Where it appeared from the record of meeting of the town board with

reasonable certainty that all the members were present and voted for the ordinance upon its passage and that it was passed unanimously, it was held, that it showed a compliance with the provision of this section. *People v. Raims*, 20 Colo. 489, 39 P. 341 (1895).

Applied in *Cordilla v. City of Pueblo*, 34 Colo. 293, 82 P. 594 (1905); *La Fitte v. City of Ft. Collins*, 42 Colo. 293, 93 P. 1098 (1908).

31-16-109. Disposition of fines and forfeitures. All fines and forfeitures for the violation of ordinances and all moneys collected for licenses or otherwise shall be paid into the treasury of the city or town at such times and in such manner as may be prescribed by ordinance, or, if there is no ordinance referring to the case, it shall be paid to the treasurer at once.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-307 as it existed prior to 1975.

Cross references: For disposition of fines and forfeitures involving the operation of motor vehicles, see § 42-1-217.

ANNOTATION

Applied in *Orman v. City of Pueblo*, 8 Colo. 292, 6 P. 931 (1885).

31-16-110. County officers may serve process. Any sheriff of any county or city and county of this state may serve, within such sheriff's county, any process issued from any court or may make any arrest within such sheriff's county, authorized by law to be made by any municipal officers; but the only process or warrant for the arrest of any person charged with a violation of a municipal ordinance which shall be valid and executed outside the municipality where said violation occurred is that for the violation of an ordinance of any municipality in this state which is a criminal or quasi-criminal offense. For the purposes of this section, traffic offenses shall not be considered to be criminal or quasi-criminal offenses unless penalty points may be assessed under section 42-2-127 (5) (a) to (5) (r), (5) (w), and (5) (x), C.R.S.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1. L. 77: Entire section amended, p. 795, § 9, effective June 3. L. 94: Entire section amended, p. 2565, § 78, effective January 1, 1995.

Editor's note: This section is similar to former § 31-12-308 as it existed prior to 1975.

31-16-111. One-year limitation of suits. All suits for the recovery of any fine and prosecutions for the commission of any offense made punishable under any ordinance of any municipality shall be barred one year after the commission of the offense for which the fine is sought to be recovered.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-309 as it existed prior to 1975.

PART 2

ORDINANCE CODES ADOPTED BY REFERENCE

31-16-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Adopting municipality" means any municipality which has adopted or is in the process of adopting an ordinance pursuant to the provisions of this part 2.

(2) "Code" means any published compilation of statutes, ordinances, rules, regulations, or standards adopted by the federal government or the state of Colorado, by an agency of either of them, or by any municipality or other political subdivision in this state. The term includes any codification or compilation of existing ordinances of the adopting municipality. The term "code" also means published compilations of any nongovernmental organization or institution which may embrace any of the following subjects: The construction, alteration, repair, removal, demolition, equipment, use, occupancy, location, maintenance, or other matters related to buildings or other erected structures including, but not limited to, building codes, fire or fire prevention codes, plumbing codes, housing codes, mechanical codes, and electrical codes.

(3) "Municipality" means any city or any town operating under general or special laws of the state of Colorado or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with provisions of this part 2.

(4) "Primary code" means any code which is directly adopted by reference in whole or in part by any ordinance passed pursuant to this part 2.

(5) "Published" means issued in printed, lithographed, multigraphed, mimeographed, or similar form.

(6) "Secondary code" means any code which is incorporated by reference, directly or indirectly, in whole or in part in any primary code or in any secondary code.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-401 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Adoption by Reference in Municipal Ordinances", see 22 Rocky Mt. L. Rev. 69 (1949).

31-16-202. Adoption by reference - title. If all the procedures and requirements of this part 2 are complied with, any municipality may enact any ordinance which adopts any code by reference in whole or in part, and such primary code thus adopted may in turn adopt by reference, in whole or in part, any secondary codes duly described therein. However, every primary code which is incorporated in any such adopting ordinance shall be specified in the title of the ordinance. Notwithstanding the procedures and requirements of this part 2, a municipality may enact any ordinance which adopts by reference any statute, rule, regulation, or standard adopted by the federal government or the state of Colorado, or by any agency of either of them, solely by referring to such statute, rule, regulation, or standard in the text of such ordinance.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1. **L. 88:** Entire section amended, p. 1125, § 7, effective April 4.

Editor's note: This section is similar to former § 31-12-402 as it existed prior to 1975.

31-16-203. Notice - hearing. After the introduction of the adopting ordinance, the governing body of any municipality shall schedule a public hearing thereon. Notice of the hearing shall be published twice in a newspaper of general circulation in the adopting municipality, once at least fifteen days preceding the hearing, and once at least eight days preceding it. If there is no such newspaper, the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and copies of the secondary codes, if any, being considered for adoption are on file with the clerk and are

open to public inspection. The notice shall also contain a description which the governing body deems sufficient to give notice to interested persons of the purpose of the primary code, the subject matter of the code, the name and address of the agency by which it has been promulgated or, if a municipality, the corporate name of such municipality which has enacted such code, and the date of publication of such code, and, in the case of a code of any municipality, the notice shall contain a specific reference to the code of a given municipality as it existed and was effective at a given date. The requirements as to the reading of the adopting ordinance are as provided in section 31-16-107.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-403 as it existed prior to 1975.

31-16-204. Adopting ordinance - adoption of penalty clauses by reference prohibited. After the hearing, the governing body may amend, adopt, or reject the adopting ordinance in the same manner in which it is empowered to act in the case of other ordinances; but nothing in this part 2 shall permit the adoption by reference of any penalty clauses which may appear in any code which is adopted by reference. Any such penalty clauses may be enacted only if set forth in full and published in the adopting ordinance. All changes or additions to any code made by the governing body shall be published in the manner which is required for ordinances; except that changes or additions which are not substantive in nature made in connection with any codification or compilation of existing ordinances of the adopting municipality may be posted at the municipal offices in lieu of publication of such changes or additions.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1. L. 88: Entire section amended, p. 1126, § 8, effective April 4.

Editor's note: This section is similar to former § 31-12-404 as it existed prior to 1975.

31-16-205. Publication of ordinance. Nothing in this part 2 shall relieve any municipality from the requirement of publishing in full the ordinance which adopts any such code, and all provisions applicable to such publication shall be fully carried out. The adopting ordinance shall contain the same description of the primary adopted code as required in the notice of hearing in section 31-16-203.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-405 as it existed prior to 1975.

31-16-206. Filing of public record - sale of copies. Not less than one copy of each primary code adopted by reference and of each secondary code pertaining thereto, all certified to be true copies by the mayor and the clerk, shall be filed in the office of the clerk at least fifteen days preceding the hearing and shall be kept there for public inspection while the ordinance is in force. After the adoption of the code by reference, a copy of the primary code and of each secondary code may be kept in the office of the chief enforcement officer instead of in the office of the clerk. Following the adoption of any code, the clerk shall at all times maintain a reasonable supply of copies of the primary code available for purchase by the public at a moderate price.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1. L. 88: Entire section amended, p. 1126, § 9, effective April 4.

Editor's note: This section is similar to former § 31-12-406 as it existed prior to 1975.

31-16-207. Amendments. If at any time any code which any municipality has previously adopted by reference is amended by the agency or municipality which originally promulgated, adopted, or enacted it, the governing body may adopt such amendment by reference through the same procedure as required for the adoption of the original code, or an ordinance may be enacted in the regular manner setting forth the entire text of such amendment.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-407 as it existed prior to 1975.

31-16-208. Use as evidence. Copies of such codes in published form, duly certified by the clerk and mayor of the municipality, shall be received without further proof as prima facie evidence of the provisions of such codes or public records in all courts and administrative tribunals of this state.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-408 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-16-208 is similar to former § 31-12-408 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Municipal courts may take judicial notice of the municipal ordinances that fall within their jurisdiction. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

And a county court may take judicial notice of municipal ordinances when an appeal is taken from the municipal court to the county court for a trial de novo. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

However, courts of general jurisdiction may not take judicial notice of the ordinances of municipal corporations in civil or criminal cases. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

ARTICLE 20

Taxation and Finance

Cross references: For public indebtedness, see article XI of the state constitution; for the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

PART 1		31-20-105.	Municipality may certify delinquent charges.
TAXATION AND ASSESSMENT COLLECTION		31-20-106.	County treasurer to collect municipal taxes - liens - publication.
31-20-101.	Power to levy taxes - on what property.	31-20-107.	Municipality to pay share of county expenses.
31-20-101.3.	Incentives for installation of renewable energy fixtures - definitions.	PART 2	
31-20-102.	Assessor to designate property.	FINANCE - GENERAL	
31-20-103.	Committee to appear before board of equalization.	31-20-201.	Fiscal procedures - budgeting - appropriations.
31-20-104.	Assessor to extend taxes - warrant.	31-20-202.	Publication - penalty.

PART 3

31-20-307.

Keeping moneys - inspection of books - paying over.

FINANCE - TREASURER

PART 4

- 31-20-301. Bond of treasurer - waiver - duties.
- 31-20-302. Penalty for using municipal funds.
- 31-20-303. Deposits - investments - interest - no liability.
- 31-20-304. Reports - annual account - publication.
- 31-20-305. Collector to keep warrants - books - pay over weekly - receipt.
- 31-20-306. Collector to report - annual statement - publication.

FINANCE - WARRANTS

- 31-20-401. Warrants signed - counter-signed - fund.
- 31-20-402. Funds - how used.
- 31-20-403. Warrant endorsed when no funds - new warrant.
- 31-20-404. Registry of orders - contents - inspection.
- 31-20-405. Order warrants paid.
- 31-20-406. Redemption of warrants.
- 31-20-407. Neglect in keeping register or paying - penalty.

PART 1

TAXATION AND ASSESSMENT COLLECTION

31-20-101. Power to levy taxes - on what property. The governing body of any municipality has the power to levy taxes, the same kinds and classes, upon taxable property, real, personal, and mixed, within the municipal limits as are subject to taxation for state or county purposes in accordance with the laws of this state.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-101 as it existed prior to 1975.

Cross references: For the procedure to increase a tax levy beyond statutory limits, see § 29-1-302.

ANNOTATION

Law reviews. For note, "The Constitutional-ity of a Colorado Municipal Income Tax", see 25 Rocky Mt. L. Rev. 343 (1953).

The specific taxing power is governed by this section. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When unconstitutional. Where taxes result in a flagrant inequality between the burden imposed and the benefit received, such is confiscatory and unconstitutional. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

To enforce a special assessment for a purpose which does not confer a special benefit upon the property upon which it is levied would result in taking private property without compensation, and without due process of law. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Scope of power. City councils and boards of trustees of cities and towns incorporated under the general statutes are authorized to levy taxes for city or town purposes upon the property in the city or town subject to taxation, and the time within which such annual levy shall be made is not limited, except that it must be done before

the county clerk extends the taxes on the tax list and delivers it to the treasurer for collection. Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

Taxation defined. Taxation, as the word is employed in the Colorado constitution and statutes generally, is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of government. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation and assessment are not synonymous terms, each is a separate and distinct exercise of the sovereign power to tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

If the tax is for a "general" purpose it must be an ad valorem tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

An assessment in the nature of a special tax is for purposes of municipal improvement conferring a special benefit upon the property being assessed. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

Special benefits which will sustain a special assessment must be immediate, and of such a character that they can be seen and traced; remote or contingent benefits enjoyed by the general public will not sustain a special assessment. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

Portion of assessment for general benefit invalid. So much of an improvement as is designated and utilized for the general benefit of the inhabitants and property within the limits of a municipality is in no sense local, and special assessments to raise funds to construct, purchase, pay for, or maintain that portion of it, cannot be lawfully levied. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

The revenues derived from frontage taxes are designated for general purposes of a town, i.e., in maintenance of the town's water system, roads and road equipment, and the manner of imposition of taxes upon properties by a municipality is governed by § 3 of art. X, Colo.

Const., prescribing that the same shall be uniform ad valorem taxes. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

Authority to levy a special frontage tax can only be upheld on the theory that the property upon which it is levied is specially benefitted by the purposes to which such tax may be applied. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

Spending of special assessments. If the "taxes" are special assessments upon the properties, the revenues therefrom could not be diverted to providing for general town purposes, but would necessarily have to be used and confined to payment for the capital improvement resulting in an equivalent benefit to plaintiff's properties. *Ochs v. Town of Hot Sulphur Springs*, 158 Colo. 456, 407 P.2d 677 (1965).

Showing needed to invalidate tax. A grant of power to impose municipal taxes involves a decision by the general assembly that benefits proportionate to the burden will be conferred, and the burden of proof is upon him who assails the legislative action, and to warrant judicial interference, he must show a clear case of violation of the principle exempting private property from condemnation to public use. *Brown v. Denver*, 3 Colo. 169 (1877).

31-20-101.3. Incentives for installation of renewable energy fixtures - definitions.

(1) Notwithstanding any law to the contrary, a governing body of any municipality may offer an incentive, in the form of a municipal property tax or sales tax credit or rebate, to a residential or commercial property owner who installs a renewable energy fixture on his or her residential or commercial property.

(2) For purposes of this section, unless the context otherwise requires, "renewable energy fixture" means any fixture, product, system, device, or interacting group of devices that produces energy, including but not limited to alternating current electricity, from renewable resources, including, but not limited to, photovoltaic systems, solar thermal systems, small wind systems, biomass systems, or geothermal systems.

Source: **L. 2007:** Entire section added, p. 489, § 3, effective August 3. **L. 2009:** (2) amended, (HB 09-1126), ch. 254, p. 1147, § 2, effective May 15.

Cross references: For the short title contained in the 2007 act enacting this section, see section 1 of chapter 130, Session Laws of Colorado 2007.

31-20-102. Assessor to designate property. It is the duty of the county assessor each year, in making his return, to designate the property situated within the limits of any municipality in such county.

Source: **L. 75:** Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-102 as it existed prior to 1975.

ANNOTATION

Mandatory duty presumed discharged. The county assessor each year has the mandatory

duty to designate the property situate in the towns of the county, and it is presumed, as the

supreme court has many times held, that public officials properly discharge their duties. *Town of Frisco v. Brower*, 171 Colo. 441, 467 P.2d 801 (1970).

Applied in *Boston & Colo. Smelting Co. v. Elder*, 20 Colo. App. 96, 77 P. 258 (1904).

31-20-103. Committee to appear before board of equalization. Any governing body of any municipality has the authority to appoint a committee from its members to appear before the board of county commissioners, sitting as a board of equalization, and to recommend to said board such amendments and additions to or changes in the assessment made by the county assessor of the property or any portion thereof within the limits of such municipality as such committee may deem just.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-103 as it existed prior to 1975.

31-20-104. Assessor to extend taxes - warrant. It is the duty of the county assessor, when the assessment roll is prepared each year for the extension of the taxes, to extend the municipal tax upon the tax list in the same manner as other taxes are extended, carrying said municipal tax into the general total of all taxes for the year, and to include said municipal taxes in his general warrant to the county treasurer for collection.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-104 as it existed prior to 1975.

ANNOTATION

Applied in *Elder v. Fox*, 18 Colo. App. 263, 71 P. 398 (1903); *Boston & Colo. Smelting Co. v. Elder*, 20 Colo. App. 96, 77 P. 258 (1904).

31-20-105. Municipality may certify delinquent charges. Any municipality, in addition to the means provided by law, if by ordinance it so elects, may cause any or all delinquent charges, assessments, or taxes made or levied to be certified to the treasurer of the county and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be by this title.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-105 as it existed prior to 1975.

ANNOTATION

Authority to collect. When the municipality by ordinance so provides, this section and said ordinance together constitute the authority, and the only authority, which the treasurer has for collecting said delinquent municipal assessments, in the same manner as he collects state, county, and municipal taxes; and when the municipality furnishes to the treasurer, with proof of the passage of an appropriate ordinance, the treasurer, without any other warrant, has the authority to collect the delinquent municipal

assessment in the same manner as he collects other taxes. *City of Highlands v. Johnson*, 24 Colo. 371, 51 P. 1004 (1897).

Priority. A municipality may not impose a "superpriority lien" for nuisance abatement expenses except as specifically authorized by statute. *Gold Vein LLC v. Cripple Creek*, 973 P.2d 1286 (Colo. App. 1999).

Applied in *Elder v. Fox*, 18 Colo. App. 263, 71 P. 398 (1903).

31-20-106. County treasurer to collect municipal taxes - liens - publication.

(1) (a) It is the duty of the treasurer of said county and he is authorized to collect the municipal taxes in the same manner and at the same time as other taxes upon the same tax list are collected. The expense of construction and repair of sidewalks, streets, paving of streets, curb and gutter, drainage facilities, or other improvements, which are placed upon municipal streets, other than pursuant to part 5 of article 25 of this title, shall be assessed in the manner prescribed by the ordinance of any such municipality upon the property fronting upon the same. Except for the construction and repair of sidewalks, no such assessments for other construction shall be made by the municipality unless approved by petition signed by not less than sixty percent of the owners of property fronting upon the same and owning at least sixty percent of the property fronting thereon. Such assessment shall be a lien upon said property until it is paid. In case of failure to pay such assessment in a reasonable time, to be specified by ordinance, the assessment, at any time after such failure, may be certified by the clerk of such municipality to the officer having the custody of the tax list at the time such certification is made to be placed by him upon such tax list for the current year and collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection. All the laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and their redemption of the same, shall apply and have as full effect for the collection of all such municipal taxes as for such general taxes, except as modified by this title.

(b) Nothing in paragraph (a) of this subsection (1) shall be construed to repeal existing statutes concerning the power to levy taxes, charges, and assessments and the procedures for the assessments and collection thereof.

(2) The county treasurer, at the close of every month and more often if the governing body of said municipality requires, shall pay over to the municipal treasurer all moneys collected by him upon the presentation to him of an order signed by the mayor and clerk of such municipality. Any such county treasurer shall be liable on his official bond for the faithful discharge of all the duties and obligations imposed upon him.

(3) In case of sale of any lot or tract of ground for delinquent sidewalk tax, the same shall be advertised and sold for such tax, and the certificate of sale and deed therefor shall be made separate from the sale certificate and deed for other taxes. The amount of sidewalk tax so assessed shall not be certified to the county clerk and recorder until notice of such assessment has been published for ten days in some newspaper published in such municipality as provided by the ordinance of such municipality, giving the lot owner an opportunity to be heard before the governing body, at the time and place designated, as to the justness and correctness of the amount so assessed. The provisions of this title relating to collecting the expense of construction and repairs of sidewalks shall be construed to be for the purpose of carrying into effect the police powers of municipalities as to such construction and repairs of sidewalks and shall not be construed as imposing a special tax under the taxing power. The ordinance of such municipality shall provide for a reasonable time after the order of such municipality for the construction or repairs of such sidewalks for the owners of such lots to construct or repair such sidewalks. In case any such owners fail to so construct or repair such sidewalk in the time and manner prescribed by said ordinances, such municipality may proceed to construct or repair such sidewalk and charge such owners as prescribed by ordinance and in the manner described in this section.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-106 as it existed prior to 1975.

ANNOTATION

Inapplicable to sales made in pursuance of a special assessment. It is sufficient to say that no language to be found in this section will warrant the court in holding it was the intention of the general assembly to make this section

applicable to sales made in pursuance of a special assessment for a sidewalk. *Richardson v. City of Denver*, 17 Colo. 398, 30 P. 333 (1892).

The rule of caveat emptor applies to a purchaser at an invalid tax sale of a city lot for

delinquent sewer taxes and neither the purchaser nor his assignee of the tax sale certificate is entitled to recover from the city the amount due upon such certificate. *Elder v. Fox*, 18 Colo. App. 263, 71 P. 398 (1903).

Estopped from enforcing unrecorded tax lien. Where a special sewer tax was assessed against a city lot but no record thereof was made either in the office of the county treasurer or county clerk, and 12 years after such assessment was made the city attempted to enforce its lien by causing said lot to be sold for said tax, the

city was estopped to assert its tax lien as against a purchaser of the lot who purchased without notice of such tax and after an examination of the records for tax liens, and who received no notice of the tax or the tax sale until the purchaser at the tax sale applied for a deed upon his tax sale certificate, the holder of the tax sale certificate was not entitled to a deed and the tax lien and certificate should be annulled. *Elder v. Fox*, 18 Colo. App. 263, 71 P. 398 (1903).

Applied in Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

31-20-107. Municipality to pay share of county expenses. The governing body of said municipality shall make in each year such allowance to be paid out of the general fund to the county as shall be a reasonable and just compensation for the extra labor imposed by this part 1 and shall also make an allowance, to be paid out of the general fund to the county in which said municipality is located, for the municipality's proportion of the expense of advertising the sale of lands for delinquent taxes in each year, the amount to be certified to the governing body by the county clerk and recorder of the proper county.

Source: L. 75: Entire title R&RE, p. 1128, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-107 as it existed prior to 1975.

ANNOTATION

By virtue of this section the council or board of trustees was undoubtedly constituted a quasi-judicial body, to which was intrusted, and on which was imposed the duty to determine the allowance which the assessor should receive for doing the work prescribed by

the revenue act, and which was essential to facilitate the collection of city taxes and enable the municipality to determine the property which was liable to taxation and the amounts collectible by the city. *Walpole v. City of Pueblo*, 12 Colo. App. 151, 54 P. 910 (1898).

PART 2

FINANCE - GENERAL

31-20-201. Fiscal procedures - budgeting - appropriations. The provisions of part 1 of article 1 of title 29, C.R.S., shall govern fiscal procedures, budgeting, and appropriations of towns and cities organized under this title.

Source: L. 75: Entire title R&RE, p. 1129, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-201 as it existed prior to 1975.

ANNOTATION

Bonds issued by a municipality for the purchase of water rights, for the purpose of supplying water to its inhabitants, were not within the provisions of this section and former CSA, C. 163, § 201. *City of Cripple Creek v. Adams*, 36 Colo. 320, 85 P. 184 (1906).

The defense that there was no compliance with this and repealed CSA, C. 163, § 200,

was an affirmative defense. *Morrison v. Burke*, 103 Colo. 167, 84 P.2d 461 (1938).

Applied in *Sullivan v. City of Leadville*, 11 Colo. 483, 18 P. 736 (1888); *Rizer v. People*, 18 Colo. App. 40, 69 P. 315 (1902); *Bd. of Trustees v. Endner*, 18 Colo. App. 65, 70 P. 152 (1902).

31-20-202. Publication - penalty. (1) It is the duty of the governing body of each city and town, except cities over ten thousand population, those operating under special charters, and those which have determined by election pursuant to subsection (1.5) of this section not to publish, to publish such of their proceedings as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed, and to whom paid. They shall also publish a statement concerning all contracts awarded and rebates allowed.

(1.5) Any city or town subject to this section may determine at a regular or special election not to publish their proceedings relating to payment of bills and statements concerning their contracts. However, no city or town shall call a special election for the sole purpose of determining whether the city or town shall publish their proceedings relating to payment of bills and statements concerning their contracts. Any city or town whose citizens elect not to publish may provide an alternative for distribution of the information.

(2) Such publication shall be made within twenty days after the adjournment of each regular or special meeting in a newspaper of general circulation published in the city or town where such meeting is held. If there is no reliable newspaper published within said city or town, said publication shall be made in some newspaper of general circulation nearest to said city or town within the county and the clerk shall furnish copy of such proceedings for publication.

(3) Any mayor, member of the governing body, or clerk who fails or refuses to make such publication shall be subject to a fine of not less than twenty-five dollars nor more than three hundred dollars and the costs of the suit for each offense; except that these penalties do not apply to the officials of any city or town which has elected pursuant to subsection (1.5) of this section not to make such publication.

Source: L. 75: Entire title R&RE, p. 1129, § 1, effective July 1. L. 94: (1) and (3) amended and (1.5) added, p. 1054, § 4, effective January 1, 1993.

Editor's note: This section is similar to former §§ 31-20-202 to 31-20-204 as they existed prior to 1975.

Cross references: For duty of towns and cities to have an annual audit, see part 6 of article 1 of title 29.

PART 3

FINANCE - TREASURER

31-20-301. Bond of treasurer - waiver - duties. (1) The treasurer shall give a bond to the city or town in its corporate name with good and sufficient sureties, to be approved by vote of the governing body in such sum as it requires, conditioned on the faithful performance of his duties as treasurer of such city or town so long as he shall serve as such treasurer and requiring that, when he vacates such office, he will turn over and deliver to his successor all moneys, books, papers, property, or things belonging to such city or town and remaining in his charge as such treasurer. The governing body of the city or town may waive the requirement of a bond.

(2) The treasurer shall:

(a) Receive all moneys belonging to the city or town and shall keep his books and accounts in such manner as may be prescribed by ordinance. Such books and accounts shall always be subject to the inspection of any member of the governing body.

(b) Keep a separate account of each fund or appropriation and the debits and credits belonging thereto;

(c) Give every person paying money into the treasury a receipt therefor specifying the date of payment and upon what account paid, and he shall also file statements of such receipts with the city or town clerk on the date of his monthly report;

(d) Render an account to the governing body or such officer as may be designated by ordinance, at the end of each month and more often if required, showing the state of the treasury at the date of such account and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury and on

what account during the preceding month, together with all warrants redeemed and paid by him. Said warrants, with any vouchers held by the treasurer, shall be delivered to the clerk and filed with his account in the clerk's office upon every day of such statement. He shall return all warrants paid by him stamped or marked "paid". He shall keep a register of all warrants redeemed and paid, which shall describe such warrants and show the date, amount, number, the fund from which paid, and the name of the person to whom and when paid.

Source: L. 75: Entire title R&RE, p. 1129, § 1, effective July 1. L. 89: (1) amended, p. 1293, § 17, effective April 6.

Editor's note: This section is similar to former §§ 31-20-301 to 31-20-305 as they existed prior to 1975.

ANNOTATION

Applied in *Manitou v. First Nat'l Bank*, 37 Colo. 344, 86 P. 75 (1906); *Pub. Serv. Co. v. City of Loveland*, 79 Colo. 216, 245 P. 493 (1926).

31-20-302. Penalty for using municipal funds. The treasurer is expressly prohibited from using, either directly or indirectly, the municipal money or warrants in his custody and keeping them for his own use or benefit or that of any other person. Any violation of this provision shall subject him to immediate removal from office by the governing body which is authorized to declare said office vacant, in which case his successor shall be appointed and shall hold office for the remainder of the unexpired term of such officer so removed.

Source: L. 75: Entire title R&RE, p. 1130, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-306 as it existed prior to 1975.

ANNOTATION

A city treasurer who deposits the money of the city in a bank is liable therefor if lost by the failure of the bank. *Babcock v. City of Rocky Ford*, 25 Colo. App. 312, 137 P. 899 (1914).

Except when bank specified by ordinance. Where an ordinance of a Colorado city of the second class expressly made it the duty of and ordered the city treasurer to remit certain mon-

ey to a bank named in the ordinance for the purpose of paying interest on bonds issued by the city, and moneys so remitted by the city treasurer in compliance with the ordinance were lost due to the failure of the bank, such city treasurer, together with the surety upon his official bond was not liable to the city on account of such loss. *McBride v. People ex rel. City of Trinidad*, 111 Colo. 577, 144 P.2d 777 (1943).

31-20-303. Deposits - investments - interest - no liability. (1) (a) As used in this subsection (1), the term "resolution" means a written resolution duly adopted by a majority vote of the governing body, which vote is entered in its minutes.

(b) Subject to the requirements of part 6 of article 75 of title 24, C.R.S., in all cities and towns in this state, the treasurer shall deposit all the funds and moneys that come into his possession by virtue of his office, in his name as treasurer or in the name of such other custodian as has been appointed by resolution, in one or more state banks, national banks having their principal office in this state, or, in compliance with the provisions of article 47 of title 11, C.R.S., savings and loan associations having their principal offices in this state which have been approved and designated by resolution. The governing body by resolution may authorize the investment of all or any part of such funds and moneys in any type of security or form of investment authorized by part 6 of article 75 of title 24, C.R.S., or by any other law of this state. All securities so purchased shall be duly registered in the name of the treasurer or other custodian appointed by resolution and, if issued in a form so permitting, shall be deposited and safely kept by him in the custody of some state or national bank located in this state. The governing body, by resolution, shall establish

requirements for the sale or other disposal of securities and for the deposit or reinvestment of any proceeds, subject to the restrictions set forth in this section. For the purposes of investment of funds of the city or town, the governing body of the city or town, by resolution, may appoint one or more custodians of the funds and moneys, and such persons shall give surety bonds in such amount and form and for such purposes as the governing body may require.

(2) Such funds and moneys may be deposited in said banks and savings and loan associations in demand accounts, in interest-bearing savings accounts, or in certificates of deposit for fixed periods of time at such rates of interest as may be negotiated from time to time. All interest credited or received on such deposits shall become a part of the general fund of the city or town or of such other fund as the governing body designates.

(3) No city or town treasurer or member of the governing body who acts in good faith in approving and designating such depository shall be liable for loss of public funds deposited by such treasurer or his deputies by reason of default or insolvency of such depository; nor shall any such treasurer who invests any such funds as provided in this section or any member of the governing body who in good faith authorizes such investment be liable for any loss on account of such investment.

(4) Subject to the requirements of part 7 of article 75 of title 24, C.R.S., funds of the city or town may be pooled for investment with the funds of other local government entities.

Source: **L. 75:** Entire title R&RE, p. 1130, § 1, effective July 1; (1) and (2) amended and (3) and (4) repealed, pp. 407, 392, §§ 5, 5, 6, effective January 1, 1976. **L. 77:** (1) amended, p. 577, § 9, effective June 10. **L. 83:** (4) added, p. 1010, § 3, effective March 29; (1) and (2) amended, p. 1260. § 1, effective April 14. **L. 89:** (1)(b) amended, p. 1114, § 25, effective July 1.

Editor's note: (1) This section is similar to former § 31-20-307 as it existed prior to 1975.

(2) The subsections were renumbered on revision in the 1977 replacement volume for ease of location.

31-20-304. Reports - annual account - publication. The treasurer shall report to the governing body, as often as required, a full and detailed account of all receipts and expenditures of the city or town as shown by his books up to the time of said report. Annually, by March 1 after the close of the fiscal year, he shall make out and file with the clerk a full and detailed account of all such receipts and expenditures and of all his transactions as such treasurer during the preceding fiscal year and shall show in such account the state of the treasury at the close of the fiscal year, which account the clerk shall immediately cause to be published in a newspaper printed in such city or town if there is one and, if not, by posting the same in a public place in the clerk's office.

Source: **L. 75:** Entire title R&RE, p. 1131, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-308 as it existed prior to 1975.

31-20-305. Collector to keep warrants - books - pay over weekly - receipt. It is the duty of the collector, if anyone except the treasurer is specially appointed, or the person acting in that capacity to preserve all warrants returned into his hands, and he shall keep such books and his accounts in such manner as the governing body prescribes. Such warrants, books, and all papers pertaining to his office at all times shall be open to the inspection of and subject to the examination of the mayor, any member of the governing body, or any committee thereof. He shall pay over to the treasurer weekly, and more often if required by the governing body, all moneys collected by him, taking such treasurer's receipt therefor, which receipt he shall immediately file with the clerk. The clerk, at the time of filing or on demand, shall give such collector a copy of any such receipt so filed.

Source: **L. 75:** Entire title R&RE, p. 1131, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-309 as it existed prior to 1975.

ANNOTATION

Collector appointment optional. This section, with the two sections immediately following, refer to the office of city collector and prescribe the duties of such officer; but it is optional with the council whether a collector, as such shall be appointed, because they may leave the duties of the collector with the treasurer; they may specially appoint a collector; or they may authorize different officers to receive mon-

neys, the payment of which arises from or in connection with a performance of the duties of their respective offices, and if no one be specially appointed collector, and if no other officer be authorized to receive funds in a particular instance, under the law the treasurer is the person to whom corporation moneys must be paid. *Orman v. City of Pueblo*, 8 Colo. 292, 6 P. 931 (1885).

31-20-306. Collector to report - annual statement - publication. The collector shall make a written report to the governing body, or any officer designated by it, of all moneys collected by him, the account whereon collected, or of any other matter connected with his office when required by the governing body or by any ordinance of the town or city. He shall also annually, by March 1 after the close of the fiscal year, file with the clerk a statement of all moneys collected by him during the year, the particular warrant, special assessment, or account on which collected, the balance of moneys uncollected on all warrants in his hands, and the balance remaining uncollected at the time of the return on all warrants which he returned during the preceding fiscal year to the clerk. The clerk shall publish or post the same as required to be done by section 31-20-304 in regard to the annual report of the treasurer.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-310 as it existed prior to 1975.

31-20-307. Keeping moneys - inspection of books - paying over. The collector is expressly prohibited from keeping the moneys of the city or town in his hands or in the hands of any person for his use beyond the time prescribed for the payment of the same to the treasurer. Any violation of this provision will subject him to immediate removal from office. All the city or town collector's papers, books, warrants, and vouchers may be examined at any time by the mayor, clerk, or any member of the governing body. The collector shall pay over every two weeks, or more often if the governing body so directs, all money collected by him from any persons or associations to the treasurer taking his receipt therefor in duplicate, one of which receipts he shall at once file in the office of the clerk.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-311 as it existed prior to 1975.

PART 4

FINANCE - WARRANTS

31-20-401. Warrants signed - countersigned - fund. All warrants drawn upon the treasurer shall be signed by the mayor and countersigned by the clerk and shall state the particular fund or appropriation to which the same is chargeable and the person to whom payable. No money shall be drawn except as provided in this part 4; except that the governing body of a municipality may provide for the disbursement of money by check in lieu of by warrant.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1. L. 79: Entire section amended, p. 1187, § 1, effective May 18.

Editor's note: This section is similar to former § 31-20-401 as it existed prior to 1975.

31-20-402. Funds - how used. All moneys received on any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made. Said money shall be used for no purpose whatever other than to reimburse the city or town for money expended for such improvement. All moneys received for account of the general fund shall be held by the treasurer in the general fund and shall be used for no purpose other than that for which they were appropriated, collected, or received except to reimburse any special fund to which the general fund may be indebted.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-402 as it existed prior to 1975.

31-20-403. Warrant endorsed when no funds - new warrant. When a city or town warrant is received by the treasurer or collector and there is no money in the treasury to pay the same, he is directed to endorse on it the amount for which it was received and the date thereof, and from that date the warrant is to be regarded as canceled and cannot be reissued; but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer or collector shall give him a certificate of the balance due him, which certificate, on presentation to the board authorized to audit claims for the city or town, entitles the holder to receive a new warrant for the amount specified therein.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-403 as it existed prior to 1975.

31-20-404. Registry of orders - contents - inspection. Every treasurer of any city or town shall keep in his office a book, to be called the registry of city or town orders, in which shall be entered, at the date of the presentation thereof and without any interval or blank line between any such entry and the one preceding it, every city or town order, warrant, or other certificate of such town or city indebtedness presented to such town or city treasurer at any time for payment, whether the same is paid at the time of presentation or not, the number and date of such order, warrant, or certificate, the amount, the date of presentation, the name of the person presenting the same, and the particular fund, if any, upon which the order is drawn. Every such registry of city or town orders shall be open at all reasonable hours to the inspection and examination of any person desiring to inspect or examine the same.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-404 as it existed prior to 1975.

ANNOTATION

Applicable to Denver. This and the following section providing for the registration and order of payment of city and town warrants were applicable to the city of Denver, although it was

operating under a special charter. First Nat'l Bank v. Arthur, 10 Colo. App. 283, 50 P. 738 (1897).

31-20-405. Order warrants paid. Every fund in the hands of any treasurer of any such city or town of this state for disbursement shall be paid out in the order in which the orders drawn thereon, payable out of the same, are presented for payment.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-405 as it existed prior to 1975.

31-20-406. Redemption of warrants. When the treasurer of any city or town has any city or town funds on hand in cash to the amount of five hundred dollars or over, it is his

duty to immediately apply all such funds to the redemption of an equal amount of such outstanding city or town warrants, certificates, or orders, with the interest due thereon, as may be entitled to a preference as to payment according to the order of time in which they were previously presented to the treasurer of such city or town, as evidenced by the registry of the orders of such city or town kept in his office as provided by law. For this purpose, he shall cause to be advertised for thirty days in some newspaper published in or nearest such city or town a notice that he will redeem such certain city or town orders, certificates, or warrants with interest due thereon, stating their number and amounts on presentation at the treasury of such city or town, and that, at the expiration of thirty days from the date of such notice, such orders, certificates, or warrants shall cease to bear interest.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-20-406 as it existed prior to 1975.

31-20-407. Neglect in keeping register or paying - penalty. Any city or town treasurer, or his deputy, who fails or neglects to keep such registry or who fails or neglects to register any warrant or certificate of indebtedness of such city or town as is entitled to registry or neglects or refuses to pay such warrants or certificates in order of payments, there being then money in the treasury applicable to the payment thereof or from which the same ought to be paid, commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-20-407 as it existed prior to 1975.

ARTICLE 21

Bonds

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

Law reviews: For article, “Three Sources of Municipal Revenue in Colorado”, see 19 Colo. Law. 2065 (1990).

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31-21-302.	Ordinance - taxes - interest - disposition.	31-21-406.	Suit by bondholder - city or town to protect.
31-21-303.	Construction - disposition of delinquent assessment.	31-21-407.	Other laws unaffected.

PART 4

PAYMENT BY TAX LEVY
ON PETITION OF ELECTORS

31-21-401. Power to levy - manner paid.

PART 1

FUNDING - FLOATING DEBT

31-21-101. Definitions. As used in this part 1, unless the context otherwise requires:
(1) "Floating indebtedness" means all obligations of the municipality to pay money, of whatever kind or character, except indebtedness evidenced by outstanding negotiable interest-bearing bonds of the municipality.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-101 as it existed prior to 1975.

ANNOTATION

By the term "floating debt" is meant that mass of lawful and valid claims against the corporation, for the payment of which there is no money in the corporate treasury specifically designed, nor any taxation or other means of providing money to pay, particularly provided. Thomas S. Hayden Realty Co. v. Town of Aurora, 62 Colo. 563, 163 P. 843 (1917) (decided prior to L. 17, p. 520, § 2, the earliest source of former section).

31-21-102. Funding bonds - determination of indebtedness. The governing body of any municipality may issue negotiable coupon bonds, to be denominated funding bonds, for the purpose of funding any of the legal floating indebtedness of such municipality existing at any time. The specific indebtedness to be funded and the amount of such funding bonds to be issued under the provisions of this part 1 shall first be determined by such governing body and a certificate of such determination shall be made and entered in the records of the municipality prior to the issuance of said funding bonds. Nothing in this part 1 shall be construed to repeal or amend any law limiting the indebtedness of municipalities.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-102 as it existed prior to 1975.

31-21-103. Bond election - judgments. (1) Whenever such governing body deems it expedient to issue funding bonds under the provisions of this part 1, it shall direct, by ordinance, that the question be submitted at a regular election in the manner provided for authorization of other bonded indebtedness in section 31-15-302 (1) (d). At any election held under the provisions of this part 1, the question of authorizing the funding of all or any part of the floating indebtedness of the city or town may be submitted as one question for determination, irrespective of the form or date of such indebtedness. The election shall be

conducted as nearly as possible in conformity with the provisions of the "Colorado Municipal Election Code of 1965". The election notice shall specify, in addition to the time and places for holding said election, the qualifications for persons to vote on such question, the amount of the indebtedness to be funded, and the amount of funding bonds proposed to be issued and the rate of interest they shall bear. At such election the ballots or voting machine tabs shall contain the words "For the Funding Bonds" and "Against the Funding Bonds".

(2) No election shall be necessary to authorize the governing body to issue bonds for the purpose of funding indebtedness in the form of a valid subsisting judgment against the municipality.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-103 as it existed prior to 1975.

Cross references: For "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

For invalidity of bonds issued under improper ordinance, see Nat'l Bank of Commerce v. Town of Granada, 54 F. 100 (8th Cir. 1893) (decided prior to L. 17, p. 521, § 3, the earliest source of former section).

The use of an admission tax rather than an ad valorem tax to repay improvement bonds issued pursuant to this section is permissible. Friends of Cham. Music v. City and County of Denver, 696 P.2d 309 (Colo. 1985).

31-21-104. Ordinance - form and maturity of bonds. (1) If the governing body determines to issue funding bonds for the purpose of paying and discharging any valid and subsisting judgment against the municipality or if, upon canvassing the vote cast at any election held under the provisions of this part 1, it is determined by the governing body that a majority of the votes cast upon the question submitted are for funding, the governing body shall make such determination a part of the official records of the municipality, and the governing body shall immediately thereafter adopt and make a law of the municipality an ordinance which shall not be subject to the referendum provisions of any law providing for the issue of said funding bonds in accordance with the provisions of this part 1. Such ordinance shall fix the date of said funding bonds, shall designate the denominations thereof, the rate of interest, the maturity date which shall not be more than twenty-five years from the date of said funding bonds, the place of payment, within or without the state of Colorado, of both principal and interest, and shall prescribe the form of said funding bonds.

(2) Such funding bonds shall be negotiable in form, shall recite the title of the act under which they are issued, and shall be executed in the name of the municipality, signed by the mayor, countersigned by the treasurer, with the seal of the municipality affixed thereto, and attested by the clerk. The interest accruing on such funding bonds shall be evidenced by interest coupons attached bearing the engraved facsimile signature of the treasurer of the municipality. When so executed, such coupons shall be the binding obligations of the municipality according to their import. In the adoption of said ordinance providing for the issue of such funding bonds, the governing body shall make the principal of the debt payable in substantially equal annual installments during the period, not exceeding twenty-five years, within which the debt is to be discharged. The date of the maturity of the first installment of the debt shall not be more than five years from the date of said funding bonds.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-104 as it existed prior to 1975.

31-21-105. Disposition of bonds. All such funding bonds may be exchanged, dollar for dollar, in satisfaction of the indebtedness to be funded, or they may be sold at not less than their par value, as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which such funding bonds were issued.

Source: L. 75: Entire title R&RE, p. 1135, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-105 as it existed prior to 1975.

31-21-106. Taxes for interest and redemption. The interest accruing on such funding bonds issued pursuant to the provisions of this part 1 prior to the time when tax levies are available therefor shall be paid out of the general revenues of the municipality. For the purpose of reimbursing such general revenues and for the payment of subsequently accruing interest, the governing body issuing such funding bonds or the proper tax assessing and collecting officers upon whom shall devolve the duty of levying and collecting municipal taxes shall levy annually a sufficient tax upon all of the taxable property in the municipality fully to discharge such interest. For the ultimate redemption of such funding bonds, there shall be levied annually such a tax upon all the taxable property in such municipality as will create a fund sufficient to discharge each annual installment of such funding bonds at the maturity thereof, which fund shall be called the redemption fund. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the municipal treasurer as a special fund to be used only in payment of the interest upon and for the redemption of such bonds. Such tax shall be levied and collected as other municipal taxes are levied and collected. The tax provisions for the ultimate redemption of such bonds shall be set forth in the ordinance authorizing their issue and shall set forth the years in which such taxes shall be levied for the creation of said redemption fund.

Source: L. 75: Entire title R&RE, p. 1135, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-106 as it existed prior to 1975.

ANNOTATION

A court has some discretion in the granting or refusing of a writ of mandamus to compel a tax levy for the payment of municipal bond

interest coupons. City of Victor v. Halstead, 84 Colo. 450, 271 P. 185 (1928).

31-21-107. Ordinance irrepealable. Any ordinance authorizing an issue of funding bonds under the provisions of this part 1 and providing for the levy of taxes for the payment of the interest upon the principal of such funding bonds shall not be altered or repealed until the indebtedness thereby authorized has been fully paid.

Source: L. 75: Entire title R&RE, p. 1135, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-107 as it existed prior to 1975.

PART 2

REFUNDING BONDED INDEBTEDNESS

31-21-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Net effective interest rate" of a proposed issue of refunding bonds means the net interest cost of said refunding issue divided by the sum of the products derived by multiplying the principal amount of such refunding issue maturing on each maturity date by the number of years from the date of said proposed refunding bonds to their respective maturities. The "net effective interest rate" of an outstanding issue of bonds to be refunded means the net interest cost of said issue to be refunded divided by the sum of the products derived by multiplying the principal amounts of such issue to be refunded maturing on each maturity date by the number of years from the date of the proposed refunding bonds to the respective maturities of the bonds to be refunded. In all cases the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(2) "Net interest cost" of a proposed issue of refunding bonds means the total amount of interest to accrue on said refunding bonds from their date to their respective maturities less the amount of any premium above par at which said refunding bonds are being or have been sold. "Net interest cost" of an outstanding issue of bonds to be refunded means the total amount of interest which would accrue on said outstanding bonds from the date of the proposed refunding bonds to the respective maturity dates of said outstanding bonds to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(3) Repealed.

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1; (3) added, p. 1274, § 1, effective April 9. L. 89: (3) repealed, p. 1135, § 85, effective July 1.

Editor's note: This section is similar to former § 31-21-201 as it existed prior to 1975.

31-21-202. Refunding bonds - amount. The governing body of any municipality may issue negotiable coupon bonds, to be denominated refunding bonds, for the purpose of refunding any of the bonded indebtedness of such municipality, whether due or not or which is payable at the option of such municipality, by consent of the bondholders, or by any lawful means. The amount of the refunding bonds to be issued under the provisions of this part 2 shall first be determined by the governing body, and a certificate of such determination shall be made and entered in and upon the records of the municipality prior to the issuance of said refunding bonds.

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-202 as it existed prior to 1975.

31-21-203. Vote of electors not required. Whenever such governing body deems it expedient to issue refunding bonds under the provisions of this part 2 and the net interest cost and the net effective interest rate of the proposed issue of refunding bonds does not exceed the net interest cost and net effective interest rate of the issue of bonds to be refunded, such refunding bonds may be issued without the submission of the question of issuing such refunding bonds to a vote of the registered electors of such municipality. The issuance of bonds under this part 2 for the purpose of refunding bonds which were originally issued to supply water to such municipality shall not require approval of such electors.

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-203 as it existed prior to 1975.

31-21-204. Vote of electors required - procedures. (1) When such governing body deems it expedient to issue refunding bonds under the provisions of this part 2 and either the net interest cost or the net effective interest rate of the proposed issue of refunding bonds exceeds the net interest cost or the net effective interest rate, respectively, of the issue of bonds to be refunded, the governing body, by ordinance or resolution, shall submit the question of issuing said refunding bonds at a special election called and held for that purpose or at a regular election of the officers of such municipality; but bonds issued under this part 2 for the purpose of refunding bonds which were originally issued to supply water to such municipality shall not require such approval of the registered electors. An election held under this section shall be held in the manner provided for the authorization of an original bonded indebtedness in section 31-15-302 (1) (d).

(2) At any election held under the provisions of this part 2, the question of authorizing the refunding of all or any part of the then outstanding bonded indebtedness of the

municipality may be submitted as one question for determination whether such bonds are of the same or of different issues.

(3) The election shall be conducted as nearly as possible in conformity with the provisions of the "Colorado Municipal Election Code of 1965".

(4) The election notice shall specify, in addition to the time and places for holding said election, the qualifications for persons to vote on such question, the amount and date of the bonds to be refunded, the amount of refunding bonds proposed to be issued, and the maximum net effective interest rate at which they may be issued.

(5) At such election the ballots or voting machine tabs shall contain the words "For the Refunding Bonds" and "Against the Refunding Bonds".

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-204 as it existed prior to 1975.

Cross references: For "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Applied in *Weedin v. United States*, 509 F. Supp. 1052 (D. Colo. 1981).

31-21-205. Ordinance for bond issue - bonds. (1) If the governing body determines to issue refunding bonds without an election by meeting the requirements set forth in sections 31-21-202 to 31-21-204 or if, upon canvassing the vote cast at any election held under the provisions of this part 2, it is determined by the governing body that a majority of the votes cast upon the question submitted are in favor of refunding, the governing body shall make such determination a part of the official records of the municipality and shall immediately thereafter adopt and make a law of the municipality, an ordinance providing for the issuance of said refunding bonds in accordance with the provisions of this part 2.

(2) Such ordinance shall fix the date of said refunding bonds, shall designate the denominations thereof, shall designate the maximum net effective interest rate, the rate of interest of individual bonds, the maturity dates, and the place or alternate places of payment, within or without the state of Colorado, of both principal and interest, and shall prescribe the form of said refunding bonds.

(3) Such refunding bonds shall be negotiable in form, shall recite the title of the act under which they are issued, and shall be executed in the name of the municipality and signed by the mayor, countersigned by the treasurer, with the seal of the municipality affixed thereto, and attested by the clerk. The interest accruing on such refunding bonds shall be evidenced by interest coupons thereto attached bearing the engraved facsimile signature of the treasurer of the municipality. When so executed, such coupons shall be the binding obligations of the municipality, according to their import.

(4) In the adoption of said ordinance providing for the issuance of said refunding bonds, the governing body shall make the principal of the debt payable in annual or semiannual installments commencing not later than five years after the date of such bonds and maturing during a period not exceeding thirty-five years from the date thereof. The amounts of such maturities shall be fixed by the governing body. The right to redeem all or any part of said issue of bonds prior to the respective maturities thereof and the order of any such redemption may be reserved in said ordinance, and, if so reserved, shall be set forth on the face of said bonds.

(5) Outstanding bonds which are secured by a pledge of specific special funds or revenues of the municipality in addition to the general ad valorem tax revenues of said municipality may be refunded under the provisions of this part 2, and substantial compliance with the provisions of this part 2 is deemed and taken to be sufficient to legally authorize such refunding and the issuance of refunding bonds for such purpose without further actions being taken by the municipality. Such a pledge of specific special funds or

revenues need not be made to additionally secure the refunding bonds so issued, but such funds or revenues may be so pledged if it is deemed advisable by the governing body of the municipality.

Source: L. 75: Entire title R&RE, p. 1137, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-205 as it existed prior to 1975.

31-21-206. Exchange - sale - proceeds - amounts. Such refunding bonds may be exchanged dollar for dollar for the bonds to be refunded, or they may be sold at, above, or below their par value at a price such that the net effective interest rate of the issue of refunding bonds does not exceed the maximum net effective interest rate authorized. Such refunding bonds shall be in a principal amount not exceeding the principal amount of the bonds to be refunded, as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which such refunding bonds were issued. The principal amount of said refunding bonds may be the same or less than the principal amount of the bonds to be refunded if due, adequate, and sufficient provision has been made for the payment, or redemption, and retirement of said bonds to be refunded and the payment of the interest accrued thereon in accordance with this part 2.

Source: L. 75: Entire title R&RE, p. 1138, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-206 as it existed prior to 1975.

31-21-207. Tax for payment of refunding bonds. The interest accruing on such refunding bonds issued pursuant to the provisions of this part 2 prior to the time when the proceeds of tax levies are available therefor shall be paid out of the general revenues or any other revenues of the municipality available therefor. For the purpose of reimbursing such general revenues or other revenues and for the payment of subsequently accruing interest, the governing body issuing such refunding bonds shall certify and the board of county commissioners of the county in which the city or town is located shall levy, annually, a sufficient tax upon all the taxable property in the municipality fully to discharge such interest. For the ultimate payment or redemption of such refunding bonds, there shall be certified and levied annually such a tax upon all the taxable property in such municipality as will create a fund sufficient to pay or redeem and discharge such refunding bonds at or prior to their respective maturities. In the event the bonds to be redeemed and the interest thereon accruing would have been paid from taxes levied upon only part of the taxable property in the municipality, the taxes levied for payment or redemption of the refunding bonds and the interest accruing thereon shall be levied in the same manner and upon only the same taxable property as would have been levied for payment of the bonds to be refunded if no refunding of said bonds had been made and accomplished. As collected, all taxes levied for payment of interest on and for the payment or redemption of the principal of such bonds shall be kept by the treasurer of the municipality in a special fund to be used only in the payment of the interest upon and for the payment or redemption of the principal of such bonds. Such tax shall be levied and collected in the same manner as other municipal taxes are levied and collected. The ordinance authorizing the issuance of said bonds shall set forth the years in which such taxes shall be levied for the creation of said fund.

Source: L. 75: Entire title R&RE, p. 1138, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-207 as it existed prior to 1975.

31-21-208. Ordinance not to be altered. Any ordinance authorizing an issue of refunding bonds under the provisions of this part 2 and providing for the levy of taxes for the payment of the interest upon and the principal of such refunding bonds shall not be altered or repealed until the indebtedness thereby authorized has been fully paid.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-208 as it existed prior to 1975.

31-21-209. Consolidated city or town - refunding indebtedness of constituent portions - bonds. When any city or town consolidates with another city or town under the laws of the state of Colorado and has incurred a bonded indebtedness prior to such consolidation, such bonded indebtedness may be refunded by the consolidated city or town under the provisions of this part 2, as is provided for the refunding of other bonds in the same manner as it would have been the duty or within the power of the city council or board of trustees of the city or town which contracted such indebtedness to do had no such consolidation taken place. All the provisions of this part 2, including elections authorizing issuance of such refunding bonds, shall apply only within the former limits of the city or town which contracted such indebtedness. All refunding bonds so issued shall state in substance that they, together with interest thereon, are payable only by levies upon property situated within such limits as the same existed prior to such consolidation, unless the terms of consolidation shall provide that such refunding shall apply within the entire limits of the consolidated city or town.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-209 as it existed prior to 1975.

31-21-210. Combined issues - procedures. Any refunding bonds may be issued to refund one or more issues of outstanding bonds of a municipality, but no two or more issues of outstanding bonds may be refunded by a single issue of refunding bonds unless the taxable property upon which tax levies are being made for payment of each such outstanding issue of bonds is identical to the taxable property on which such levies are being made for the payment of all other outstanding bonds proposed to be refunded by such single issue of refunding bonds. In the event that two or more issues of outstanding bonds of a municipality are to be refunded by the issuance of a single issue of refunding bonds as provided in this section, the net interest cost and net effective interest rate on the bonds to be refunded shall be computed as if all of said bonds had originally been combined as a single issue aggregating the total of the smaller issues, and the results of this computation shall be compared with the net interest cost and net effective interest rate on the whole of the single refunding issue for purposes of determining the necessity of submitting the question of issuing such refunding bonds to a vote of the registered electors of the municipality.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-210 as it existed prior to 1975.

31-21-211. Application of refunding bond proceeds - procedures - limitations.
(1) The proceeds derived from the issuance of any refunding bonds under the provisions of this part 2 shall either be immediately applied to the payment, or redemption, and retirement of the bonds to be refunded and the cost and expense incident to such procedures or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation therefor and the costs and expenses incident to such proceedings and for no other purpose whatsoever until the bonds being refunded have been paid in full and discharged and all accrued interest thereon has also been paid in full, upon which occurrences the escrow shall terminate, and any funds remaining therein shall be returned to the municipality and may be used to pay other bonds of the municipality.

(2) The costs and expenses incident to the refunding of outstanding bonded indebtedness, the issuance of refunding bonds, and the establishment and maintenance of escrow accounts, pursuant to the provisions of this part 2, may be paid from any moneys or funds

of the municipality which are legally available therefor. Any moneys or funds of the municipality legally available therefor may be placed in any escrow account established under the provisions of this part 2 and may be used and expended for the purposes specified in the escrow agreement if such procedure is deemed by the governing body to be in the best interests of the municipality.

(3) Any escrowed funds, pending such use, may be invested or, if necessary, reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., maturing at such times as to insure the prompt payment of the bonds refunded under the provisions of this part 2 and the interest accruing thereon.

(4) Escrowed funds and investments, together with any interest to be derived from such investments, shall be in an amount which at all times shall be sufficient to pay the bonds refunded as they become due at their respective maturities or as they are called for redemption and payment on prior redemption dates as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom, and the computations made in determining such sufficiency shall be verified by a certified public accountant.

(5) For the purpose of implementing the provisions of this part 2, the governing body of any municipality has the power to enter into escrow agreements and to establish escrow accounts with any commercial bank having full trust powers located within the state of Colorado, which is a member of the federal deposit insurance corporation, under protective covenants and agreements whereby such accounts shall be fully secured by, or shall be invested in, securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., in such amounts as will be sufficient and maturing at such times as to insure the prompt payment of the bonds refunded and the interest accruing thereon under the provisions of this part 2.

(6) In no event shall the aggregate amount of bonded indebtedness of any municipality exceed the maximum allowable amount as determined pursuant to the state constitution, statutes, and charter applicable to such municipality. In determining and computing such aggregate amount of bonded indebtedness of any municipality, bonds which have been refunded as provided in this part 2, either by immediate payment, or redemption, and retirement or by the placement of the proceeds of refunding bonds in escrow shall not be deemed outstanding indebtedness from and after the date on which sufficient moneys are placed with the paying agent of such outstanding bonds for the purpose of immediately paying, or redeeming, and retiring such bonds or from and after the date on which the proceeds of said refunding bonds are placed in such an escrow.

(7) The issuance of refunding bonds by any municipality for the purposes and in the manner authorized by this part 2 or under the provisions of any other law enabling such an issuance shall never be interpreted or taken to be the creation of an indebtedness such that the same would require the approval of the registered electors of the municipality, and no such approval shall be required for the issuance of such refunding bonds except as is specifically required by this part 2 or such other law under which said refunding bonds are sought to be issued or have been issued.

(8) No bonds may be refunded under the provisions of this part 2 unless the holders thereof voluntarily surrender said bonds for immediate exchange or immediate payment or unless said bonds either mature or are callable for redemption prior to their maturity under their terms within ten years from the date of issuance of the refunding bonds, and provisions shall be made for paying, or redeeming, and discharging all of the bonds refunded within said period of time.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1; (3) and (5) amended, p. 1274, § 2, effective April 9. L. 89: (3) and (5) amended, p. 1115, § 26, effective July 1.

Editor's note: This section is similar to former § 31-21-211 as it existed prior to 1975.

31-21-212. Registration of refunding bonds. Whenever any municipality issues refunding bonds under the provisions of this part 2, the governing body shall direct that the

clerk of said municipality, as a part of said clerk's duties, register said bonds in a book to be kept by him for that purpose, and, when so registered, the legality thereof shall not be open to contest by such municipality, or by any other person or corporation in behalf of such municipality for any reason whatever. It is the duty of the clerk to register said bonds, noting the principal amount, the date of issuance and maturity, and the rate of interest of said bonds.

Source: L. 75: Entire title R&RE, p. 1141, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-212 as it existed prior to 1975.

31-21-213. Redemption of refunding bonds prior to maturity - procedures. (1) If any bonds of a municipality, either bonds issued for refunding purposes or bonds issued for other purposes as set forth in section 31-15-302 (1) (d), are made redeemable prior to their respective maturities and the governing body determines that any part of such bonds should be called for redemption according to their terms, it is the duty of the clerk of such municipality, as soon as the governing body has authorized the redemption, to cause notice to be given of such action.

(2) Such notice shall be given by publication at least once in a newspaper customarily used by said municipality for legal notices at least thirty days prior to the date on which said bonds are to be redeemed and paid. Such notice shall contain the date and place on which said bonds shall be redeemed and paid, shall describe the bonds by their legal designation, date, number, and amount, and shall state that after the date so fixed for redemption and payment the interest on said bonds shall cease.

(3) After the date so fixed for redemption and payment, the bonds so called for redemption and payment shall cease to draw interest.

Source: L. 75: Entire title R&RE, p. 1141, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-213 as it existed prior to 1975.

PART 3

PAYMENTS OF MATURED SPECIAL ASSESSMENT

31-21-301. Power to issue bonds - purpose. Subject to the provisions of this part 3, any municipality has the power to issue its negotiable coupon bonds for the purpose of paying any special assessment bonds or obligations which it may issue, together with interest thereon, when it appears that there is not or will not be sufficient money for the payment of the same at maturity in the particular fund out of which payment should be made.

Source: L. 75: Entire title R&RE, p. 1141, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-301 as it existed prior to 1975.

31-21-302. Ordinance - taxes - interest - disposition. The issuance of any bonds in accordance with this part 3 shall be authorized by an ordinance, subject to and otherwise in accordance with the provisions of section 31-15-302 (1) (d). Such bonds shall bear interest at a rate and shall be exchanged or sold at a price such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized. Interest shall be paid semiannually at such place, in such denominations, and by such officers as may be prescribed in such ordinance. Such bonds may be exchanged for outstanding matured and overdue special assessment bonds or obligations and interest thereon, or they may be sold and the proceeds thereof used for the purpose specified in this part 3.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-303 as it existed prior to 1975.

31-21-303. Construction - disposition of delinquent assessment. Nothing in this part 3 shall release or discharge any special assessment which is a lien on or against any property. Any municipality issuing bonds under this part 3 shall be subrogated to the rights of the holders or owners of the outstanding special assessment bonds or obligations paid. If, after the issuance of bonds authorized by this part 3, the delinquent or defaulted special assessments, or any part thereof, are collected and the special assessment bonds or obligations payable out of the particular special assessment fund have been redeemed by means of bonds issued under this part 3, the amounts so collected shall be used to pay the principal of and the interest on the bonds authorized and the tax levies therefor shall be reduced in a like manner.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-304 as it existed prior to 1975.

PART 4

PAYMENT BY TAX LEVY ON PETITION OF ELECTORS

31-21-401. Power to levy - manner paid. On the petition of a majority of the registered electors of any city or town having an outstanding bonded indebtedness amounting to one-fourth or more of its valuation for assessment, the governing body of such city or town is authorized to levy or cause to be levied at one time a tax on all the taxable property subject to taxes for payment of such bonds sufficient to discharge the entire principal of and the accrued interest on such indebtedness plus fifteen percent for delinquencies, which tax may be paid by the property owners at one time or in installments, as provided in this part 4. In determining the amount of outstanding bonded indebtedness, any sum in the sinking fund may be deducted.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1. **L. 87:** Entire section amended, p. 332, § 96, effective July 1.

Editor's note: This section is similar to former § 31-21-401 as it existed prior to 1975.

31-21-402. Discharge of lien by property owner. Any property owner may discharge the lien of said bond tax on his property by paying the tax in full, in bonds or matured coupons of the issue for which the levy is made at their face value. Thereafter the same property shall not be liable for the payment of such tax as between the city or town and the property owner.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-402 as it existed prior to 1975.

31-21-403. Payment in installments. Any property owner not paying the tax in full at one time has the privilege of paying the same in cash installments, the number of which installments shall be determined by the governing body and which shall equal the number of years from the time the next tax is payable to the last maturity of the bonds, with interest on the unpaid installments at the same rate which the outstanding bonds bear. After any property owner has paid one or more cash installments, he may pay the balance of said tax with bonds or matured coupons as provided in section 31-21-402.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-403 as it existed prior to 1975.

31-21-404. Payment in bonds - warrant for excess. (1) The tax-collecting officers are authorized to accept full payment of such taxes in said bonds or coupons and to cancel said bonds and coupons on such payment. Said tax-collecting officers are authorized to deliver to the person paying such tax a certificate, in duplicate, showing such payment and a description of the property on which the tax was paid, which certificate may be filed or recorded in the office of the county clerk and recorder of the county wherein the property is situated.

(2) In the event that any bonds or coupons presented as payment exceed the amount due, the tax-collecting officers shall deliver to the property owner a certificate to that effect, whereupon the property owner shall be entitled to receive from the city or town a warrant on its treasury, payable out of the bond and interest fund, in the amount of such excess, which warrant until paid shall bear the same rate of interest as the bonds for the payment of which the tax was levied.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-404 as it existed prior to 1975.

31-21-405. Assessment and collection. Said taxes shall be certified, levied, assessed, and collected in the same manner and shall be subject to the same penalties as general taxes.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-405 as it existed prior to 1975.

31-21-406. Suit by bondholder - city or town to protect. In the event that any action, suit, or proceeding is brought by any bondholder, creditor, or other person, wherein it is sought to compel the levy of any further bond tax on property which has been discharged from said tax by payment in full, the city or town shall take all necessary steps to protect said property on which the tax has been paid in full by purchasing property sold for the nonpayment of such tax in the event that there are no other purchasers and by making ample provisions for the payment of delinquent bond taxes or the installments thereof out of the general fund or any other available fund, the intention being that, as between the city or town and the taxpayer, any particular property may be fully discharged and relieved from the lien of such tax or the levy of any further tax for the same purpose by payment in full of its proportionate share thereof at the time of payment.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-406 as it existed prior to 1975.

31-21-407. Other laws unaffected. Nothing in this part 4 shall prevent the issuance of any bonds or the levy of taxes for the payment thereof in the manner as is authorized by law nor shall anything in this part 4 prevent the issuance of bonds for the purpose of refunding any outstanding bonded indebtedness of any city or town in accordance with the provisions of law applying thereto.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-407 as it existed prior to 1975.

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PART 1**PLATS OF CITIES AND TOWNS****Cross references:** For vacation of streets and alleys, see part 3 of article 2 of title 43.

31-23-101. Plats of cities and towns organized prior to 1885. In all cases in which a city or town was organized prior to March 31, 1885, in which lands embraced within the boundaries thereof have been conveyed or known by lots, blocks, streets, highways, parks, squares, or other divisions of land or in which any such lots, blocks, streets, highways, parks, squares, or other divisions of land have been known as such by reference to some previous plat or map, whether prepared or submitted in accordance with law or not, the owners of such lands, in order to determine the location and boundaries thereof, may cause a plat of the same to be filed in accordance with the provisions of this part 1.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-401 as it existed prior to 1975.

31-23-102. Application to other cities or towns. The provisions of this part 1 are applicable to lands within the boundaries of cities and towns organized on or after March 31, 1885, to the extent that any owners of lands therein desire to make any change in the plat of any such city or town from the plat as originally made.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-405 as it existed prior to 1975.

31-23-103. Plats of whole municipal area. (1) When any such plat embraces in its description the whole municipal area of any such city or town, it shall set forth, as near as may be:

- (a) All streets and highways and the width thereof;
- (b) All parks, squares, and other grounds reserved for public uses with the boundaries and dimensions thereof;
- (c) All lots and blocks and other divisions of land, with their boundaries, designating such lots and blocks by numbers and giving the dimensions of such lots and other divisions of land.

(2) Reference shall be made in said plat to one or more permanent monuments. The scale of said plat shall be indicated therein, and any other matters necessary or proper to clarify the descriptions of lands indicated on any such plat may be entered thereon.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-402 as it existed prior to 1975.

31-23-104. Acknowledgment of plat. Any such plat shall be acknowledged in the manner of a deed by the owners and proprietors of the lands designated upon any such plat before some officer authorized to take the acknowledgment of deeds. A copy thereof so acknowledged shall be filed in the office of the county clerk and recorder of the county where such lands are situated and also in the office of the clerk of any such city or town. When any such plat embraces in its description any street, highway, park, square, or other lands owned or held by the city or town for any public use or otherwise, said plat shall be acknowledged in behalf of the city or town by the mayor of the city or town when authorized by the resolution or ordinance of the governing body. Any such acknowledgment of any owner or proprietor may be made for such owner or proprietor by any attorney-in-fact duly authorized by deed.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-403 as it existed prior to 1975.

31-23-105. Plats of portion of municipal area. A plat of any portion of such municipal area may be filed, and any number of such plats may be filed. When any plat is filed containing a description of any less than all of the municipal area, the same matters shall be indicated upon such plat, to the extent of lands described in such plat, as are required to be indicated in a plat of the whole municipal area, as near as may be. Every plat shall be acknowledged by such owner and proprietor whose lands are embraced within the description of such plat.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-404 as it existed prior to 1975.

31-23-106. How parcels designated. In case of filing any such plat under this part 1, the designation by which any lot, block, or other parcel of land has previously been known shall be retained in said plat. With the consent of the city or town, any such lot, block, or other parcel of land specified in said plat may be designated by other numbers or names than those by which said lots, blocks, or other parcels of land have been previously known. Such consent of any such city or town, through its governing body, shall be evidenced by the acknowledgment of the mayor. In case of tracts or parcels of land within any such city or town which have not been known or platted by lots, blocks, or other parcels of land of a designated number or name, the same may be platted as provided in section 31-23-105 upon the consent of the city or town as provided in this section.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-406 as it existed prior to 1975.

31-23-107. Public property dedicated. All streets, parks, and other places designated or described as for public use on the map or plat of any city or town or of any addition made to such city or town are public property and the fee title thereto vested in such city or town.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-108 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Mineral Ownership Under Highways, Streets, Alleys and Ditches", see 17 Colo. Law, 43 (1988).

Annotator's notes. (1) Since § 31-23-107 is similar to former § 31-1-108 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

(2) For additional annotations concerning the dedication of public property, see § 31-2-106.

This section requires no magic words. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

The only requirement of this section is that the streets be described as for public use. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Legal consequences of dedication. The section declares that all streets, etc., described as for public use on the map or plat of any city, or any additions, shall be deemed to be public property and the fee thereof vested in such city or town. In thus providing, this section declares that the legal consequence of a dedication is that the streets, etc., are deemed to be public property and the fee is vested in the city. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

By dedication the original owner divests himself of the power of disposition of the

property and vests the city with this legal power. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Absent failure to comply or nonacceptance statutory dedication presumed. Where it does not appear that there was any failure to comply with the statute or that there was nonacceptance, it must be concluded that it was a statutory dedication, and the terms of a statutory dedication are governed by this section. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Statutory provisions as to dedication may materially affect the common-law rule. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Statutory dedication and common-law dedication distinguished. A statutory dedication operates by way of grant and ordinarily conveys the full fee title to the subject property, whereas a common-law dedication operates by way of "estoppel in pais" and ordinarily conveys only an easement. City of Greenwood Vill. v. Boyd, 624 P.2d 362 (Colo. App. 1981); State Dept. of Highways v. Town of Silverthorne, 707 P.2d 1017 (Colo. App. 1985), cert. dismissed, 736 P.2d 411 (1987).

In Colorado a dedication of land to public use may be made either according to the common law or pursuant to statute. City & County of Denver v. Publix Cab Co., 135 Colo. 132, 308 P.2d 1016 (1957).

Dedication of land to a county may be accomplished only through common law dedication because procedures under this section apply only to cities and towns. *Turnbaugh v. Chapman*, 68 P.3d 570 (Colo. App. 2003).

A dedication by acts and conduct of a city is a common-law dedication through an estoppel in pais and not a statutory dedication requiring a grant. *City & County of Denver v. Publix Cab Co.*, 135 Colo. 132, 308 P.2d 1016 (1957).

Unless prohibited by statute, an offer, constructive or actual, to dedicate a street can be made by a municipal corporation as well as by private owner. *City & County of Denver v. Publix Cab Co.*, 135 Colo. 132, 308 P.2d 1016 (1957).

Whether there has been a common-law dedication is a question of fact, and the general rule that the decision of the trial court based on substantial though conflicting evidence is binding on appeal applies. *City & County of Denver v. Publix Cab Co.*, 135 Colo. 132, 308 P.2d 1016 (1957); *State Dept. of Highways v. Town of Silverthorne*, 707 P.2d 1017 (Colo. App. 1985).

The fee title, to the surface at least, of the dedicated street passes to the city or the municipality. *Buell v. Sears, Roebuck & Co.*, 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Language of dedication created conveyance to public use of area for limited purposes. Language of dedication in developer's plats and planned unit development plan, i.e., "dedicate to the public all roadways and easements for purposes shown hereon", buttressed by the other evidence, was sufficient only to convey to the public the use of the area dedicated for the limited purposes specified plus concurrent use of the area for utility and drainage easement purposes. *City of Greenwood Vill. v. Boyd*, 624 P.2d 362 (Colo. App. 1981).

City not limited to mere easement. It cannot be said that merely because the grantor has granted the entire highway and continues to own the land which abuts the highway on one side, that he has a right to the whole or any part of the

highway when it is vacated, as there is nothing in this section which suggests that the interest granted to the city is limited to an easement. *Buell v. Sears, Roebuck & Co.*, 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

The fee granted is a limited one, in trust for the abutting owners and the users of the street, but the city nevertheless has a title to the property sufficient to allow disposition of it in accordance with § 43-2-302. *Buell v. Sears, Roebuck & Co.*, 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Rights of abutting owner retained. When a dedication satisfied this section and vested a fee in the city to the surface and so much thereof as was reasonably necessary for street and highway purposes, it operated to divest the dedicator of the property in it except to the extent of his rights as an abutting owner — rights extending only to the center of the street as dedicated. *Buell v. Sears, Roebuck & Co.*, 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Title of vacated portions vests in adjoining owner. A dedicator, even though not immediately divested of subsurface rights, is on notice at the time of dedication that if a portion of the dedicated street should be vacated by the city and county unconditional title would vest in the adjoining owner. *Buell v. Sears, Roebuck & Co.*, 321 F.2d 468 (10th Cir. 1963).

One dedicating highways to the public by filing plats showing highways located thereon is not unconstitutionally deprived of its property by § 43-2-302 which provides that upon vacation of the highway the title shall vest in the abutting owner. *Buell v. Sears, Roebuck & Co.*, 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

For the requirement that a political subdivision accept a dedication, see *Bd. of County Comm'rs v. Warneke*, 85 Colo. 388, 276 P. 671 (1929); *Hand v. Rhodes*, 125 Colo. 508, 245 P.2d 292 (1952); *Litvak v. Sunderland*, 143 Colo. 347, 353 P.2d 381 (1960); *Thornton v. City of Colo. Springs*, 173 Colo. 357, 478 P.2d 665 (1970).

31-23-108. Record and preservation. The county clerk and recorder shall record all such plats of lands within his county together with the description, acknowledgment, or other writing thereon in a book to be kept by him for that purpose and, when necessary, may reduce the scale of any such plat. Upon each record in the book he shall endorse his certificate that the same is truly recorded from the original plat filed in his office. Every such original plat shall be preserved by the county clerk and recorder. Such county clerk and recorder shall keep an index to such book of plats, which index shall contain the names of the parties acknowledging such plats and the name of the city or town, as the case may be. Said county clerk and recorder shall likewise make entries of all such plats in the index in his office in which deeds are required to be entered.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-407 as it existed prior to 1975.

31-23-109. Plats shall be evidence. All such original plats, the record thereof, or copies therefrom, certified by the county clerk and recorder of such county, shall be evidence in all courts and places.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-408 as it existed prior to 1975.

31-23-110. Boundaries settled by plat. Upon the filing of any such plat in the office of the county clerk and recorder, the boundaries of contiguous divisions of land, as described in section 31-23-103, upon any such plat shall be determined and settled as indicated in the plat. All the other matters indicated upon said plat are binding upon the parties acknowledging such plat. For the purpose of description in any instrument affecting title to any land described in any such plat, the designation given upon such plat shall be sufficient.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-409 as it existed prior to 1975.

31-23-111. Owner construed. For the purposes of this part 1, any person having a legal or equitable interest in any lands shall be deemed an owner and proprietor. Nothing in this part 1 shall affect the rights of anyone other than those acknowledging any such plat.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-410 as it existed prior to 1975.

31-23-112. Fees of recorder. The county clerk and recorder shall receive the same fees for filing and recording the plats provided for by this part 1 as are allowed for filing and recording original maps or plats of cities or towns.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-411 as it existed prior to 1975.

Cross references: For fees for filing and recording maps or plats, see § 30-1-103.

PART 2

PLANNING COMMISSION

Law reviews: For article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989).

31-23-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Mayor" means the chief executive of the municipality, whether the official designation of his office is mayor, city manager, or otherwise; except that with respect to municipalities operating under the statutory city manager form of government, the term means the city manager.

(2) "Subdivision" means any parcel of land which is to be used for condominiums, apartments, or any other multiple-dwellings units, unless such land was previously subdivided and the filing accompanying such subdivision complied with municipal regulations applicable to subdivisions of substantially the same density, or the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose,

whether immediate or future, of sale or of building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

Source: **L. 75:** Entire title R&RE, p. 1145, § 1, effective July 1. **L. 81:** (2) amended, p. 1512, § 1, effective June 4.

Editor's note: This section is similar to former § 31-23-101 (3) and (6) as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980).

Applied in *Wood Bros. Homes v. City of Colo. Springs*, 42 Colo. App. 15, 592 P.2d 1336 (1978).

31-23-202. Grant of power to municipality. Any municipality is authorized to make, adopt, amend, extend, add to, or carry out a plan as provided in this part 2 and to create by ordinance or resolution a planning commission with the powers and duties set forth in this part 2.

Source: **L. 75:** Entire title R&RE, p. 1146, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-102 as it existed prior to 1975.

31-23-203. Personnel of the commission. (1) The municipal planning commission, referred to in this part 2 as the "commission", shall consist of not less than five nor more than seven members; except that a home rule city or town shall not be limited in the size of its commission. Unless otherwise provided by ordinance, the membership and terms of members shall be as follows:

(a) When the commission is limited to five members, the membership shall consist of the mayor and a member of the governing body as ex officio members and three persons appointed by the mayor, if the mayor is an elective officer; otherwise by such office as the governing body may designate as the appointing power in the ordinance creating the commission.

(b) When the commission consists of seven or more members, there shall be four ex officio members consisting of the mayor, one of the administrative officials selected by the mayor, a member of the governing body selected by the mayor, and a member of the governing body selected by the governing body; the balance of the membership shall be appointed as provided in paragraph (a) of this subsection (1).

(2) All members of such commission shall be bona fide residents of the municipality and, if any member ceases to reside in such municipality, his membership on the commission shall automatically terminate.

(3) All members of the commission shall serve without compensation and the appointed members shall hold no other municipal office; except that one such appointed member may be a member of the zoning board of adjustment or appeals. The terms of ex officio members shall correspond to their respective official tenures; except that the term of the administrative official selected by the mayor shall terminate with the expiration of the term of the mayor who selected him. The term of each appointed member shall be six years or until his successor takes office; except that the respective terms of one-third of the members first appointed shall be two years, one-third shall be four years, and one-third shall be six years. Members other than the member representing the governing body may be removed, after public hearings, by the mayor for inefficiency, neglect of duty, or malfeasance in office, and the governing body may remove the member representing it for the same reasons. The mayor or the governing body, as the case may be, shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the

expiration of term shall be filled for the remainder of the unexpired term by the mayor in the case of members selected or appointed by him, by the governing body in the case of the member appointed by it, and by the appointing power designated by the governing body in municipalities in which the mayor is not an elective officer.

(4) Notwithstanding any provisions of subsections (1) and (3) of this section to the contrary, the governing body of each municipality may provide by ordinance for the size, membership, designation of alternate membership, terms of members, removal of members pursuant to subsection (3) of this section, and filling of vacancies of the commission.

Source: L. 75: Entire title R&RE, p. 1146, § 1, effective July 1. L. 79: (4) added, p. 1188, § 1, effective June 19.

Editor's note: This section is similar to former § 31-23-103 as it existed prior to 1975.

31-23-204. Organization and rules. The commission shall elect its chairman from among the non ex officio members and shall create and fill such other of its offices as it may determine. The term of the chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-104 as it existed prior to 1975.

31-23-205. Staff and finances. The commission may appoint such employees as it deems necessary for its work; except that the appointment, promotion, demotion, and removal of such employees shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract, with the approval of the governing body, with municipal planners, engineers, and architects and other consultants for such services as it requires. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the governing body, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-105 as it existed prior to 1975.

31-23-206. Master plan. (1) It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries, subject to the approval of the governmental body having jurisdiction thereof, which in the commission's judgment bear relation to the planning of such municipality. The master plan of a municipality shall be an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the municipality's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. When a commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the municipality in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall, after consideration of each of the following, where applicable or appropriate, show the commis-

sion's recommendations for the development of said municipality and outlying areas, including:

(a) The general location, character, and extent of existing, proposed, or projected streets, roads, rights-of-way, bridges, waterways, waterfronts, parkways, highways, mass transit routes and corridors, and any transportation plan prepared by any metropolitan planning organization that covers all or a portion of the municipality and that the municipality has received notification of or, if the municipality is not located in an area covered by a metropolitan planning organization, any transportation plan prepared by the department of transportation that the municipality has received notification of and that covers all or a portion of the municipality;

(b) The general location of public places or facilities, including public schools, culturally, historically, or archaeologically significant buildings, sites, and objects, playgrounds, squares, parks, airports, aviation fields, military installations, and other public ways, grounds, open spaces, trails, and designated federal, state, and local wildlife areas. For purposes of this section, "military installation" shall have the same meaning as specified in section 29-20-105.6 (2) (b), C.R.S.

(c) The general location and extent of public utilities terminals, capital facilities, and transfer facilities, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes, and any proposed or projected needs for capital facilities and utilities, including the priorities, anticipated costs, and funding proposals for such facilities and utilities;

(d) The general location and extent of an adequate and suitable supply of water. If the master plan includes a water supply element, the planning commission shall consult with the entities that supply water for use within the municipality to ensure coordination on water supply and facility planning, and the water supply element shall identify water supplies and facilities sufficient to meet the needs of the public and private infrastructure reasonably anticipated or identified in the planning process. Nothing in this paragraph (d) shall be construed to supersede, abrogate, or otherwise impair the allocation of water pursuant to the state constitution or laws, the right to beneficially use water pursuant to decrees, contracts, or other water use agreements, or the operation, maintenance, repair, replacement, or use of any water facility.

(e) The acceptance, removal, relocation, widening, narrowing, vacating, abandonment, modification, change of use, or extension of any of the public ways, rights-of-way, including the coordination of such rights-of-way with the rights-of-way of other municipalities, counties, or regions, grounds, open spaces, buildings, property, utility, or terminals, referred to in paragraphs (a) to (d) of this subsection (1);

(f) A zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. Such a zoning plan may protect and assure access to appropriate conditions for solar, wind, or other alternative energy sources; however, regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

(g) The general character, location, and extent of community centers, housing developments, whether public or private, the existing, proposed, or projected location of residential neighborhoods and sufficient land for future housing development for the existing and projected economic and other needs of all current and anticipated residents of the municipality, and redevelopment areas. If a municipality has entered into a regional planning agreement, such agreement may be incorporated by reference into the master plan.

(h) A master plan for the extraction of commercial mineral deposits pursuant to section 34-1-304, C.R.S.;

(i) A plan for the location and placement of public utilities that facilitates the provision of such utilities to all existing, proposed, or projected developments in the municipality;

(j) Projections of population growth and housing needs to accommodate the projected population for specified increments of time. The municipality may base these projections upon data from the department of local affairs and upon the municipality's local objectives.

(k) The areas containing steep slopes, geological hazards, endangered or threatened species, wetlands, floodplains, floodways, and flood risk zones, highly erodible land or

unstable soils, and wildfire hazards. For purposes of determining the location of such areas, the planning commission should consider the following sources for guidance:

- (I) The Colorado geological survey for defining and mapping geological hazards;
- (II) The United States fish and wildlife service of the United States department of the interior and the parks and wildlife commission created in section 33-9-101, C.R.S., for locating areas inhabited by endangered or threatened species;
- (III) The United States Army corps of engineers and the United States fish and wildlife service national wetlands inventory for defining and mapping wetlands;
- (IV) The federal emergency management agency for defining and mapping floodplains, floodways, and flood risk zones;
- (V) The natural resources conservation service of the United States department of agriculture for defining and mapping unstable soils and highly erodible land; and
- (VI) The Colorado state forest service for locating wildfire hazard areas.

(2) As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part thereof. Any such part shall cover one or more major sections or divisions of the municipality or one or more of the foregoing or other functional matters to be included in the plan. The commission may amend, extend, or add to the plan from time to time.

(3) (Deleted by amendment, L. 2007, p. 613, § 2, effective August 3, 2007.)

(4) (a) Each municipality that has a population of two thousand persons or more and that is wholly or partially located in a county that is subject to the requirements of section 30-28-106 (4), C.R.S., shall adopt a master plan within two years after January 8, 2002.

(b) The department of local affairs shall annually determine, based on the population statistics maintained by said department, whether a municipality is subject to the requirements of this subsection (4), and shall notify any municipality that is newly identified as being subject to said requirements. Any such municipality shall have two years following receipt of notification from the department to adopt a master plan.

(c) Once a municipality is identified as being subject to the requirements of this subsection (4), the municipality shall at all times thereafter remain subject to the requirements of this subsection (4), regardless of whether it continues to meet the criteria specified in paragraph (a) of this subsection (4).

(5) A master plan adopted in accordance with the requirements of subsection (4) of this section shall contain a recreational and tourism uses element pursuant to which the municipality shall indicate how it intends to provide for the recreational and tourism needs of residents of the municipality and visitors to the municipality through delineated areas dedicated to, without limitation, hiking, mountain biking, rock climbing, skiing, cross country skiing, rafting, fishing, boating, hunting, and shooting, or any other form of sports or other recreational activity, as applicable, and commercial facilities supporting such uses.

(6) The master plan of any municipality adopted or amended in accordance with the requirements of this section on and after August 8, 2005, shall satisfy the requirements of section 29-20-105.6, C.R.S., as applicable.

(7) Notwithstanding any other provision of this section, no master plan originally adopted or amended in accordance with the requirements of this section shall conflict with a master plan for the extraction of commercial mineral deposits adopted by the municipality pursuant to section 34-1-304, C.R.S.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1. L. 79: (1)(d) amended, p. 1162, § 10, effective January 1, 1980. L. 97: (3) added, p. 414, § 2, effective April 24. L. 2000: (1) amended, p. 874, § 2, effective August 2. L. 2001, 2nd Ex. Sess.: (4) and (5) added, p. 22, § 2, effective January 8, 2002. L. 2002: (5) amended, p. 1036, § 84, effective June 1. L. 2005: (6) added, p. 223, § 3, effective August 8. L. 2007: IP(1) and (3) amended and (7) added, p. 613, § 2, effective August 3. L. 2010: (1)(b) and (6) amended, (HB 10-1205), ch. 242, p. 1078, § 3, effective August 11. L. 2012: IP(1) and (1)(k)(II) amended, (HB 12-1317), ch. 248, p. 1206, § 13, effective June 4.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002).

City in advisory role. There is nothing in this section and § 31-23-209 which indicates a legislative intent to broaden a city's authority. They place ultimate governmental authority in matters pertaining to land use in unincorporated areas in the county. In effect, a city is given only an

advisory role. *Robinson v. City of Boulder*, 190 Colo. 357, 547 P.2d 228 (1976).

Standing of owner of property outside territory of authority to challenge rezoning. An owner of property adjacent to property being rezoned but not within the territory of the zoning authority has standing to challenge the rezoning. *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981).

Sections 31-23-206 through 31-23-208 do not apply to rezoning or to a zoning change to a particular area. *Coates v. City of Cripple Creek*, 865 P.2d 924 (Colo. App. 1993).

Applied in *Margolis v. District Court*, 638 P.2d 297 (Colo. 1981).

31-23-207. Purposes in view. In the preparation of such plan, the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality, with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire, flood waters, and other dangers, adequate provision for light and air, distribution of population, affordable housing, the promotion of good civic design and arrangement, efficient expenditure of public funds, the promotion of energy conservation, and the adequate provision of public utilities and other public requirements.

Source: **L. 75:** Entire title R&RE, p. 1147, § 1, effective July 1. **L. 79:** Entire section amended, p. 1163, § 11, effective January 1, 1980. **L. 97:** Entire section amended, p. 414, § 3, effective April 24.

Editor's note: This section is similar to former § 31-23-107 as it existed prior to 1975.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983).

Sections 31-23-206 through 31-23-208 do not apply to rezoning or to a zoning change to a particular area. *Coates v. City of Cripple Creek*, 865 P.2d 924 (Colo. App. 1993).

Applied in *Margolis v. District Court*, 638 P.2d 297 (Colo. 1981).

31-23-208. Procedure of commission. The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan (said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan) and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition, the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official newspaper of the county affected. The adoption of the plan, any part, amendment, extension, or addition shall be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole

or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman or secretary of the commission. An attested copy of the plan or part thereof shall be certified to each governmental body of the territory affected and, after the approval by each body, shall be filed with the county clerk and recorder of each county wherein the territory is located.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-108 as it existed prior to 1975.

ANNOTATION

Sections 31-23-206 through 31-23-208 do not apply to rezoning or to a zoning change to a particular area. Coates v. City of Cripple Creek, 865 P.2d 924 (Colo. App. 1993).

31-23-209. Legal status of official plan. When the commission has adopted the master plan of the municipality or of one or more major sections or districts thereof, no street, square, park or other public way, ground or open space, public building or structure, or publicly or privately owned public utility shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof has been submitted for approval by the commission. In case of disapproval, the commission shall communicate its reasons to the municipality's governing body, which has the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground space, building, structure, or utility is one the authorization or financing of which does not, under the law or charter provisions governing the same, fall within the province of the municipal governing body, the submission to the commission shall be by the governmental body having jurisdiction, and the planning commission's disapproval may be overruled by said governmental body by a vote of not less than two-thirds of its membership. The failure of the commission to act within sixty days from and after the date of official submission to it shall be deemed approval.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-109 as it existed prior to 1975.

ANNOTATION

City in advisory role. There is nothing in § 31-23-206 and this section which indicates a legislative intent to broaden a city's authority. They place ultimate governmental authority in matters pertaining to land use in unincorporated areas in the county. In effect, a city is given only an advisory role. Robinson v. City of Boulder, 190 Colo. 357, 547 P.2d 228 (1976).

Amendment to plan not subject to referendum powers. Being advisory only, an amendment to a municipal master plan is not legislation which is subject to the referendum powers reserved to the people. Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

31-23-210. Publicity - travel - information - entry. The commission has power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or any report and may employ such other means of publicity and education as it may determine. Members of the commission may attend city planning conferences, meetings of city planning institutes, or hearings upon pending municipal planning legislation, and the commission may pay, by resolution, the reasonable traveling expenses incident to such attendance. The commission shall recommend, from time to time, to the appropriate public officials' programs for public structures and improvements and for the financing thereof. It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens in relation to protecting and carrying out the plan. The commis-

sion has the right to accept and use gifts for the exercise of its functions. All public officials shall furnish to the commission, upon request, within a reasonable length of time, such available information as the commission may require for its work. The commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary marks and monuments thereon. In general, the commission has such powers as are necessary to enable it to fulfill its functions, to promote municipal planning, or to carry out the purposes of this part 2.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-110 as it existed prior to 1975.

31-23-211. Zoning. Where a commission is established in accordance with the provisions of this part 2, it has and shall exercise all of the powers and rights granted to the zoning commission by part 3 of this article. When there is a zoning commission in existence at the time that a commission is created, the zoning commission shall deliver to the commission all of its records and shall thereafter cease to exercise the powers and prerogatives previously exercised by it; except that, if the existing zoning commission is nearing completion of a zoning plan, the governing body of the municipality may postpone, by resolution, the transfer of the zoning commission's powers until completion of the zoning plan; but in no event shall the period of such postponement exceed six months from the date of the creation of the commission. Nothing in this section shall invalidate or otherwise affect any zoning law or regulation or any action of the zoning commission adopted or taken prior to the creation of a commission.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-111 as it existed prior to 1975.

31-23-212. Jurisdiction. The territorial jurisdiction of any commission over the subdivision of land includes all land located within the legal boundaries of the municipality and, limited only to control with reference to a major street plan and not otherwise, also includes all land lying within three miles of the boundaries of the municipality not located in any other municipality; except that in the case of any such land lying within five miles of more than one municipality, the jurisdiction of each commission shall terminate at a boundary line equidistant from the respective municipal limits of such municipalities. The jurisdiction over the subdivision of lands outside the boundary of a municipality shall apply equally to any municipality.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-112 as it existed prior to 1975.

31-23-213. Scope of control. When a commission has adopted a major street plan for the territory within its subdivision control, or any part thereof, as provided in section 31-23-208, and has filed a certified copy of such plan in the office of the county clerk and recorder of the county in which such territory or such part is located, no plat of a subdivision of land within such territory or such part shall be filed or recorded until it has been approved by such commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-113 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "The Lawyer's Role in Developing an Area", see 28 Rocky Mt. L. Rev. 453 (1956).

31-23-214. Subdivision regulations. (1) Before any commission exercises the powers set forth in section 31-23-213, it shall adopt regulations governing the subdivision of land within its jurisdiction and shall publish the same in pamphlet form, which shall be available for public distribution, or, at the election of the commission, the regulations may be published once each week for three consecutive weeks in the official paper of the municipality or county in which such subdivisions, or any part thereof, are located. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum area and width of lots. The regulations may also provide for waivers from subdivision requirements and may establish different requirements applicable to subdivisions of different sizes, densities, or types of dwelling units. In the territory subject to subdivision jurisdiction beyond the municipal limits, the regulations shall provide only for conformance with the major street plan.

(1.5) Subdivision regulations adopted under provisions of this section may protect and assure access to sunlight for solar energy devices by considering in subdivision development plans the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street orientation and width requirements, or other permissible forms of land use controls.

(2) Before the adoption of the regulations referred to in this section, a public hearing shall be held thereon in the municipality. A copy of such regulations shall be certified by the commission to the county clerk and recorders of the counties in which the municipality and territory are located.

(3) Subdivision regulations adopted under provisions of this section shall require that a subdivider, as defined in section 30-28-101 (9), C.R.S., submit to the commission evidence that provision has been made for facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric or, if applicable, natural gas service for any proposed subdivision. Submission of a letter of agreement between the subdivider and utility serving the site shall be deemed sufficient to establish that adequate provision for electric or, if applicable, natural gas service to a proposed subdivision has been made.

Source: **L. 75:** Entire title R&RE, p. 1150, § 1, effective July 1. **L. 79:** (1.5) added, p. 1163, § 12, effective January 1, 1980. **L. 81:** (1) amended, p. 1512, § 2, effective June 4. **L. 83:** (2) amended, p. 1262, § 1, effective March 15. **L. 2000:** (3) added, p. 1618, § 2, effective July 1.

Editor's note: This section is similar to former § 31-23-114 as it existed prior to 1975.

Cross references: For registration of subdivision developers, see part 4 of article 61 of title 12.

ANNOTATION

Law reviews. For article, "Subdivision Regulations and Compulsory Dedications", see 39 Dicta 299 (1962). For article, "Subdivision

Improvement Requirements and Guarantees in Colorado", see 14 Colo. Law. 554 (1985).

31-23-214.1. Subdivision plan or plat - access to public highways. No person may submit an application for subdivision approval to a local authority unless the subdivision

plan or plat provides, pursuant to section 43-2-147, C.R.S., that all lots and parcels created by the subdivision will have access to the state highway system in conformance with the state highway access code.

Source: **L. 80:** Entire section added, p. 796, § 59, effective June 5. **L. 82:** Entire section amended, p. 627, § 35, effective April 2.

31-23-215. Procedure - legal effect. (1) The commission shall approve or disapprove a plat within thirty days after said plat has been submitted to it; otherwise such plat shall be deemed approved and a certificate to that effect shall be issued by the commission on demand unless the applicant for the commission's approval waives this requirement and consents to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. No plat shall be acted on by the commission without affording a hearing thereon. Notice of the time and place of such hearing shall be sent to mineral estate owners in accordance with article 65.5 of title 24, C.R.S.

(2) Every plat approved by the commission, by virtue of such approval, shall be deemed to be an amendment or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not constitute or effect an acceptance by the public of any street or other open space shown upon the plat. From time to time, the commission may recommend to the governing body amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulations of the territory comprised within approved subdivisions. The commission has the power to impose use, height, area, or bulk requirements or restrictions governing buildings and premises within the subdivision if such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof, shall have the force of law, and shall be enforceable in the same manner and with the same sanctions and penalties and subject to the same powers of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality. No action taken under this section shall be binding for any purpose until such action has been approved by the governmental body of the territory affected or any part thereof.

Source: **L. 75:** Entire title R&RE, p. 1150, § 1, effective July 1. **L. 79:** (1) amended, p. 1167, § 3, effective July 1. **L. 2001:** (1) amended, p. 490, § 5, effective July 1. **L. 2007:** (1) amended, p. 2122, § 8, effective August 3.

Editor's note: This section is similar to former § 31-23-115 as it existed prior to 1975.

31-23-216. Penalties for sales in unapproved subdivisions. Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of or by use of a plat of a subdivision before such plat has been approved by the commission and recorded or filed in the office of the appropriate county clerk and recorder shall pay a penalty of one hundred dollars to the municipality for each lot or parcel so transferred, or sold, or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer or sale or agreement by action for injunction brought in any court of competent jurisdiction and may recover the penalty by civil action in any court of competent jurisdiction.

Source: **L. 75:** Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-116 as it existed prior to 1975.

Cross references: For the requirements of monumentation of external boundaries of all subdivisions prior to recording of a plat, see § 38-51-105.

31-23-216.5. Additional enforcement - fine or imprisonment - abatement or removal. (1) In addition to any other remedies, the governing body of any municipality may provide by ordinance that it is unlawful to erect, construct, reconstruct, use, or alter any building or structure or to use any land in violation of any municipal subdivision regulation, and the governing body may enforce obedience to such ordinance by fine or imprisonment as provided in section 31-16-101.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used or any land is or is proposed to be used in violation of any municipal subdivision regulation, the municipality, in addition to other remedies provided by law, may institute an appropriate action to prevent, enjoin, abate, or remove the violation to prevent the occupancy of the building, structure, or land or to prevent any illegal act or use in or on such premises.

Source: L. 81: Entire section added, p. 1513, § 3, effective June 4.

31-23-217. Acceptance and improvement of streets. (1) The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street or lay or authorize water mains or sewers or connections to be laid in any street within any portion of a territory for which the commission has adopted a major street plan unless such street:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to the adoption of such plan; or

(b) Corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission. However, the governing body may accept any street not shown on or not corresponding with a street on the official master plan or on any approved subdivision plat or an approved street plat if the ordinance or other measure accepting such street is first submitted to the commission for its approval and, if approved by the commission, is enacted or passed by not less than a majority of the entire membership of the governing body or, if disapproved by the commission, is enacted or passed by not less than two-thirds of the entire membership of the governing body.

(2) A street approved by the commission upon submission by the governing body or a street accepted by a two-thirds vote after disapproval by the commission shall have the status of an approved street as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or had been originally platted by the commission.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-117 as it existed prior to 1975.

31-23-218. Erection of buildings. (1) After the time when a commission has adopted a major street plan of the territory within the municipal limits of said municipality, no building shall be erected on any lot within such territory or part nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to that time; or

(b) Corresponds with a street shown on the official master plan, with a street or subdivision plat approved by the planning commission, with a street on a street plat made by and adopted by the commission, or with a street accepted by the governing body in accordance with the provisions of section 31-23-217. Any building erected in violation of this section is an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated or have it removed.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-118 as it existed prior to 1975.

31-23-219. Status of existing statutes. After the time when a municipal planning commission has control over subdivisions as provided in section 31-23-213, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivisions of land granted by other statutes, insofar as in harmony with the provisions of this part 2, shall be deemed transferred to the planning commission of such municipality.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-119 as it existed prior to 1975.

31-23-220. Reservation for future acquisition. (1) (a) Any commission is empowered, from time to time, after it has adopted a major street plan of the territory within its subdivision jurisdiction or of any major section or district thereof, to make or cause to be made surveys for the exact location of the lines of a street in any portion of such territory and to make a plat of the area or district thus surveyed showing the land which it recommends be reserved for future acquisition for public streets. The commission, before adopting any such plat, shall hold a public hearing thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be given not less than ten days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area is within the municipality or of general circulation in the county if the district or area is outside the municipality. After such a hearing the commission may transmit the plat, as originally made or modified, as may be determined by the commission, to the governing body together with the commission's estimate of the time within which the lands shown on the plat as street locations should be acquired by the municipality.

(b) The governing body, by resolution, may approve and adopt or reject such plat or may modify it with the approval of the planning commission or, in the event of the commission's disapproval, the governing body, by a favorable vote of not less than two-thirds of its entire membership, may modify such plat and adopt the modified plat. In the resolution of adoption of a plat, the governing body shall fix the period of time for which the street locations shown upon the plat shall be reserved for future taking or acquisition for public use. Upon such adoption the clerk shall transmit one attested copy of the plat to the county clerk and recorder of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation.

(2) (a) Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street, nor the taking of any land for street purposes, nor for public use, nor as a public improvement but solely as a reservation of the street location shown therein for the period specified in the resolution for future taking or acquisition for public use. The commission at any time may negotiate for and secure from the owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality from such claims by others, which releases or agreements shall be binding upon the owners executing the same and their successors in title.

(b) At any time after the filing of a plat with the county clerk and recorder and during the period specified for the reservation, the commission and the owner of any land containing a reserved street location may agree upon modification of the location of the lines of the proposed street. Such agreement shall include a release by said owner of any claim for compensation or damages by reason of such modification. Thereupon the commission may make a plat corresponding to the said modification and transmit the same to the governing body. If such modified plat is approved by the governing body, the clerk shall transmit an attested copy thereof to the county clerk and recorder and the modified plat shall take the place of the original plat. At any time the governing body, by resolution, may abandon any reservation and shall certify any such abandonment to the county clerk and recorder.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-120 as it existed prior to 1975.

31-23-221. Compensation for reservations. (1) In the resolution of adoption of a plat, the governing body shall appoint a board of three appraisers and shall fix the time and place of meetings for hearings by said board upon the amounts of compensation to be paid for such reservations. Thereupon the clerk shall publish in at least two newspapers of general circulation in the municipality once a week for four consecutive weeks a notice which shall contain a general description of the land thus reserved as shown on the plat, the provisions of the resolution of the governing body, including the period of time for which such reservations are made, the time within which claims for compensation may be filed, which shall be not less than three nor more than six months from the date of notice, and the time and place of hearings by the board of appraisers. The first hearing shall not be set earlier than thirty days after the date of the first of such publications. Such notice shall also be posted in at least three public places in the neighborhood of or along the line of the location of the reservation.

(2) The board of appraisers shall fix the amounts of compensation to be paid, respectively, to the owners of lands reserved for the period of time as shown on the plat and in the resolution adopted by the governing body. When the clerk receives, within the period fixed for the same, any claim for such compensation, he shall transmit it to the board of appraisers. At the time and place fixed for such hearings, the board of appraisers shall hear and consider all claims presented to it in writing or in person, including all evidence which may be presented by the claimants or other persons. The board of appraisers has the right on its own initiative to investigate and ascertain data or evidence relevant to the question of such compensation. In case of the abandonment of a reservation prior to the time fixed for payment of compensation, the municipality shall be liable to the owner of the land included within the abandoned reservation for the expenses, if any, incurred by such owner by reason of such reservation.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-121 as it existed prior to 1975.

31-23-222. Report of appraisers - action by the governing body. (1) The board of appraisers, within ninety days after the time fixed for the filing of claims, shall file its tentative report with the clerk setting forth its findings as to the amounts of compensation to be paid the respective owners of the lands included within the lines of such reservations as located on the approved plat. Thereupon the clerk shall publish once a week for two consecutive weeks in at least two newspapers of general circulation in the municipality the fact of the filing of the report of the appraisers and specify a period of thirty days after the date of the first such publication within which objections to the report may be filed with the clerk. If objections are filed within said period, the clerk shall cause the board of appraisers to hold a meeting at which said objections shall be transmitted to the board, and the board may modify its report. The report in its original form or, if modified, in its modified form shall be transmitted to the governing body by the clerk.

(2) Before passing on the report, the governing body may return it to the board of appraisers for reconsideration, and the board, upon further consideration, may transmit its former or modified report to the governing body. The governing body may approve or disapprove the report. If the report is approved by the governing body, it shall provide for the payment of the amounts of compensation set forth in the report within ninety days after the filing of the report with the governing body. In the case of those property owners who file claims, payment shall be made through the clerk who shall notify the claimants at the addresses given upon the claims filed with him. Payments to all other persons shall be made through the clerk of the district court of the county in which the reserved location is situated by the payment to said clerk of the amounts awarded to such persons. Notice of distribution to such persons shall be given and made as may be provided by a rule or order of said court. Payments made to the clerk or clerk of the district court within said ninety days shall be deemed compliance with the above requirement for payment within ninety days.

(3) If the governing body disapproves the report or fails to provide for such payment within ninety days, such disapproval or failure shall be deemed a dismissal of the

proceedings, a cancellation of the plat, and an abandonment of the reservations of the street locations as shown on the plat, with the same liability of the municipality for expenses as provided in the case of abandonment by resolution. Thereafter the clerk shall transmit to the county clerk and recorder an attested statement of such abandonment.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-122 as it existed prior to 1975.

31-23-223. Appeal from awards. Within twenty days after the approval of any such report by the governing body, any person dissatisfied with the award of compensation may file with the clerk notice of appeal to the district court of the county in which the appellant's land is located. Within ten days of such notice, the clerk shall file with the clerk of the district court the report of the board of appraisers approved by the governing body, together with certified copies of the resolution thereof and of the notice of appeal. Thereafter the procedure shall be in accordance with the procedure specified by law.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-123 as it existed prior to 1975.

31-23-224. No compensation for buildings. The reservation of a street location, as provided in section 31-23-220, shall not prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon. No compensations, other than the compensation awarded in the final report of said board of appraisers as approved by the governing body, as provided in section 31-23-222 or, in the case of an appeal, as awarded on such appeal as provided in section 31-23-223, shall at any time be paid by the municipality or public to or recovered from the municipality or public by any person for the taking of or injury to any building or structure built or erected within the period fixed in the resolution of the governing body upon any such reserved location. No compensation or damages for any such reservation shall be paid or recovered except as provided in sections 31-23-221 to 31-23-223.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-124 as it existed prior to 1975.

31-23-225. Major activity notice. When a subdivision or commercial or industrial activity is proposed which will cover five or more acres of land, the governing body of the municipality in which the activity is proposed shall send notice to the state geologist and the board of county commissioners of the county in which the improvement is located of the proposal prior to approval of any zoning change, subdivision, or building permit application associated with such a proposed activity.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1. L. 2005: Entire section amended, p. 669, § 7, effective June 1.

Editor's note: This section is similar to former § 31-23-125 as it existed prior to 1975.

Cross references: For duties of the state geologist upon receipt of a notice, see § 34-1-103 (4).

31-23-226. Applicability. This part 2 applies to municipalities, including home rule cities and towns, insofar as constitutionally permissible and except as limits are placed upon its application within the boundaries of home rule cities and towns by the charter or ordinance adopted pursuant thereto of said cities or towns.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-101 (4) as it existed prior to 1975.

31-23-227. Allocation of powers or duties. (1) The governing body of a municipality may, by ordinance, assume and exercise any power granted to or duty placed upon the municipal planning commission by this part 2 and may, by ordinance, delegate to the municipal planning commission or other appropriate municipal body any power granted to or duty placed upon the municipal governing body by this part 2, providing that the right to appeal to the municipal governing body is retained in any such delegation; except that the power to impose fines and penalties may not be delegated.

(2) The governing body of a municipality may, by ordinance, enter into an intergovernmental agreement with the county or counties in which it is located for the purposes of joint participation in land use planning, subdivision procedures, and zoning for a specific area designated in the intergovernmental agreement. However, any action taken pursuant to the intergovernmental agreement that pertains to any land within the municipality is subject to final approval by the governing body of the municipality.

Source: L. 83: Entire section added, p. 1263, § 1, effective May 4. L. 96: Entire section amended, p. 575, § 1, effective April 25.

PART 3

ZONING

Cross references: For county planning and building codes, see article 28 of title 30.

Law reviews: For comment, "The King Can Do Wrong: Local Government Immunity from Zoning", see 57 U. Colo. L. Rev. 639 (1986); for article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to municipal zoning, see 15 Colo. Law. 1560 (1986); for article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989); for article, "Substantive Due Process and Zoning Decisions", see 25 Colo. Law. 71 (March 1996).

31-23-301. Grant of power. (1) Except as otherwise provided in section 34-1-305, C.R.S., for the purpose of promoting health, safety, morals, or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the height and location of trees and other vegetation, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Regulations and restrictions of the height, number of stories, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation. Such regulations shall provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations. Subject to the provisions of subsection (2) of this section and to the end that adequate safety may be secured, said governing body also has power to establish, regulate, restrict, and limit such uses on or along any storm or floodwater runoff channel or basin, as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board, in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters. Any ordinance enacted under authority of this part 3 shall exempt from the operation thereof any building or structure as to which satisfactory proof is presented to the board of adjustment that the present or proposed situation of such building or structure is reasonably necessary for the convenience or welfare of the public.

(2) The power conferred by subsection (1) of this section for flood prevention and control shall not be exercised to deprive the owner of any existing property of its future use or maintenance for the purpose to which it was lawfully devoted on February 25, 1966, but provisions may be made for the gradual elimination of uses, buildings, and structures, including provisions for the elimination of such uses when the existing uses to which they are devoted are discontinued, and for the elimination of such buildings and structures when they are destroyed or damaged in major part.

(3) The governing body of any municipality or the board of adjustment thereof, in the exercise of powers pursuant to this section, may condition any zoning regulation, any amendment to such regulation, or any variance of the application thereof or the exemption of any building or structure therefrom upon the preservation, improvement, or construction of any storm or floodwater runoff channel designated and approved by the Colorado water conservation board.

(4) A statutory or home rule city or town or city and county shall not enact an ordinance prohibiting the use of a state-licensed group home for either persons with developmental disabilities or mental illness that serves not more than eight persons with developmental disabilities or eight persons with mental illness and appropriate staff as a residential use of property for zoning purposes. As used in this subsection (4), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning.

(5) (a) As used in this subsection (5), unless the context otherwise requires:

(I) "Manufactured home" means a single family dwelling which:

(A) Is partially or entirely manufactured in a factory;

(B) Is not less than twenty-four feet in width and thirty-six feet in length;

(C) Is installed on an engineered permanent foundation;

(D) Has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and

(E) Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401 et seq., as amended.

(II) "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units.

(b) (I) No municipality shall have or enact zoning regulations, subdivision regulations, or any other regulation affecting development which exclude or have the effect of excluding manufactured homes from the municipality if such homes meet or exceed, on an equivalent performance engineering basis, standards established by the municipal building code.

(II) Nothing in this subsection (5) shall prevent a municipality from enacting any zoning, developmental, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and setback standards to the extent that such standards or requirements are applicable to existing or new housing within the specific use district of the municipality.

(III) Nothing in this subsection (5) shall preclude any municipality from enacting municipal building code provisions for unique public safety requirements such as snow load roof, wind shear, and energy conservation factors.

(IV) Nothing in this subsection (5) shall be deemed to supersede any valid covenants running with the land.

Source: L. 75: Entire title R&RE, p. 1155, § 1, effective July 1; (4) added, p. 934, § 57, effective July 1. L. 79: (1) amended, p. 1163, § 13, effective January 1, 1980. L. 84: (5) added, p. 824, § 2, effective January 1, 1985. L. 87: (4) amended, p. 1217, § 2, effective July 1. L. 2006: (4) amended, p. 1408, § 76, effective August 7.

Editor's note: This section is similar to former § 31-23-201 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Colorado Needs a Constitutional and Effective Roadside Sign Law", see 36 Dicta 475 (1959). For note, "Spot Zoning", see 34 Rocky Mt. L. Rev. 231 (1962). For note, "Zoning Variances — The Colorado Position", see 34 Rocky Mt. L. Rev. 382 (1962). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980). For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For note, "Referendum and Rezoning", see 53 U. Colo. L. Rev. 745 (1982). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "The Antitrust Challenge to Local Government Protection of the Central Business District", see 55 U. Colo. L. Rev. 21 (1983). For article, "Judicial Review, Referral and Initiation of Zoning Decisions", see 13 Colo. Law. 387 (1984). For comment, "State and Local Regulation of Timesharing in Colorado", see 56 U. Colo. L. Rev. 289 (1985). For article, "Transferable Development Rights and Their Application in Colorado: An Overview", see 34 Colo. Law. 75 (March 2005). For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (February 2006).

Annotator's note. Since § 31-23-301 is similar to former § 31-23-201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

General assembly has power to legislate zoning regulations applicable to statutory cities, as distinguished from home rule cities. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

Subsection (4) constitutes a legitimate limitation on the legislative powers delegated to statutory cities. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

State has authority to enact legislation for the welfare of developmentally disabled citizens under its police powers. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

Exemption of municipal activities from zoning ordinances. Exemption from zoning ordinance must be pursuant to statutory procedure, and the governmental/proprietary distinction is rejected as a means for determining when a

municipality must obey its zoning ordinances. *Clark v. Town of Estes Park*, 686 P.2d 777 (Colo. 1984).

Zoning is a matter of local and municipal concern. *Serv. Oil Co. v. Rhodus*, 179 Colo. 335, 500 P.2d 807 (1972); *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972); *City of Greeley v. Ells*, 186 Colo. 352, 527 P.2d 538 (1974).

Zoning laws is an area which is best left to local government, and decisions which relate to the decided course of community development should be upheld, even though a reviewing court may disagree with the wisdom of the municipality's choice. *Rademan v. City & County of Denver*, 186 Colo. 250, 526 P.2d 1325 (1974).

City council did not abuse its discretion or exceed its jurisdiction in denying application to rezone property from residential to limited residential-commercial when there was competent evidence of a factual basis in support of the zoning decision. *Christiansen v. Golden City Council*, 757 P.2d 1121 (Colo. App. 1988).

Section does not make counties immune or exempt from municipal zoning requirements. *La Plata County Comm'rs v. Bd. of Adjustment*, 768 P.2d 1250 (Colo. App. 1988).

Board of county commissioners did not exceed its jurisdiction or abuse its discretion when it concluded that a pre-parole facility proposed use conformed to the PUD zone district since it was representative of the class "hospitals, nursing homes, and mental or physical rehabilitation center" allowed by ordinance in the district. *Abbott v. Bd. of County Comm'rs of Weld County*, 895 P.2d 1165 (Colo. App. 1995).

Zoning is a proper exercise of the state's police power. *Rademan v. City & County of Denver*, 186 Colo. 250, 526 P.2d 1325 (1974).

The power and force of the police power attends in the regulations provided in zoning ordinances, and the rule is that the doctrine of estoppel does not apply. *Flinn v. Treadwell*, 120 Colo. 117, 207 P.2d 967 (1949); *Witkin Homes, Inc. v. City & County of Denver*, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Certain rights yield to zoning regulations. Even though the right of freedom of association and of privacy are cherished rights, they must yield to valid zoning regulations. *Rademan v. City & County of Denver*, 186 Colo. 250, 526 P.2d 1325 (1974).

If necessary to protect compelling and substantial government interest. If a zoning ordinance impinges on fundamental rights, the ordinance may be sustained only upon a showing that the burden imposed is necessary to protect a compelling and substantial government interest. *Rademan v. City & County of Denver*, 186 Colo. 250, 526 P.2d 1325 (1974).

Such as to provide for the health, safety, and welfare of its citizens and the general public, a city has the power to classify land within its boundaries for specified uses. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

A zoning ordinance is presumed to be valid and one assailing it bears the burden of overcoming that presumption as the courts indulge in every intendment in favor of the validity of the ordinance. *City & County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 32 Colo. App. 191, 508 P.2d 789 (1973).

Once the power to classify land to specified uses is exercised by a city, it is entitled to a presumption of validity and one assailing it bears the burden of overcoming that presumption, and courts indulge every intendment in favor of its validity. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

Zoning ordinances, like other legislative enactments, are presumed valid. *Ford Leasing Dev. Co. v. Bd. of County Comm'rs*, 186 Colo. 418, 528 P.2d 237 (1974).

A home-rule city zoning code is a legislative enactment which is presumed to be valid. *City of Greeley v. Ells*, 186 Colo. 352, 527 P.2d 538 (1974).

And one challenging a zoning ordinance has the burden of proving beyond a reasonable doubt that it is invalid. *Ford Leasing Dev. Co. v. Bd. of County Comm'rs*, 186 Colo. 418, 528 P.2d 237 (1974).

To overcome the presumption that a city has validly exercised its zoning powers, the one claiming invalidity must establish such invalidity beyond a reasonable doubt. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

In challenging the validity of a zoning ordinance, it is incumbent upon the aggrieved party to establish that as applied to this property, the ordinance is confiscatory and deprives him of the use of his land without due process of law. *City & County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 32 Colo. App. 191, 508 P.2d 789 (1973).

The presumption of validity which a zoning ordinance possesses imposes upon the litigant challenging the ordinance's validity the burden of proving that the ordinance is unconstitutional by "clear and convincing" evidence. *City of Greeley v. Ells*, 186 Colo. 352, 527 P.2d 538 (1974).

Substantial compliance with statutory provisions is required for lawful enactment of a zoning change and failure to comply with essential mandates of the statutes invalidates the proceeding. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Factors to be considered in construing ordinance. Because zoning laws should be given a fair and reasonable construction in light of the

setting in which employed, the factors surrounding adoption of an ordinance should be considered. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Zoning, since it restricts an owner's right to use his property, constitutes a partial taking, but it is constitutionally permissible, however, so long as it is reasonable. *Serv. Oil Co. v. Rhodus*, 179 Colo. 335, 500 P.2d 807 (1972).

And a landowner need not be permitted to make the most profitable use of his land. The due process and just compensation clauses do not require that zoning ordinances permit a landowner to make the most profitable use of his property. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971); *Baum v. City & County of Denver*, 147 Colo. 104, 363 P.2d 688 (1961); *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972).

There is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property. *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972).

Right to gain maximum profit from use of property not constitutionally protected. There is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property. *City & County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 32 Colo. App. 191, 508 P.2d 789 (1973).

The validity of zoning ordinances has never been determined by the highest and best use concept or in terms of profitability. *City & County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 32 Colo. App. 191, 508 P.2d 789 (1973).

The mere fact that the regulation deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation. *Art Neon Co. v. City & County of Denver*, 488 F.2d 118 (10th Cir. 1973), cert. denied, 417 U.S. 932, 94 S. Ct. 2644, 41 L. Ed.2d 236 (1974).

If the land in question is susceptible to any reasonable or lawful use under the classification imposed by a city, the ordinance will be allowed to stand. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971); *Trans-Robles Corp. v. City of Cherry Hills Vill.*, 30 Colo. App. 511, 497 P.2d 335 (1972), aff'd, 181 Colo. 356, 509 P.2d 797 (1973).

Zoning ordinance is unconstitutional if it deprives property owner of any reasonable use to which his land may be put. *City of Cherry Hills Vill. v. Trans-Robles Corp.*, 181 Colo. 356, 509 P.2d 797 (1973).

A zoning ordinance is unconstitutional if it can be shown that the zoning ordinance precludes the use of property for any reasonable purpose. *Ford Leasing Dev. Co. v. Bd. of County Comm'rs*, 186 Colo. 418, 528 P.2d 237 (1974).

In order for the courts to hold a zoning ordinance to be violative of the due process rights of a property owner or to interfere with the discretion of the zoning authorities in drawing zoning boundaries, the person challenging the zoning ordinance must establish beyond any reasonable doubt that the property cannot be devoted to any reasonable lawful use under the challenged ordinance. *City & County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 32 Colo. App. 191, 508 P.2d 789 (1973).

Or if not substantially related to public health, safety, or welfare. A zoning ordinance is unconstitutional if it can be shown that it is not substantially related to the public health, safety, or welfare. *Ford Leasing Dev. Co. v. Bd. of County Comm'rs*, 186 Colo. 418, 528 P.2d 237 (1974).

In a challenge to a general zoning ordinance, the outcome turns on the exercise of the police power as bearing a reasonable relation to the public health, safety, morals, or welfare. *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975).

Whether zoning provisions are reasonable and for promotion of public health, safety, and welfare, is to be determined by the court from facts, circumstances, and locality in the particular case. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

Group homes permitted in residential neighborhoods as matter of statewide concern. Group homes for developmentally disabled persons are permitted in residential neighborhoods as a matter of statewide concern. *Roundup Found., Inc. v. Bd. of Adjustment*, 626 P.2d 1154 (Colo. App. 1980).

The general assembly intended that group homes for the developmentally disabled be considered a residential use of property and that they be permitted in all residential zones, specifically including those zoned for single family dwellings. It is inconsistent with this intent for a city council to base its denial of a special use permit on the adverse effects of the group home on the single family characteristics of the neighborhood or on the peace and quiet of the neighborhood, in addition to the attitude of general hostility in the neighborhood towards this proposed facility. *Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster*, 196 Colo. 79, 580 P.2d 1246 (1978).

Although municipalities may regulate certain aspects of construction and location. The general assembly has expressly reserved to municipalities the right to regulate several aspects of the construction and location of group homes in order to avoid adverse impacts on the neighborhood, as long as such regulation is not tantamount to prohibition of such homes within any residential district. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

Zoning not disturbed unless legislative body exceeds powers. Zoning determination cannot be disturbed by the courts unless it appears that the legislative body has exceeded its powers or has acted arbitrarily or unreasonably. *City of Greeley v. Ells*, 186 Colo. 352, 527 P.2d 538 (1974).

Proof that it is not possible to use land for any of the uses permitted in the intervening zones between the zone sought and the existing zone is a prerequisite to showing that the property has been unconstitutionally confiscated under existing zoning. *Ford Leasing Dev. Co. v. Bd. of County Comm'rs*, 186 Colo. 418, 528 P.2d 237 (1974).

When a city annexes land from a county, the power to zone that land shifts to the city. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

For issuance of writ of mandamus to compel issuance of building permit where zoning ordinance is unconstitutional, see *Hedgcock v. People ex rel. Arden Realty & Inv. Co.*, 98 Colo. 522, 57 P.2d 891 (1936).

Property owners have the right to rely on existing zoning regulations where there has been no material change in the character of the neighborhood which may require rezoning in the public interest. *Roosevelt v. Beau Monde Co.*, 152 Colo. 567, 384 P.2d 96 (1963).

Applicability of estoppel. To invoke the doctrine of equitable estoppel in relation to a zoning ordinance, the plaintiff must show substantial reliance upon the zoning ordinance and mere procurement of a building permit is insufficient. *Witkin Homes, Inc. v. City & County of Denver*, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Party seeking application of doctrine of equitable estoppel to government action must show reasonable reliance. *Bentley v. Valco, Inc.*, 741 P.2d 1246 (Colo. App. 1987).

In order to invoke the doctrine of equitable estoppel against a city in relation to a zoning ordinance, the plaintiff must show as a factual predicate that there was a communication or action by the city by which he was unmistakably misled. *LaFollette v. Bd. of Adj. of Lakewood*, 741 P.2d 1262 (Colo. App. 1987).

A party cannot state a claim for relief under a theory of estoppel against a state or local government entity on the basis of an unauthorized action or promise. *Lehman v. City of Louisville*, 967 F.2d 1474 (10th Cir. 1992).

Zoning changes should be placed on map as soon as possible. As soon as reasonably possible after adoption by the board of county commissioners of changes in zoning, they should be placed upon an authorized copy of an original map or maps with the date of the action shown along with the type of change. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

A zoning map merely reflects the effect of exercises of the zoning power. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

And changes made thereon do not of themselves constitute an exercise of that power. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Since there was no resolution by the board of county commissioners amending a zoning map, the inadvertent or erroneous change in the zoning map was without effect. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Status of county zoning at time map incorporated governs. Inasmuch as zoning maps derive their effectiveness from the ordinance or resolution that adopts them, it is the status of the county zoning, at the time the city incorporated the map into its zoning ordinance, that governs. *Wainwright v. City of Wheat Ridge*, 38 Colo. App. 485, 558 P.2d 1005 (1976).

A zoning resolution may legally restrict the right of a landowner to extend or enlarge a nonconforming use. *Bird v. City of Colo. Springs*, 176 Colo. 32, 489 P.2d 324 (1971).

A city council, in the exercise of its police power, must afford procedural due process as it has been delineated in its zoning code. *McArthur v. Zabka*, 177 Colo. 337, 494 P.2d 89 (1972).

Zoning proceedings are informal in nature and do not require application of the rules of evidence used in judicial proceedings. The primary requirement is that the principles of fundamental fairness be observed in such proceedings. *Nat'l Heritage, Inc. v. Pritzka*, 728 P.2d 737 (Colo. App. 1986).

Regulation of signs permitted. The powers granted to a statutory city by this section and § 31-15-103 are commodious enough to enable it to promote its safety and aesthetic interests by regulating the number and type of signs permitted in different zoning districts. *City of Lakewood v. Colfax Unlimited Ass'n*, 634 P.2d 52 (Colo. 1981).

Federal highway beautification act and Colorado highway sign act have not preempted cities in regulation of signs nor do they

bind the cities by example or standard. *Art Neon Co. v. City & County of Denver*, 488 F.2d 118 (10th Cir. 1973), cert. denied, 417 U.S. 932, 94 S. Ct. 2644, 41 L. Ed.2d 236 (1974).

Requirements for sustaining denial of special exception to floodplain ordinance. Where a city council is acting in an adjudicative capacity with respect to an application for a special exception to a floodplain ordinance, the following would be required to sustain a denial of the application: If there is a lack of evidence to show that certain of the required factors existed, or if the evidence is in dispute as to one or more of these factors, and the city council determines the application should be denied, then it would have to make specific findings of fact as to what factors were or were not established. *Bauer v. City of Wheat Ridge*, 182 Colo. 324, 513 P.2d 203 (1973).

And only factors which apply to all applicants may be considered. Where city enacted a floodplain ordinance, and the ordinance establishes the criteria upon which a "special exception" will be granted, if the city council believes that other reasons should be used in denying an application for the exception, then the appropriate procedure is to amend the floodplain ordinance, for once an applicant applies under the ordinance, only those factors which apply generally to all applicants may be considered. *Bauer v. City of Wheat Ridge*, 182 Colo. 324, 513 P.2d 203 (1973).

Construction of ambiguous ordinance. The testimony of the zoning administrator, who dealt with a zoning ordinance on a day-to-day basis, is significant in construing ambiguous language in the ordinance. *Humana, Inc. v. Bd. of Adjustment*, 189 Colo. 79, 537 P.2d 741 (1975).

Meaning of "structure". A parking lot is a "structure" within the meaning of this section. *Clark v. Town of Estes Park*, 686 P.2d 777 (Colo. 1984).

Time limit for judicial review. Since the municipal zoning statutes do not specify a time limit for judicial review, the 30-day time frame in C.R.C.P. 106(b) is applicable. *Norby v. City of Boulder*, 195 Colo. 231, 577 P.2d 277 (1978).

Applied in *Wood Bros. Homes v. City of Colo. Springs*, 42 Colo. App. 15, 592 P.2d 1336 (1978).

31-23-302. Districts. For any of the purposes enumerated in section 31-23-301, the governing body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this part 3, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-202 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "The Antitrust Challenge to Local Government Protection of the Central Business District", see 55 U. Colo. L. Rev. 21 (1983).

Annotator's note. Since § 31-23-302 is similar to former § 31-23-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Establishment of zoning district boundary lines in a legislative function. Zoning necessarily requires the establishment of boundary lines between different districts and the selection of the boundary line is a legislative function with which courts should not interfere, and only where the determination of the zoning authority is so unreasonable, arbitrary, capricious, and

unjustifiable as to amount to a violation of constitutional rights are the courts permitted to interfere. *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972).

And having different classifications in different district does not deny equal protection. The fact that, under zoning laws, adjoining properties in other districts may be put to different and possibly more advantageous uses does not afford a basis for concluding there is a denial of equal protection of the laws. *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972); *City & County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 32 Colo. App. 191, 508 P.2d 789 (1973).

Applied in *Wood Bros. Homes v. City of Colo. Springs*, 42 Colo. App. 15, 592 P.2d 1336 (1978).

31-23-303. Legislative declaration. (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote energy conservation; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

(2) (a) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of developmentally disabled persons, which are known as community residential homes as defined in section 27-10.5-102 (4), C.R.S., is a matter of statewide concern and that a state-licensed group home for eight developmentally disabled persons is a residential use of property for zoning purposes. As used in this subsection (2), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. "Developmentally disabled" in this section means a person with a developmental disability as defined in section 27-10.5-102, C.R.S.

(b) (I) (Deleted by amendment, L. 2001, p. 104, § 2, effective March 21, 2001.)

(II) The general assembly declares that the establishment of group homes for the aged for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need nursing facilities, and who so elect, to live in normal residential surroundings, including single-family residential units. Group homes for the aged shall be distinguished from nursing facilities, as defined in section 25.5-4-103 (14), C.R.S., and institutions providing life care, as defined in section 12-13-101 (5), C.R.S. Every municipality having adopted or which shall adopt a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this paragraph (b) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality. Nothing in this paragraph (b) shall be construed to exempt such group homes from compliance with any state, county, or municipal health, safety, and fire codes. On April 29, 1976, every person sixty years of age or older who resides in a skilled or intermediate health care facility and who may be transferred or discharged therefrom to a group home for the aged shall not be so discharged or transferred unless he or she has received ninety days' advance written notice thereof or has agreed in writing to the proposed transfer or discharge.

(b.5) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with mental illness as that term is defined in section 27-65-102, C.R.S., is a matter of statewide concern and that a state-licensed group home for eight persons with mental illness is a residential use of property for zoning purposes, as defined in section 31-23-301 (4). A group home for persons with mental illness established under this paragraph (b.5) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality. A person shall not be placed in a group home without being screened by either a professional person, as defined in section 27-65-102 (17), C.R.S., or any other such mental health professional designated by the director of a facility, which facility is approved by the executive director of the department of human services pursuant to section 27-90-102, C.R.S. Persons determined to be not guilty by reason of insanity to a violent offense shall not be placed in such group homes, and any person who has been convicted of a felony involving a violent offense shall not be eligible for placement in such group homes. The provisions of this paragraph (b.5) shall be implemented, where appropriate, by the rules of the department of public health and environment concerning residential treatment facilities for persons with mental illness. Nothing in this paragraph (b.5) shall be construed to exempt such group homes from compliance with any state, county, or municipal health, safety, and fire codes.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulations may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

(3) The general assembly declares that the availability and affordability of housing for residents of this state is a matter of statewide concern. It is the purpose of section 31-23-301 (5) to promote the public health, safety, and welfare by allowing residents of this state an additional opportunity to be able to live in decent, safe, and affordable housing on a permanent basis by prohibiting the exclusion of manufactured homes on single site lots from municipalities where the manufactured homes meet or exceed on an equivalent performance engineering basis the standards established by the municipal building code.

Source: **L. 75:** Entire title R&RE, p. 1156, § 1, effective July 1; entire section amended, p. 934, § 58, effective July 1. **L. 76:** (2)(a.5) added, p. 695, § 2, effective April 29. **L. 79:** (1) amended, p. 1164, § 14, effective January 1, 1980. **L. 84:** (3) added, p. 825, § 3, effective January 1, 1985. **L. 87:** (2)(b.5) added, p. 1217, § 3, effective July 1. **L. 90:** (2)(b) amended, p. 1477, § 2, effective July 1. **L. 91:** (2)(b)(II) amended, p. 1858, § 21, effective April 11. **L. 92:** (2)(b.5) amended, p. 2179, § 44, effective June 2. **L. 94:** (2)(b.5) amended, p. 2715, § 298, effective July 1. **L. 2001:** (2)(a), (2)(b), and (2)(b.5) amended, p. 104, § 2, effective March 21. **L. 2006:** (2)(b)(II) amended, p. 2022, § 116, effective July 1; (2)(b.5) amended, p. 1408, § 77, effective August 7. **L. 2010:** (2)(b.5) amended, (SB 10-175), ch. 188, p. 806, § 82, effective April 29.

Editor's note: (1) This section is similar to former § 31-23-203 as it existed prior to 1975.

(2) Subsection (2) was renumbered on revision in 1977 for ease of location.

Cross references: For the care and treatment of the developmentally disabled, see article 10.5 of title 27.

ANNOTATION

Law reviews. For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959). For article, "Recent Developments in Zoning Law in Colorado", see 39 Dicta 211 (1962). For article, "The Antitrust Challenge to Local Government Protection of the Central Business District", see 55 U. Colo. L. Rev. 21 (1983). For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (February 2006).

Annotator's note. Since § 31-23-303 is similar to former § 31-23-203 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Implicit in this authorization of zoning power is a broad legislative discretion of how to achieve the declared objectives, and as long as the zoning provisions are within the authorized purposes and conform to statutory guidelines, mere disagreement with zoning classifications and district regulations will not suffice as a reason to set them aside. *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972).

Parking regulations are permissible under this section. *Town of Grand Lake v. Lanzi*, 937 P.2d 785 (Colo. App. 1996).

Requirements of this section are met where city council weighed elements enumerated in this section in light of facts presented at public meeting. *Coates v. City of Cripple Creek*, 865 P.2d 924 (Colo. App. 1993).

Group homes permitted in residential neighborhoods as matter of statewide concern. Group homes for developmentally disabled persons are permitted in residential neighborhoods as a matter of statewide concern. *Roundup Found., Inc. v. Bd. of Adjustment*, 626 P.2d 1154 (Colo. App. 1980).

The general assembly, by enacting this section and § 31-23-301 intended that group homes for the developmentally disabled be con-

sidered a residential use of property and that they be permitted in all residential zones, specifically including those zoned for single family dwellings. It is inconsistent with this intent for a city council to base its denial of a special use permit on the adverse effects of the group home on the single family characteristics of the neighborhood or on the peace and quiet of the neighborhood, in addition to the attitude of general hostility in the neighborhood towards this proposed facility. *Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster*, 196 Colo. 79, 580 P.2d 1246 (1978).

Adoption of section permitting developmentally disabled persons to live in group homes reflects legislative intent to assist such persons to live in normal residential surroundings. *Double D Manor v. Evergreen Meadows*, 773 P.2d 1046 (Colo. 1989).

Reasonable means must be used to terminate nonconforming uses. Comprehensive zoning contemplates the existence of nonconforming uses and, to ultimately and effectively accomplish the end sought to be accomplished, it is inherent that reasonable means must be afforded to terminate nonconforming uses. *Serv. Oil Co. v. Rhodus*, 179 Colo. 335, 500 P.2d 807 (1972).

Reduction of nonconforming uses to conformity is favored. *LaFollette v. Bd. of Adj. of Lakewood*, 741 P.2d 1262 (Colo. App. 1987).

Specific authority necessary for city agency to expand nonconforming use. A nonconforming use cannot be expanded by the issuance of a license or permit or by an order from any city agency unless the agency is given specific authority to countermand or override the terms of the zoning ordinance by the charter or within the provisions of the zoning ordinance. *City of Greeley v. Ells*, 186 Colo. 352, 527 P.2d 538 (1974).

Applied in Wood Bros. Homes v. City of Colo. Springs, 42 Colo. App. 15, 592 P.2d 1336 (1978); *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

31-23-304. Method of procedure. The governing body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts are determined, established, enforced, and, from time to time, amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-204 as it existed prior to 1975.

ANNOTATION

Quasi-judicial function subject to certiorari review. Enactment of a rezoning ordinance by the legislative body of a city, governed by both state zoning statutes as well as the municipal code, pursuant to statutory criteria, after notice and a public hearing, constitutes a quasi-judicial function subject to certiorari review. *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975).

This section expressly applies only to amendments made by municipalities of their own ordinances, and not to enactments of the

general assembly. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

Statutory city may not provide for automatic rezoning when plat not approved. While a statutory city may provide that property being rezoned may not be used until the plat of the rezoned property is approved, it may not provide for automatic rezoning to the prior classification if the plat is not approved. *Spiker v. City of Lakewood*, 198 Colo. 528, 603 P.2d 130 (1979).

31-23-305. Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against changes in regulations or restrictions, or changes in the zone district applicable to particular land, which protest is filed with the municipal clerk at least twenty-four hours prior to the governing body's vote on the change and is signed by the owners of twenty percent or more of the area of land which is subject to the proposed change or twenty percent or more of the area of land extending a radius of one hundred feet from the land which is subject to the proposed change, disregarding intervening public streets and alleys, such changes shall not become effective except by the favorable vote of two-thirds of all the members of the governing body of the municipality. The provisions of section 31-23-304 relative to public hearings and official notice shall apply equally to all changes or amendments.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1. L. 81: Entire section amended, p. 1513, § 4, effective June 4.

Editor's note: This section is similar to former § 31-23-205 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-23-305 is similar to former § 31-23-205 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Due process provisions of notice and hearing are proper and must be followed when amending the zoning map by council action. *City of Fort Collins v. Dooney*, 178 Colo. 25, 496 P.2d 316 (1972).

Due process may be satisfied by referendum. That due process requirements may be met in one manner when the change is by council action does not preclude other procedures from meeting due process requirements under a referendum. *City of Fort Collins v. Dooney*, 178 Colo. 25, 496 P.2d 316 (1972).

Prime considerations in denying application. The maintenance of stability in zoning and resulting conservation of property values based upon existing zoning regulations are prime considerations in denying applications for zoning changes. *Nopro Co. v. Town of Cherry Hills Vill.*, 180 Colo. 217, 504 P.2d 344 (1972).

Quasi-judicial function subject to certiorari review. Enactment of a rezoning ordinance by the legislative body of a city, governed by both state zoning statutes as well as the municipal code, pursuant to statutory criteria, after notice and a public hearing, constitutes a quasi-judicial function subject to certiorari review. *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975).

The real issues involved in a rezoning case focus on the reasonableness of a city council's application of the statutory criteria to the evidence presented. *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975).

Review for abuse of discretion and exceeding jurisdictional bounds. The determination of whether a council reasonably applied statutory criteria in exercising its statutory power to rezone involves a consideration of whether the council abused its discretion or exceeded the bounds of its jurisdiction and is properly resolved in a certiorari proceeding under rule 106(a)(4), C.R.C.P. *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975).

Statutory requirements do not apply to home-rule cities. The provisions of this statute which require a three-fourths majority vote of the council to pass a zoning request over a legal protest does not apply to home-rule cities. *City of Fort Collins v. Dooney*, 178 Colo. 25, 496 P.2d 316 (1972).

This section expressly applies only to amendments made by municipalities of their own ordinances, and not to enactments of the general assembly. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

31-23-306. Zoning commission. In order to avail itself of the powers conferred by this part 3, the governing body shall appoint a commission, known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it shall be appointed as the zoning commission.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-206 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982).

31-23-307. Board of adjustment. (1) The governing body shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years, unless the governing body by ordinance establishes a different number of members or term of office. The governing body may provide by ordinance for filling vacancies on the board, for designation of alternate members, and for removal of members for inefficiency, neglect of duty, or malfeasance in office. The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this part 3. It shall also hear and decide all matters referred to it or upon which it is required to pass under such ordinance. Unless otherwise provided by ordinance, the concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Every decision of such board shall be subject, however, to review by certiorari by the district court of the county within which the municipality or any part thereof is located. Such appeal shall be filed not later than thirty days from the final action taken by the board of adjustment. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the municipality.

(2) An appeal to the board of adjustment shall be taken within such time as prescribed by the board of adjustment by general rule by filing with the officer from whom the appeal is taken with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall at once transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by the district court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide the same within a reasonable time. Upon

hearing, any party may appear in person or by agent or attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment has the power, in passing upon appeals, to vary or modify the application of the regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. The governing body by ordinance may eliminate the board of adjustment's authority to grant use variances or use modifications, or may transfer that authority to some other board, agency, or commission, or to the governing body of the municipality. Where feasible, the board of adjustment may vary or modify the application of the regulations for the purpose of considering access to sunlight for solar energy devices.

(5) The governing body of a municipality that has entered into an intergovernmental agreement with the county or counties within which it is located for the purposes of joint participation in land use planning, subdivision procedures, and zoning pursuant to the authority granted in section 31-23-227 (2) may, by ordinance, enter into an intergovernmental agreement with the county or counties within which it is located for the purpose of joint participation in the establishment of a joint zoning board of adjustment for a specific area designated in the intergovernmental agreement.

Source: **L. 75:** Entire title R&RE, p. 1157, § 1, effective July 1. **L. 79:** (4) amended, p. 1164, § 15, effective January 1, 1980. **L. 81:** (1) and (2) amended, p. 877, § 2, effective April 24; (4) amended, p. 1514, § 5, effective June 4. **L. 98:** (5) added, p. 689, § 2, effective May 18.

Editor's note: This section is similar to former § 31-23-207 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "Zoning Variances — The Colorado Position", see 34 Rocky Mt. L. Rev. 382 (1962). For article, "Boards of Adjustment in the 1990s", see 20 Colo. Law. 487 (1991).

A board of adjustment has broad discretion in issuing an order pertaining to an appeal from an order, requirement, decision, or determination made by an administrative official charged with the enforcement of a zoning ordi-

nance. *Bd. of County Comm'rs of La Plata County v. Moga*, 947 P.2d 1385 (Colo. 1997).

Authority to rehear variance application. A zoning board of adjustment has authority to rehear an application for variance based upon the allegation that it has granted a variance which it is not empowered to grant under a city code. *Moschetti v. Bd. of Zoning Adjustment*, 40 Colo. App. 156, 574 P.2d 874 (1977).

31-23-308. Remedies. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part 3 or of any ordinance or other regulation made under authority conferred by this part 3, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

Source: **L. 75:** Entire title R&RE, p. 1157, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-208 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-23-308 is similar to former § 31-23-208 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision has been included in the annotations to this section.

Injunctive relief appropriate. Where city established that property was being used in violation of a zoning ordinance, and that lessee of property failed to present evidence constituting a defense, injunctive relief was appropriate. City

& County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

Uses not in compliance with zoning may be enjoined. City of Englewood v. Kingsley, 178 Colo. 338, 497 P.2d 1004 (1972).

But even when permitted by zoning regulations, uses may be enjoined if they constitute a nuisance. City of Englewood v. Kingsley, 178 Colo. 338, 497 P.2d 1004 (1972).

31-23-309. Conflict with other laws. When the regulations made under authority of this part 3 require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part 3 shall govern. Wherever the provisions of any other statute, local ordinance, or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required by the regulations made under authority of this part 3, the provisions of such statute or local ordinance or regulation shall govern.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-209 as it existed prior to 1975.

31-23-310. Racial restrictions. This part 3 shall not be construed, in the case of any municipality, to confer or enlarge any authority or power to establish any restriction based upon race or color.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-210 as it existed prior to 1975.

31-23-311. Telecommunications research facilities of the United States - inclusions in planning and zoning. Any zoning plan, modification thereof, or variance therefrom adopted or granted under this part 3 or part 2 of this article on or after April 23, 1969, shall comply with the requirements of part 6 of article 11 of title 30, C.R.S.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-211 as it existed prior to 1975.

31-23-312. Safety glazing materials. The governing body of each municipality in this state shall adopt standards governing the use of safety glazing materials for hazardous locations within its jurisdiction. No building permit shall be issued for the construction, reconstruction, or alteration of any structure in such municipality unless such construction, reconstruction, or alteration conforms to the standards adopted pursuant to this section. The

building inspection authority in such municipality shall inspect all places to determine whether such places are in compliance with the standards for the use of safety glazing materials.

Source: **L. 75:** Entire title R&RE, p. 1158, § 1, effective July 1. **L. 86:** Entire section amended, p. 502, § 123, effective July 1.

Editor’s note: This section is similar to former § 31-23-212 as it existed prior to 1975.

31-23-313. Planned unit developments - ordinances. Any municipality may authorize planned unit developments, as defined in section 24-67-103, C.R.S., by enacting an ordinance in accordance with the provisions of article 67 of title 24, C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1158, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-23-213 as it existed prior to 1975.

31-23-314. Solid wastes disposal sites and facilities. All applications for solid wastes disposal sites and facilities received by a municipality shall be processed, reviewed, and approved pursuant to the provisions of part 1 of article 20 of title 30, C.R.S.

Source: **L. 91:** Entire section added, p. 971, § 15, effective June 5.

ARTICLE 25

Public Improvements

Cross references: For public improvements, see also article 20 of title 30; for Colorado labor on public works, see article 17 of title 8; for public works contractor’s bond, see article 26 of title 38; for the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

Law reviews: For article, “Choice of Entity: Using Limited Purpose Local Governments to Solve Problems”, see 38 Colo. Law. 59 (October 2009).

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PART 1

URBAN RENEWAL

Cross references: For slum clearance and municipal housing authorities, see part 7 of article 32, article 55, and article 56 of title 24 and article 4 of title 29.

Law reviews: For article, "A Brief Overview of Recent Changes in Colorado's Urban Renewal Law", see 33 Colo. Law. 99 (September 2004).

31-25-101. Short title. This part 1 shall be known and may be cited as the "Urban Renewal Law".

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-101 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Constitutional Law: The Validity of Urban Renewal in Colorado", see 39 Dicta 149 (1962). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law. 2527 (1982).

This part is general law uniform in its operation and applies to all similarly situated, and therefore is not local or special legislation. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Urban renewal is valid exercise of state's police power. James v. Bd. of Comm'rs, 42

Colo. App. 27, 595 P.2d 262 (1978), aff'd, 200 Colo. 28, 611 P.2d 976 (1980).

Urban blight is matter of both statewide and local concern. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

And both general assembly and local government can act to alleviate problem or urban blight provided the state and the local law do not conflict. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Applied in Vigoda v. Denver Urban Renewal Auth., 646 P.2d 900 (Colo. 1982).

31-25-102. Legislative declaration. (1) The general assembly finds and declares that there exist in municipalities of this state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state in general and of the municipalities thereof; that the existence of such areas contributes substantially to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of public policy and statewide concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(2) The general assembly further finds and declares that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this part 1, since the prevailing conditions therein may make impracticable the reclamation of the area by conservation or rehabilitation; that other slum or blighted areas, or portions thereof, through the means provided in this part 1, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils

enumerated in this section may be eliminated, remedied, or prevented; and that salvable slum and blighted areas can be conserved and rehabilitated through appropriate public action, as authorized or contemplated in this part 1, and the cooperation and voluntary action of the owners and tenants of property in such areas.

(3) The general assembly further finds and declares that the powers conferred by this part 1 are for public uses and purposes for which public money may be expended and the police power exercised and that the necessity in the public interest for the provisions enacted in this part 1 is declared as a matter of legislative determination.

(4) The general assembly further finds and declares that:

(a) Urban renewal areas created for the purposes described in subsections (1) and (2) of this section shall not include agricultural land except in connection with the limited circumstances described in this part 1; and

(b) The inclusion of agricultural land within urban renewal areas is a matter of statewide concern.

Source: **L. 75:** Entire title R&RE, p. 1158, § 1, effective July 1. **L. 2010:** (4) added, (HB 10-1107), ch. 89, p. 298, § 1, effective June 1.

Editor's note: This section is similar to former § 31-25-102 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Current Trends in Business Real Estate Transactions", see 35 U. Colo. L. Rev. 131 (1962). For comment on *Rabinoff v. District Court* (145 Colo. 225, 360 P.2d 114 (1961)), see 35 U. Colo. L. Rev. 269 (1963). For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law. 2527 (1982).

For there to be an unconstitutional "taking" under the U.S. constitution, it must be shown that no public purpose exists for the proposed urban renewal project. *Oberndorf v. City & County of Denver*, 696 F. Supp. 552 (D. Colo. 1988), *aff'd*, 900 F.2d 1434 (10th Cir. 1990), *cert. denied*, 498 U.S. 845, 111 S. Ct. 129, 112 L. Ed.2d 97 (1990).

Public purpose. The acquisition of properties and the elimination of their slum or blighted character constitutes a public purpose; that what is involved is an urban reclamation project; and the fact that when the redevelopment is achieved the properties are sold to private individuals for the purpose of development does not rob the taking of its public purpose. *Rabinoff v. District Court*, 145 Colo. 225, 360 P.2d 114 (1961).

Private ownership does not defeat public purpose. Although the general assembly's method is to be accomplished not by public ownership of the land but rather through private endeavor and ownership under the direction of authorized officials. The acquisition and transfer to private parties is a mere incident of the chief purpose of the act which is rehabilitation of the area. The fact that the property would not continue to be owned by the city does not mean that the use was not a public one. *Rabinoff v. District Court*, 145 Colo. 225, 360 P.2d 114 (1961).

The power of eminent domain may be exercised. The sale or leasing of property for redevelopment with restrictions to prevent blight are for public uses and purposes for which the power of eminent domain may properly be exercised. *Rabinoff v. District Court*, 145 Colo. 225, 360 P.2d 114 (1961).

Urban renewal is a substantial state interest that can justify taking property dedicated to religious uses. *Pillar of Fire v. Denver Urban Renewal Auth.*, 181 Colo. 411, 509 P.2d 1250 (1973).

Applied in *People v. Bailey*, 41 Colo. App. 504, 595 P.2d 252 (1978).

31-25-103. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Agricultural land" means any one parcel of land or any two or more contiguous parcels of land that, regardless of the uses for which the land has been zoned, has been classified by the county assessor as agricultural land for purposes of the levying and collection of property tax pursuant to sections 39-1-102 (1.6) (a) and 39-1-103 (5) (a), C.R.S., at any time during the five-year period prior to the date of adoption of an urban renewal plan or any modification of such a plan.

(2) "Blighted area" means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or

constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

- (a) Slum, deteriorated, or deteriorating structures;
- (b) Predominance of defective or inadequate street layout;
- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (d) Unsanitary or unsafe conditions;
- (e) Deterioration of site or other improvements;
- (f) Unusual topography or inadequate public improvements or utilities;
- (g) Defective or unusual conditions of title rendering the title nonmarketable;
- (h) The existence of conditions that endanger life or property by fire or other causes;
- (i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
- (j) Environmental contamination of buildings or property;
- (k) (Deleted by amendment, L. 2004, p. 1745, § 3, effective June 4, 2004.)
- (k.5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements; or

(l) If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, “blighted area” also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection (2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. For purposes of this paragraph (l), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.

(3) “Bonds” means any bonds (including refunding bonds), notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures, or other obligations.

(3.1) “Brownfield site” means real property, the development, expansion, redevelopment, or reuse of which will be complicated by the presence of a substantial amount of one or more hazardous substances, pollutants, or contaminants, as designated by the United States environmental protection agency.

(3.3) “Business concern” has the same meaning as “business” as set forth in section 24-56-102 (1), C.R.S.

(3.5) “Displaced person” has the same meaning as set forth in section 24-56-102 (2), C.R.S., and for purposes of this part 1 shall also include any individual, family, or business concern displaced by the acquisition by eminent domain of real property by an authority.

(3.7) “Governing body” means the governing body of the municipality within which an authority has been established in accordance with the requirements of this part 1.

(4) “Obligee” means any bondholder, agent, or trustee for any bondholder, or any lessor demising to an authority property used in connection with an urban renewal project of the authority, or any assignee of such lessor’s interest or any part thereof, and the federal government when it is a party to any contract or agreement with the authority.

(5) “Public body” means the state of Colorado or any municipality, quasi-municipal corporation, board, commission, authority, or other political subdivision or public corporate body of the state.

(6) “Real property” means lands, lands under water, structures, and any and all easements, franchises, incorporeal hereditaments, and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(7) “Slum area” means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors,

is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare.

(7.5) “Urban-level development” means an area in which there is a predominance of either permanent structures or above-ground or at-grade infrastructure.

(8) “Urban renewal area” means a slum area, or a blighted area, or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(8.5) “Urban renewal authority” or “authority” means a corporate body organized pursuant to the provisions of this part 1 for the purposes, with the powers, and subject to the restrictions set forth in this part 1.

(9) “Urban renewal plan” means a plan, as it exists from time to time, for an urban renewal project, which plan conforms to a general or master plan for the physical development of the municipality as a whole and which is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan’s relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(10) “Urban renewal project” means undertakings and activities for the elimination and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment, or rehabilitation, or conservation, or any combination or part thereof, in accordance with an urban renewal plan. Such undertakings and activities may include:

- (a) Acquisition of a slum area or a blighted area or portion thereof;
- (b) Demolition and removal of buildings and improvements;
- (c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the objectives of this part 1 in accordance with the urban renewal plan;
- (d) Disposition of any property acquired or held by the authority as a part of its undertaking of the urban renewal project for the urban renewal areas (including sale, initial leasing, or temporary retention by the authority itself) at the fair value of such property for uses in accordance with the urban renewal plan;
- (e) Carrying out plans for a program through voluntary action and the regulatory process for the repair, alteration, and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; and
- (f) Acquisition of any other property where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise remove or prevent the spread of blight or deterioration or to provide land for needed public facilities.

Source: **L. 75:** Entire title R&RE, p. 1159, § 1, effective July 1. **L. 99:** (2) amended, p. 529, § 1, effective May 3. **L. 2004:** (2)(f), (2)(h), (2)(j), (2)(k), and (2)(l) amended and (2)(k.5), (3.3), (3.5), and (3.7) added, p. 1745, §§ 3, 2, effective June 4. **L. 2005:** IP(10) amended, p. 1264, § 3, effective June 3. **L. 2010:** (1) amended and (3.1), (7.5), and (8.5) added, (HB 10-1107), ch. 89, p. 298, § 2, effective June 1.

Editor’s note: This section is similar to former § 31-25-103 as it existed prior to 1975.

ANNOTATION

Law reviews. For comment on *Rabinoff v. District Court*, appearing below, see 35 U. Colo. L. Rev. 269 (1963).

Basis for finding area blighted. The fact that there were not widespread violations of building and health ordinances does not of itself establish

arbitrariness on the part of the responsible authorities in the finding that the area was slum and blighted. *Rabinoff v. District Court*, 145 Colo. 225, 360 P.2d 114 (1961).

One well-kept building does not in itself defeat the determination of a blighted area. If

the building owned by plaintiff, be, as claimed, a magnificent victorian type edifice such would not in itself defeat the determination that the area, taken as a whole, is a slum and blighted area. *Interstate Trust Bldg. Co. v. Denver Urban Renewal Auth.*, 172 Colo. 427, 473 P.2d 978 (1970).

“Blighted area” construed. The definition of “blighted area” contained in subsection (2) is broad and not only encompasses those areas containing properties so dilapidated as to justify condemnation as nuisances, but also envisions the prevention of deterioration. The absence of widespread violations of building and health ordinances does not of itself establish arbitrariness on the part of a city council in finding blight. *Tracy v. City of Boulder*, 635 P.2d 907 (Colo. App. 1981).

Determination of “blighted area” by council is legislative question. A city council’s determination as to whether an area is blighted, when such determination relates to the need for an ordinance, is a legislative question and scope of review by the judiciary is restricted. *Tracy v. City of Boulder*, 635 P.2d 907 (Colo. App. 1981).

If actual purpose behind a particular urban renewal plan is not the elimination or prevention of blight or slums, the urban renewal authority does not have the power to condemn land in furtherance of that plan because the determination of necessity is not supported by the record. *City & County of Denver v. Block 173*, 814 P.2d 824 (Colo. 1991).

Proper purpose for which a condemnation action may be instituted in the context of urban renewal is limited to plans adopted to remedy identified slum or blight conditions, and fact that such conditions were found to exist is not dispositive if the purpose in designating a large study area and in targeting block 173 as part of that area was to acquire block 173 for private purposes. *City & County of Denver v. Block 173*, 814 P.2d 824 (Colo. 1991).

Quarry lake property is no longer subject to municipality’s 1981 blight determination, because the statutory procedures for removing blight were followed. The urban renewal authority disposed of the quarry lake property according to the terms of state’s urban renewal law and certified the uses to which the lake was devoted comported with the urban renewal plan. After duly disposing of the lake property, certifying that the property was being used in accordance with the urban renewal plan, and having notice at all relevant times of the developer’s efforts to incorporate the lake into its office park, the urban renewal authority cannot now claim that the lake has never been developed in accordance with the urban renewal plan. On the contrary, the quarry lake has been developed in accordance with the procedures laid out in the state’s urban renewal law and, thus, can no longer be considered “blighted” under the municipality’s 1981 blight determination. *Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n.*, 85 P.3d 1066 (Colo. 2004).

Applied in *Bailey v. People*, 200 Colo. 549, 617 P.2d 549 (1980).

31-25-104. Urban renewal authority. (1) (a) Any twenty-five registered electors of the municipality may file a petition with the clerk, setting forth that there is a need for an authority to function in the municipality. Upon the filing of such a petition, the clerk shall give notice of the time, place, and purpose of a public hearing, at which the local governing body will determine the need for such an authority in the municipality. Such notice shall be given at the expense of the municipality by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the municipality or, if there is no such newspaper, by posting such a notice in at least three public places within the municipality at least ten days preceding the day on which the hearing is to be held.

(b) Upon the date fixed for said hearing held upon notice as provided in this section, a full opportunity to be heard shall be granted to all residents and taxpayers of the municipality and to all other interested persons. After such a hearing, if the governing body finds that one or more slum or blighted areas exist in the municipality, and finds that the acquisition, clearance, rehabilitation, conservation, development, or redevelopment, or a combination thereof of such area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality, and declares it to be in the public interest that the urban renewal authority for such municipality created by this part 1 exercise the powers provided in this part 1 to be exercised by such authority, the governing body shall adopt a resolution so finding and declaring and shall cause notice of such resolution to be given to the mayor, who shall thereupon appoint, as provided in paragraph (a) of subsection (2) of this section, commissioners to act as an authority. A certificate signed by such commissioners shall then be filed with the division of local government in the department of local affairs and there remain of record, setting forth that the governing body made the findings and declaration provided in this paragraph (b) after such hearing and that

the mayor has appointed them as commissioners. Upon the filing of such certificate, the commissioners and their successors are constituted an urban renewal authority, which shall be a body corporate and politic. The boundaries of such authority shall be coterminous with those of the municipality.

(c) If the governing body, after a hearing, determines that the findings and declaration enumerated in paragraph (b) of this subsection (1) cannot be made, it shall adopt a resolution denying the petition. After six months have expired from the date of the denial of such petition, subsequent petitions may be filed and new hearings and determinations made thereon; except that there shall be at least six months between the time of filing of any subsequent petition and the denial of the last preceding petition.

(d) In any suit, action, or proceeding involving the validity or enforcement of any bond, contract, mortgage, trust indenture, or other agreement of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part 1 upon proof of the filing of said certificate. A copy of such certificate, duly certified by the director of the division of local government, shall be admissible in evidence in any such suit, action, or proceeding.

(2) (a) An authority shall consist of any odd number of commissioners which shall be not less than five nor more than eleven, each of whom shall be appointed by the mayor, who shall designate the chairman for the first year. Such appointments and designation shall be subject to approval by the governing body. Not more than one of the commissioners may be an official of the municipality. In the event that an official of the municipality is appointed as commissioner of an authority, acceptance or retention of such appointment shall not be deemed a forfeiture of his office, or incompatible therewith, or affect his tenure or compensation in any way. The term of office of a commissioner of an authority who is a municipal official shall not be affected or curtailed by the expiration of the term of his municipal office.

(b) The commissioners who are first appointed shall be designated by the mayor to serve for staggered terms so that the term of at least one commissioner will expire each year. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies other than by reason of expiration of terms shall be filled by the mayor for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(c) When the office of the first chairman of the authority becomes vacant and annually thereafter, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and it shall determine their qualifications, duties, and compensation. An authority may call upon the municipal council or chief legal officer of the municipality for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such duties as it deems proper.

(3) No commissioner, other officer, or employee of an authority nor any immediate member of the family of any such commissioner, officer, or employee shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner, other officer, or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner, officer, or other employee shall not participate in any action by the authority affecting the carrying out of the project planning or the undertaking of the project unless the authority determines that, in the light of such personal interest, the participation of such member in

any such act would not be contrary to the public interest. Acquisition or retention of any such interest without such determination by the authority that it is not contrary to the public interest or willful failure to disclose any such interest constitutes misconduct in office.

(4) The mayor, with the consent of the governing body, may remove a commissioner for inefficiency or neglect of duty or misconduct in office but only after the commissioner has been given a copy of the charges made by the mayor against him and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of any commissioner, the mayor shall file in the office of the clerk a record of the proceedings, together with the charges made against the commissioner and findings thereon.

Source: **L. 75:** Entire title R&RE, p. 1161, § 1, effective July 1. **L. 76:** (1)(b) and (1)(d) amended, p. 597, § 11, effective July 1.

Editor's note: This section is similar to former § 31-25-104 as it existed prior to 1975.

ANNOTATION

Standard on review. The reviewing court's task is to exercise an independent determination to insure that a city council's decisions are based on evidence presented at council hearings, that any ordinance is supported by fact findings, and

that the council applied the legislative standards set out in this part. *Tracy v. City of Boulder*, 635 P.2d 907 (Colo. App. 1981).

Applied in *James v. Bd. of Comm'rs*, 42 Colo. App. 27, 595 P.2d 262 (1978).

31-25-105. Powers of an authority. (1) Every authority has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 1, including, but not limited to, the following powers in addition to others granted in this part 1:

(a) To sue and to be sued; to adopt and have a seal and to alter the same at pleasure; to have perpetual succession; to make, and from time to time amend and repeal, bylaws, orders, rules, and regulations to effectuate the provisions of this part 1;

(b) To undertake urban renewal projects and to make and execute any and all contracts and other instruments which it may deem necessary or convenient to the exercise of its powers under this part 1, including, but not limited to, contracts for advances, loans, grants, and contributions from the federal government or any other source;

(c) To arrange for the furnishing or repair by any person or public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities for or in connection with a project of the authority; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate under this part 1, including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the authority provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(d) To arrange with the municipality or other public body to plan, replan, zone, or rezone any part of the area of the municipality or of such other public body, as the case may be, in connection with any project proposed or being undertaken by the authority under this part 1;

(e) To enter, with the consent of the owner, upon any building or property in order to make surveys or appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire any property by purchase, lease, option, gift, grant, bequest, devise, or otherwise to acquire any interest in property by condemnation, including a fee simple absolute title thereto, in the manner provided by the laws of this state for the exercise of the power of eminent domain by any other public body (and property already devoted to a public use may be acquired in a like manner except that no property belonging to the federal government or to a public body may be acquired without its consent); except that any acquisition of any interest in property by condemnation by an authority must be approved as part of an urban renewal plan or substantial

modification thereof, as provided in section 31-25-107, by a majority vote of the governing body of the municipality in which such property is located, and the acquisition of property by condemnation by an authority shall also satisfy the requirements of section 31-25-105.5; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of its property; and to insure or provide for the insurance of any property or operations of the authority against any risks or hazards; except that no provision of any other law with respect to the planning or undertaking of projects or the acquisition, clearance, or disposition of property by public bodies shall restrict an authority exercising powers under this part 1 in the exercise of such functions with respect to a project of such authority unless the general assembly specifically so states;

(f) (I) To invest any of its funds not required for immediate disbursement in property or in securities in which public bodies may legally invest funds subject to their control pursuant to part 6 of article 75 of title 24, C.R.S., and to redeem such bonds as it has issued at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled;

(II) To deposit any funds not required for immediate disbursement in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the authority may appoint, by written resolution, one or more persons to act as custodians of the funds of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the authority requires.

(g) To borrow money and to apply for and accept advances, loans, grants, and contributions from the federal government or other source for any of the purposes of this part 1 and to give such security as may be required;

(h) To make such appropriations and expenditures of its funds and to set up, establish, and maintain such general, separate, or special funds and bank accounts or other accounts as it deems necessary to carry out the purposes of this part 1;

(i) To make or have made and to submit or resubmit to the governing body for appropriate action the authority's proposed plans and modifications thereof necessary to the carrying out of the purposes of this part 1, such plan shall include, but not be limited to:

(I) Plans to assist the municipality in the latter's preparation of a workable program for utilizing appropriate private and public resources to eliminate and prevent the development or spread of slum and blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program, which program may include, without limitation, provision for: The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning, removing congestion, providing public improvements, and encouraging rehabilitation and repair of deteriorated or deteriorating structures; and the clearance and redevelopment of slum and blighted areas or portions thereof;

(II) Urban renewal plans;

(III) Preliminary plans outlining proposed urban renewal activities for neighborhoods of the municipality to embrace two or more urban renewal areas;

(IV) Plans for the relocation of those individuals, families, and business concerns situated in the urban renewal area which will be displaced by the urban renewal project, which relocation plans, without limitation, may include appropriate data setting forth a feasible method for the temporary relocation of such individuals and families and showing that there will be provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the individuals and families so displaced, decent, safe, and sanitary dwellings equal in number to the number of and available to such individuals and families and reasonably accessible to their places of employment;

(V) Plans for undertaking a program of voluntary repair and rehabilitation of buildings and improvements and for the enforcement of state and local laws, codes, and regulations

relating to the use of land and the use and occupancy of buildings and improvements and to the repair, rehabilitation, demolition, or removal of buildings and improvements;

(VI) Financing plans, maps, plats, appraisals, title searches, surveys, studies, and other preliminary plans and work necessary or pertinent to any proposed plans or modifications;

(j) To make reasonable relocation payments to or with respect to individuals, families, and business concerns situated in an urban renewal area that will be displaced as provided in subparagraph (IV) of paragraph (i) of this subsection (1) for moving expenses and actual direct losses of property including, for business concerns, goodwill and lost profits that are reasonably related to relocation of the business, resulting from their displacement for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(k) To develop, test, and report methods and techniques and to carry out demonstrations and other activities for the prevention and the elimination of slum and blighted areas within the municipality;

(l) To rent or to provide by any other means suitable quarters for the use of the authority or to accept the use of such quarters as may be furnished by the municipality or any other public body, and to equip such quarters with such furniture, furnishings, equipment, records, and supplies as the authority may deem necessary to enable it to exercise its powers under this part 1.

Source: **L. 75:** Entire title R&RE, p. 1163, § 1, effective July 1. **L. 79:** (1)(f) amended, p. 1619, § 21, effective June 8. **L. 89:** (1)(f)(I) amended, p. 1115, § 27, effective July 1. **L. 90:** (1)(e) amended, p. 1480, § 1, effective April 5. **L. 99:** (1)(j) amended, p. 530, § 2, effective May 3. **L. 2004:** (1)(e) amended, p. 1746, § 4, effective June 4.

Editor's note: This section is similar to former § 31-25-105 as it existed prior to 1975.

ANNOTATION

Law reviews. For comment discussing church condemnation, see 46 U. Colo. L. Rev. 43 (1974). For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

No constitutional right to relocation benefits. Persons displaced by redevelopment project have no constitutional right to relocation benefits or assistance. *Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth.*, 183 Colo. 441, 517 P.2d 845 (1974).

Federal statutes not determinative of right to recovery. In a condemnation action under the statutes and constitution of Colorado, a landowner's right to compensation and the extent thereof must be determined by the applicable law of Colorado, so the right to recovery is not dependent upon nor limited by federal statutes. *Denver Urban Renewal Auth. v. Steiner Am. Corp.*, 31 Colo. App. 125, 500 P.2d 983 (1972).

No clear indication in subsection (1)(e) of an urban renewal authority's powers to place the decision to condemn in the hands of a private party. The Urban Renewal Law mentions many conventional matters that urban renewal authorities could effectuate only through contracts with private parties. No provision, however, suggests that urban renewal authorities may, through contract, delegate to private parties the prerogative of taking property by emi-

nent domain. Subsection (1)(e) speaks of exercising the power of eminent domain "in the manner provided by the laws of this state", none of which authorizes the delegation of that power by contract to private entities. Grants of power to exercise the sovereign right of eminent domain, in derogation of the common private rights of individuals, are generally strictly construed. *Cornerstone Group XXII v. Wheat Ridge Urban Renewal Auth.*, 151 P.3d 601 (Colo. App. 2006), rev'd on other grounds, 176 P.3d 737 (Colo. 2007).

Because district court lacked authority to order the specific performance of a contractual obligation to exercise the core governmental power of eminent domain and urban renewal authority could not be estopped from abandoning its condemnation petitions, judgment of the court of appeals is reversed. However, because authority's agreement to acquire specific properties by condemnation, if necessary, does not render the contract void under reserved powers doctrine, case is remanded and district court directed to consider respondent's remaining claims, including breach of contract. *Wheat Ridge Urban Renewal Auth. v. Cornerstone Group XXII*, 176 P.3d 737 (Colo. 2007).

Purpose of subsection (1)(j) is to provide supplemental assistance for particular losses incurred by reason of dislocation, in an effort to reduce the burden falling on the property owner

whose property is condemned. *Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth.*, 183 Colo. 441, 517 P.2d 845 (1974).

Subsection (1)(j) does not create additional elements compensable under eminent domain laws. *Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth.*, 183 Colo. 441, 517 P.2d 845 (1974).

Small businessmen not denied equal protection. Subsection (1)(j) of this section and §§ 24-56-103, 24-56-104, and 24-56-105 do not create discriminatory and unjustified classifications which deny small businessmen equal protection of the law. *Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth.*, 183 Colo. 441, 517 P.2d 845 (1974).

Omission of supplemental payments for loss of goodwill and profit in subsection (1)(j) does not render it unconstitutional. *Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth.*, 183 Colo. 441, 517 P.2d 845 (1974).

Owner entitled to value of land and improvements. When land occupied for business purposes is taken, the owner is entitled to compensation only for the value of the land and improvements. *Denver Urban Renewal Auth. v. Cook*, 186 Colo. 182, 526 P.2d 652 (1974).

But owner is not entitled to value of any business conducted on land that is taken. *Denver Urban Renewal Auth. v. Cook*, 186 Colo. 182, 526 P.2d 652 (1974).

And evidence of business profits inadmissible. On the theory that profits derived from a business are more a function of the entrepreneurial skills of management than the value of the land, evidence of business profits is not admissible as a determinant of the fair market value of the condemned property. *Denver Urban Renewal Auth. v. Cook*, 186 Colo. 182, 526 P.2d 652 (1974).

The business profit rule, long followed in Colorado, requires the exclusion of business profits generated by an enterprise on the property. *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

Except to show use of property. Under the business profits rule, evidence of the character and volume of business conducted on condemned property is admissible only for the limited purpose of showing a use for which the property may be utilized. *Denver Urban Renewal Auth. v. Cook*, 186 Colo. 182, 526 P.2d 652 (1974); *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

And evidence of gross sales falls within purview of the business profits rule and, therefore, is inadmissible as a determinant of a reasonable rental value. *Denver Urban Renewal*

Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974).

Because gross sales, like profits, are more inextricably tied to management and administration of a business than to the value of the property upon which the business is situated, and thus, the same reasons that cause the amount of profits to be an inappropriate measure of the value of the land are applicable to the use of gross sales figures, albeit to a lesser degree. *Denver Urban Renewal Auth. v. Cook*, 186 Colo. 182, 526 P.2d 652 (1974).

Fixtures are a part of the realty for which compensation must be paid to the owner by the condemning authority. *Denver Urban Renewal Auth. v. Steiner Am. Corp.*, 31 Colo. App. 125, 500 P.2d 983 (1972).

The foundation for the business profits rule is that (1) the business itself is not being condemned and can be relocated, and (2) business profits are more a function of the entrepreneurial skills of management than of the value of the land. *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

A crucial distinction must be made between "profits derived from a business conducted on the premises" and "profits derived from the land itself". *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

Only the first is inadmissible under the business profits rule. *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

Evidence of farm and rental income is admissible as "profit derived from the land itself". *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

The fair economic rental value of commercial property is also evidence of "profit derived from the land itself" and is therefore admissible as a determinant of value in conjunction with the income approach. *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

The capitalization of income approach may be used to determine the value of owner-occupied property. *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

No purpose is served by limiting testimony to one approach or to the most appropriate method of attaining an opinion as to value. Recognition should be given to all relevant factors which tend to provide a means for arriving at a fair evaluation, and therefore, the better rule is to permit the use of capitalization of income method even if other methods are available. *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 193 Colo. 562, 568 P.2d 478 (1977).

Payment of relocation benefits to persons displaced by urban renewal project does not constitute unconstitutional expenditure of public funds in the aid of private persons. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Applied in Interstate Trust Bldg. Co. v. Denver Urban Renewal Auth., 172 Colo. 427, 473 P.2d 978 (1970).

31-25-105.5. Acquisition of private property by eminent domain by authority for subsequent transfer to private party - restrictions - exceptions - right of civil action - damages - definitions. (1) Except as provided in this subsection (1) or subsection (2) of this section, no private property acquired by eminent domain by an authority pursuant to section 31-25-105 (1) (e) after June 4, 2004, shall be subsequently transferred to a private party unless:

(a) The owner of the property consents in writing to acquisition of the property by eminent domain by the authority;

(b) The governing body of the authority determines that the property is no longer necessary for the purpose for which it was originally acquired, and the authority first offers to sell the property to the owner from whom it was acquired, if the owner can be located, at a price not more than that paid by the authority and the owner of the property declines to exercise such right of first refusal;

(c) The property acquired by the authority has been abandoned; or

(d) The owner of the property requests or pleads in an eminent domain action that the authority acquiring the property also acquire property that is not essential to the purpose of the acquisition on the basis that acquiring less property would leave the owner of the property holding an uneconomic remnant.

(2) (a) Where a proposed transfer of private property acquired by an authority by eminent domain does not satisfy one of the requirements specified in subsection (1) of this section, such property acquired by eminent domain by an authority after June 4, 2004, may be subsequently transferred to a private party only upon satisfaction of each of the following conditions:

(I) The governing body has made a determination that the property is located in a blighted area or the property itself is blighted, and the urban renewal project for which the property is being acquired shall be commenced no later than seven years from the date the blight determination is made. For purposes of this section, the determination of whether a particular area or property is blighted shall be based upon reasonably current information obtained at the time the blight determination is made.

(II) Not later than the commencement of the negotiation of an agreement for redevelopment or rehabilitation of property acquired or to be acquired by eminent domain, the authority provides notice and invites proposals for redevelopment or rehabilitation from all property owners, residents, and owners of business concerns located on the property acquired or to be acquired by eminent domain in the urban renewal area by mailing notice to their last known address of record. The authority may also at the same time invite proposals for redevelopment or rehabilitation from other interested persons who may not be property owners, owners of business concerns, or residents within the urban renewal area, and may provide public notice thereof by publication in a newspaper having a general circulation within the municipality in which the authority has been established.

(III) In the case of a set of parcels to be acquired by the authority in connection with an urban renewal project, at least one of which is owned by an owner refusing or rejecting an agreement for the acquisition of the entire set of parcels, the authority makes a determination that the redevelopment or rehabilitation of the remaining parcels is not viable under the urban renewal plan without the parcel at issue.

(b) Any owner of property located within the urban renewal area may challenge the determination of blight made by the governing body pursuant to subparagraph (I) of paragraph (a) of this subsection (2) by filing, not later than thirty days after the date the determination of blight is made, a civil action in district court for the county in which the property is located pursuant to C.R.C.P. 106 (a) (4) for judicial review of the exercise of discretion on the part of the governing body in making the determination of blight. Any such

action shall be governed in accordance with the procedures and other requirements specified in the rule; except that the governing body shall have the burden of proving that, in making its determination of blight, it has neither exceeded its jurisdiction nor abused its discretion.

(c) Notwithstanding any other provision of law, any determination made by the governing body pursuant to paragraph (a) of this subsection (2) shall be deemed a legislative determination and shall not be deemed a quasi-judicial determination.

(d) Notwithstanding any other provision of this section, no transfer that satisfies the requirements of subsection (1) of this section shall be subject to the provisions of this subsection (2), subsection (3) or (4), or paragraph (a) of subsection (5) of this section.

(3) Any authority seeking to acquire property by eminent domain in accordance with the requirements of subsection (2) of this section shall reimburse the owner of the property for reasonable attorney fees incurred by the owner in connection with the acquisition where the owner is the prevailing party on a challenge brought under paragraph (b) of subsection (2) of this section.

(4) (a) Any authority that exercises the power of eminent domain to transfer acquired property to another private party as authorized in accordance with the requirements of this section shall adopt relocation assistance and land acquisition policies to benefit displaced persons that are consistent with those set forth in article 56 of title 24, C.R.S., to the extent applicable to the facts of each specific property, and, at the time of the relocation of the owner or the occupant, shall provide compensation or other forms of assistance to any displaced person in accordance with such policies. In addition, in the case of a business concern displaced by the acquisition of property by eminent domain, the authority shall make a business interruption payment to the business concern not to exceed the lesser of ten thousand dollars or one-fourth of the average annual taxable income shown on the three most recent federal income tax returns of the business concern.

(b) In any case where the acquisition of property by eminent domain by an authority displaces individuals, families, or business concerns, the authority shall make reasonable efforts to relocate such individuals, families, or business concerns within the urban renewal area, where such relocation is consistent with the uses provided in the urban renewal plan, or in areas within reasonable proximity of, or comparable to, the original location of such individuals, families, or business concerns.

(5) For purposes of this section, unless the context otherwise requires:

(a) "Blighted area" shall have the same meaning as set forth in section 31-25-103 (2); except that, for purposes of this section only, "blighted area" means an area that, in its present condition and use and, by reason of the presence of at least five of the factors specified in section 31-25-103 (2) (a) to (2) (l), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare.

(b) "Private property" or "property" means, as applied to real property, only a fee ownership interest.

Source: L. 2004: Entire section added, p. 1742, § 1, effective June 4.

ANNOTATION

No clear indication in section of an urban renewal authority's powers to place the decision to condemn in the hands of a private party. The Urban Renewal Law mentions many conventional matters that urban renewal authorities could effectuate only through contracts with private parties. No provision, however, suggests that urban renewal authorities may, through contract, delegate to private parties the prerogative of taking property by eminent domain. Purpose of this section is to restrict eminent domain when used to acquire private property for trans-

fer to another private party. Grants of power to exercise the sovereign right of eminent domain, in derogation of the common private rights of individuals, are generally strictly construed. *Cornerstone Group XXII v. Wheat Ridge Urban Renewal Auth.*, 151 P.3d 601 (Colo. App. 2006), rev'd on other grounds, 176 P.3d 737 (Colo. 2007).

Because district court lacked authority to order the specific performance of a contractual obligation to exercise the core governmental power of eminent domain and urban

renewal authority could not be estopped from abandoning its condemnation petitions, judgment of the court of appeals is reversed. However, because authority's agreement to acquire specific properties by condemnation, if necessary, does not render the contract void under

reserved powers doctrine, case is remanded and district court directed to consider respondent's remaining claims, including breach of contract. *Wheat Ridge Urban Renewal Auth. v. Cornerstone Group XXII*, 176 P.3d 737 (Colo. 2007).

31-25-105.7. Condemnation actions by authorities - effect of other provisions. Notwithstanding any other provision of law, any condemnation action commenced by an authority on or after June 6, 2006, shall satisfy the requirements specified in section 38-1-101, C.R.S. To the extent there is any conflict between the provisions of this part 1 and the provisions of section 38-1-101, C.R.S., the provisions of section 38-1-101, C.R.S., shall control.

Source: L. 2006: Entire section added, p. 1750, § 2, effective June 6.

31-25-106. Disposal of property in urban renewal area. (1) An authority may sell, lease, or otherwise transfer real property or any interest therein acquired by it as a part of an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the urban renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land (and including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof), as it deems to be in the public interest or necessary to carry out the purposes of this part 1. The purchasers, lessees, transferees, and their successors and assigns are obligated to devote such real property only to the land uses, designs, building requirements, timing, or procedure specified in the urban renewal plan and may be obligated to comply with such other requirements as the authority may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, or otherwise transferred at not less than its fair value (as determined by the authority) for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, an authority shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. Real property acquired by an authority which, in accordance with the provisions of the urban renewal plan, is to be transferred shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part of such contract or plan as the authority may determine) may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

(2) An authority may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as provided in this subsection (2). An authority, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the municipality, prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, may invite proposals from and make available all pertinent information to any person interested in undertaking to redevelop or rehabilitate an urban renewal area or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that such further information as is available may be obtained at the office designated in the notice. The authority shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the authority in the urban renewal area. The authority may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this part 1; except that a notification of intention to

accept such proposal shall be filed with the governing body not less than fifteen days prior to any such acceptance. Thereafter, the authority may execute such contract in accordance with the provisions of subsection (1) of this section and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contract.

(3) An authority may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment without regard to the provisions of subsection (1) of this section for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

(4) Anything in subsection (1) of this section to the contrary notwithstanding, project real property may be set aside, dedicated, and devoted by the authority to public uses which are in accordance with the urban renewal plan or set aside, dedicated, and transferred by the authority to the municipality or to any other appropriate public body for public uses which are in accordance with such urban renewal plan, with or without compensation for such property and with or without regard to the fair value thereof as determined in subsection (1) of this section, upon or subject to such terms, conditions, covenants, restrictions, or limitations as the authority deems to be in the public interest and as are not inconsistent with the purposes and objectives and the other applicable provisions of this part 1.

Source: L. 75: Entire title R&RE, p. 1165, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-106 as it existed prior to 1975.

ANNOTATION

Trial court correctly held that plaintiff lacked standing to pursue claims alleging a violation of state Urban Renewal Law. A plaintiff has standing if he or she (1) incurred an injury in fact (2) to a legally protected interest, as contemplated by statutory or constitutional provisions. To satisfy the injury-in-fact prong of the controlling test for standing, the injury must be direct and palpable. A claimed injury that, as here, is presently speculative and that cannot be determined until a remote time in the future is not sufficiently direct and palpable to support a finding of injury in fact. To determine whether plaintiff has a legal interest that entitles her to judicial redress, court must consider whether Urban Renewal Law reflects a legislative purpose to confer such an interest. Court finds that general assembly did not intend to create a right in taxpayers to enforce the statute. Implying such a right in taxpayers is also inconsistent with the statutory scheme. *Olson v. City of Golden*, 53 P.3d 747 (Colo. App. 2002).

Urban renewal authority lacks statutory authority to condemn subject parcel of real

property that is no longer subject to blight determination. Neither lake parcel nor Arvada marketplace parcel is subject to municipality's 1981 blight finding. Once the purpose of eliminating or preventing the spread of blight has been achieved, the urban renewal authority may no longer rely on a municipality's initial blight determination to condemn property because it can no longer exercise its condemnation powers in furtherance of a valid public purpose. Thus, the statutory basis for the urban renewal authority's power to condemn, the elimination of blight, is no longer present. Accordingly, where blight has been eliminated from a parcel that lies within an urban renewal area, an urban renewal authority no longer has any statutory basis to exercise its condemnation power over or for the benefit of that parcel. *Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n.*, 85 P.3d 1066 (Colo. 2004).

Applied in *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980); *Thornton Development Authority v. Upah*, 640 F. Supp. 1071 (D. Colo. 1986).

31-25-107. Approval of urban renewal plans by local governing body. (1) (a) An authority shall not actually undertake an urban renewal project for an urban renewal area unless based on evidence presented at a public hearing the governing body, by resolution, has determined such area to be a slum, blighted area, or a combination thereof and designated such area as appropriate for an urban renewal project.

(b) Notwithstanding any other provision of this part 1, and in addition to any other notice required by law, within thirty days of the commissioning of a study to determine whether an area is a slum, blighted area, or a combination thereof in accordance with the requirements of paragraph (a) of this subsection (1), the authority shall provide notice to any owner of private property located in the area that is the subject of the study by mailing

notice to the owner by regular mail at the last-known address of record. The notice shall state that the authority is commencing a study necessary for making a determination as to whether the area in which the owner owns property is a slum or a blighted area. Where the authority makes a determination that the area is not a slum, blighted area, or a combination thereof, within thirty days of making such determination, the authority shall also send notice of such determination to any owner of private property located in the area that is the subject of the study by mailing notice to the owner by regular mail at the last-known address of record. For purposes of this paragraph (b), "private property" means, as applied to real property, only a fee ownership interest.

(c) (I) Except for urban renewal plans subject to section 31-25-103 (2) (I), the boundaries of an area that the governing body determines to be a blighted area shall be drawn as narrowly as the governing body determines feasible to accomplish the planning and development objectives of the proposed urban renewal area. The governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. An authority shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal plan in accordance with subsection (4) of this section. In making the determination as to whether a particular area is blighted pursuant to the provisions of this part 1, any particular condition found to be present may satisfy as many of the factors referenced in section 31-25-103 (2) as are applicable to such condition.

(II) Notwithstanding any other provision of this part 1, no area that has been designated as an urban renewal area shall contain any agricultural land unless:

(A) The agricultural land is a brownfield site;

(B) Not less than one-half of the urban renewal area as a whole consists of parcels of land containing urban-level development that, at the time of the designation of such area, are determined to constitute a slum or blighted area, or a combination thereof, in accordance with the requirements of paragraph (a) of subsection (1) of this section and not less than two-thirds of the perimeter of the urban renewal area as a whole is contiguous with urban-level development as determined at the time of the designation of such area;

(C) The agricultural land is an enclave within the territorial boundaries of a municipality and the entire perimeter of the enclave has been contiguous with urban-level development for a period of not less than three years as determined at the time of the designation of the area;

(D) Each public body that levies an ad valorem property tax on the agricultural land agrees in writing to the inclusion of the agricultural land within the urban renewal area; or

(E) The agricultural land was included in an approved urban renewal plan prior to June 1, 2010.

(III) Notwithstanding any other provision of this part 1, for a period commencing on June 1, 2010, and concluding ten years from June 1, 2010, and in addition to the provisions of subparagraph (II) of this paragraph (c), no area that has been designated as an urban renewal area shall contain any agricultural land unless:

(A) The agricultural land is contiguous with an urban renewal area in existence as of June 1, 2010;

(B) The person who is the fee simple owner of the agricultural land as of June 1, 2010, is also the fee simple owner of land within the urban renewal area as of June 1, 2010, that is contiguous with the agricultural land; and

(C) Both the agricultural land and the land within the urban renewal area that is described in sub-subparagraph (B) of this subparagraph (III) will be developed solely for the purpose of creating primary manufacturing jobs, and any ancillary jobs necessary to support such manufacturing operations, for the duration of the period during which property tax revenues in excess of a base amount are paid into a special fund pursuant to subparagraph (II) of paragraph (a) of subsection (9) of this section for the purpose of financing an urban renewal project. For purposes of this subparagraph (III), "primary manufacturing jobs" means manufacturing jobs that produce products that are in excess of those that will be consumed within the boundaries of the state and that are exported to other states and foreign countries in exchange for value.

(d) In the case of an urban renewal plan approved or substantially modified on or after June 1, 2010, the plan shall include a legal description of the urban renewal area, including the legal description of any agricultural land proposed for inclusion within the urban renewal area pursuant to the conditions specified in subparagraph (II) or (III) of paragraph (c) of this subsection (1).

(2) Prior to its approval of an urban renewal plan, the governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, without such recommendations, the governing body may proceed with the hearing on the proposed urban renewal plan prescribed by subsection (3) of this section.

(3) (a) The governing body shall hold a public hearing on an urban renewal plan or substantial modification of an approved urban renewal plan no less than thirty days after public notice thereof by publication in a newspaper having a general circulation in the municipality. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(b) Where an authority intends to acquire private property by eminent domain within the urban renewal area to be subsequently transferred to a private party in accordance with the requirements of section 31-25-105.5 (2), the governing body, prior to the commencement of the acquisition of such property, shall first hold a public hearing on the use of eminent domain as a means to acquire such property after written notice of the time, date, place, and purpose of the hearing has been provided to each owner of property within the meaning of section 31-25-105.5 that is within the urban renewal area at least thirty days prior to the date of the hearing. In order to authorize the use of eminent domain as a means to acquire property, a governing body shall base its decision on such authorization on a finding of blighted or slum conditions without regard to the economic performance of the property to be acquired.

(3.5) (a) At least thirty days prior to the hearing on an urban renewal plan or a substantial modification to such plan, regardless of when the urban renewal plan was first approved, the governing body or the authority shall submit such plan or modification to the board of county commissioners, and, if property taxes collected as a result of the county levy will be utilized, the governing body or the authority shall also submit an urban renewal impact report, which shall include, at a minimum, the following information concerning the impact of such plan:

(I) The estimated duration of time to complete the urban renewal project;

(II) The estimated annual property tax increment to be generated by the urban renewal project and the portion of such property tax increment to be allocated during this period to fund the urban renewal project;

(III) An estimate of the impact of the urban renewal project on county revenues and on the cost and extent of additional county infrastructure and services required to serve development within the proposed urban renewal area, and the benefit of improvements within the urban renewal area to existing county infrastructure;

(IV) A statement setting forth the method under which the authority or the municipality will finance, or that agreements are in place to finance, any additional county infrastructure and services required to serve development in the urban renewal area for the period in which all or any portion of the property taxes described in subparagraph (II) of paragraph (a) of subsection (9) of this section and levied by a county are paid to the authority; and

(V) Any other estimated impacts of the urban renewal project on county services or revenues.

(b) The inadvertent failure of a governing body or an authority to submit an urban renewal plan, substantial modification to the plan, or an urban renewal impact report, as applicable, to a board of county commissioners in accordance with the requirements of

paragraph (a) of this subsection (3.5) shall neither create a cause of action in favor of any party nor invalidate any urban renewal plan or modification to the plan.

(c) Notwithstanding any other provision of this section, a city and county shall not be required to submit an urban renewal impact report satisfying the requirements of paragraph (a) of this subsection (3.5).

(3.7) Upon request of the governing body or the authority, each county that is entitled to receive a copy of the plan shall provide available county data and projections to assist the governing body or the authority in preparing the urban renewal impact report required pursuant to subsection (3.5) of this section.

(4) Following such hearing, the governing body may approve an urban renewal plan if it finds that:

(a) A feasible method exists for the relocation of individuals and families who will be displaced by the urban renewal project in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such individuals and families;

(b) A feasible method exists for the relocation of business concerns that will be displaced by the urban renewal project in the urban renewal area or in other areas that are not generally less desirable with respect to public utilities and public and commercial facilities;

(c) The governing body has taken reasonable efforts to provide written notice of the public hearing prescribed by subsection (3) of this section to all property owners, residents, and owners of business concerns in the proposed urban renewal area at their last known address of record at least thirty days prior to such hearing. Such notice shall contain the same information as is required for the notice described in subsection (3) of this section.

(d) No more than one hundred twenty days have passed since the commencement of the first public hearing of the urban renewal plan pursuant to subsection (3) of this section;

(e) Except for urban renewal plans subject to section 31-25-103 (2) (l), if the urban renewal plan contains property that was included in a previously submitted urban renewal plan that the governing body failed to approve pursuant to this section, at least twenty-four months shall have passed since the commencement of the prior public hearing concerning such property pursuant to subsection (3) of this section unless substantial changes have occurred since the commencement of such hearing that result in such property constituting a blighted area pursuant to section 31-25-103;

(f) The urban renewal plan conforms to the general plan of the municipality as a whole;

(g) The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(h) The authority or the municipality will adequately finance, or that agreements are in place to finance, any additional county infrastructure and services required to serve development within the urban renewal area for the period in which all or any portion of the property taxes described in subparagraph (II) of paragraph (a) of subsection (9) of this section and levied by a county are paid to the authority.

(4.5) In addition to the findings otherwise required to be made by the governing body pursuant to subsection (4) of this section, where an urban renewal plan seeks to acquire private property by eminent domain for subsequent transfer to a private party pursuant to section 31-25-105.5 (2), the governing body may approve the urban renewal plan where it finds, in connection with a hearing satisfying the requirements of subsection (3) of this section, that the urban renewal plan has met the requirements of section 31-25-105.5 (2) and that the principal public purpose for adoption of the urban renewal plan is to facilitate redevelopment in order to eliminate or prevent the spread of physically blighted or slum areas.

(5) In case the urban renewal area consists of an area of open land which, under the urban renewal plan, is to be developed for residential uses, the governing body shall comply with the applicable provisions of this section and shall also determine that a shortage of housing of sound standards and design which is decent, safe, and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas (including other portions of the urban renewal area); that the conditions of blight in the urban renewal area and the shortage of decent, safe,

and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality.

(6) In case the urban renewal area consists of an area of open land which, under the urban renewal plan, is to be developed for nonresidential uses, the local governing body shall comply with the applicable provisions of this section and shall also determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and that the contemplated acquisition of the area may require the exercise of governmental action, as provided in this part 1, because of being in a blighted area.

(7) An urban renewal plan may be modified at any time; but, if modified after the lease or sale by the authority of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor in interest may be entitled to assert. Any proposed modification shall be submitted to the governing body for a resolution as to whether or not such modification will substantially change the urban renewal plan in land area, land use, design, building requirements, timing, or procedure, as previously approved, and, if it finds that there will be a substantial change, its approval of such modification shall be subject to the requirements of this section.

(8) Upon the approval by the governing body of an urban renewal plan or a substantial modification thereof, the provisions of said plan with respect to the land area, land use, design, building requirements, timing, or procedure applicable to the property covered by said plan shall be controlling with respect thereto.

(9) (a) Notwithstanding any law to the contrary, any urban renewal plan, as originally approved or as later modified pursuant to this part 1, may contain a provision that taxes, if any, levied after the effective date of the approval of such urban renewal plan upon taxable property in an urban renewal area each year or that municipal sales taxes collected within said area, or both such taxes, by or for the benefit of any public body shall be divided for a period not to exceed twenty-five years after the effective date of adoption of such a provision, as follows:

(I) That portion of the taxes which are produced by the levy at the rate fixed each year by or for each such public body upon the valuation for assessment of taxable property in the urban renewal area last certified prior to the effective date of approval of the urban renewal plan or, as to an area later added to the urban renewal area, the effective date of the modification of the plan, or that portion of municipal sales taxes collected within the boundaries of said urban renewal area in the twelve-month period ending on the last day of the month prior to the effective date of approval of said plan, or both such portions, shall be paid into the funds of each such public body as are all other taxes collected by or for said public body.

(II) That portion of said property taxes or all or any portion of said sales taxes, or both, in excess of the amount of property taxes or sales taxes paid into the funds of each such public body in accordance with the requirements of subparagraph (I) of this paragraph (a) shall be allocated to and, when collected, paid into a special fund of the authority to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the authority for financing or refinancing, in whole or in part, an urban renewal project, or to make payments under an agreement executed pursuant to subsection (11) of this section. Any excess municipal sales tax collections not allocated pursuant to this subparagraph (II) shall be paid into the funds of the municipality. Unless and until the total valuation for assessment of the taxable property in an urban renewal area exceeds the base valuation for assessment of the taxable property in such urban renewal area, as provided in subparagraph (I) of this paragraph (a), all of the taxes levied upon the taxable property in such urban renewal area shall be paid into the funds of the respective public bodies. Unless and until the total municipal sales tax collections in an urban renewal area exceed the base year municipal sales tax collections in such urban renewal area, as provided in subparagraph (I) of this paragraph (a), all such sales tax collections shall be paid into the funds of the

municipality. When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith, have been paid, all taxes upon the taxable property or the total municipal sales tax collections, or both, in such urban renewal area shall be paid into the funds of the respective public bodies.

(III) In calculating and making payments as described in subparagraph (II) of this paragraph (a), the county treasurer may offset the authority's pro rata portion of any property taxes that are paid to the authority under the terms of subparagraph (II) of this paragraph (a) and that are subsequently refunded to the taxpayer against any subsequent payments due to the authority for the urban renewal project. The authority shall make adequate provision for the return of overpayments in the event that there are not sufficient property taxes due to the authority to offset the authority's pro rata portion of the refunds. The authority may establish a reserve fund for this purpose or enter into an intergovernmental agreement with the municipal governing body in which the municipality assumes responsibility for the return of the overpayments. The provisions of this subparagraph (III) shall not apply to a city and county.

(b) The portion of taxes described in subparagraph (II) of paragraph (a) of this subsection (9) may be irrevocably pledged by the authority for the payment of the principal of, the interest on, and any premiums due in connection with such bonds, loans, advances, and indebtedness. This irrevocable pledge shall not extend to any taxes that are placed in a reserve fund to be returned to the county for refunds of overpayments by taxpayers; except that this limitation on the extension of the irrevocable pledge shall not apply to a city and county.

(c) As used in this subsection (9), the word "taxes" shall include, without limitation, all levies authorized to be made on an ad valorem basis upon real and personal property or municipal sales taxes; but nothing in this subsection (9) shall be construed to require any public body to levy taxes.

(d) In the case of urban renewal areas, including single- and multiple-family residences, school districts which include all or any part of such urban renewal area shall be permitted to participate in an advisory capacity with respect to the inclusion in an urban renewal plan of the provision provided for by this subsection (9).

(e) In the event there is a general reassessment of taxable property valuations in any county including all or part of the urban renewal area subject to division of valuation for assessment under paragraph (a) of this subsection (9) or a change in the sales tax percentage levied in any municipality including all or part of the urban renewal area subject to division of sales taxes under paragraph (a) of this subsection (9), the portions of valuations for assessment or sales taxes under both subparagraphs (I) and (II) of said paragraph (a) shall be proportionately adjusted in accordance with such reassessment or change.

(f) Notwithstanding the twenty-five-year period of limitation set forth in paragraph (a) of this subsection (9), any urban renewal plan, as originally approved or as later modified pursuant to this part 1, may contain a provision that the municipal sales taxes collected in an urban renewal area each year or the municipal portion of taxes levied upon taxable property within such area, or both such taxes, may be allocated as described in this subsection (9) for a period in excess of twenty-five years after the effective date of the adoption of such provision if the existing bonds are in default or about to go into default; except that such taxes shall not be allocated after all bonds of the authority issued pursuant to such plan including loans, advances, and indebtedness, if any, and interest thereon, and any premiums due in connection therewith have been paid.

(g) Notwithstanding any other provision of this section, if one or more of the conditions specified in subparagraph (II), or all of the conditions specified in subparagraph (III), of paragraph (c) of subsection (1) of this section have been satisfied such that agricultural land is included within an urban renewal area, the county assessor shall value the agricultural land at its fair market value in making the calculation of the taxes to be paid to the public bodies pursuant to subparagraph (I) of paragraph (a) of this subsection (9) solely for the purpose of determining the tax increment available pursuant to subparagraph (II) of paragraph (a) of this subsection (9). Nothing in this section shall affect the actual classification, or require reclassification, of agricultural land for property tax purposes, and nothing in this section shall affect the taxes actually to be paid to the public bodies pursuant

to subparagraph (I) of paragraph (a) of this subsection (9), which shall continue to be based on the agricultural classification of such land unless and until it has been reclassified in the normal course of the assessment process.

(h) The manner and methods by which the requirements of this subsection (9) are to be implemented by county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109 (1) (e), C.R.S.

(10) The municipality in which an urban renewal authority has been established pursuant to the provisions of this part 1 shall timely notify the assessor of the county in which such authority has been established when:

(a) An urban renewal plan or a substantial modification of such plan has been approved that contains the provision referenced in paragraph (a) of subsection (9) of this section or a substantial modification of the plan adds land to the plan, which plan contains the provision referenced in paragraph (a) of subsection (9) of this section;

(b) Any outstanding obligation incurred by such authority pursuant to the provisions of subsection (9) of this section has been paid off; and

(c) The purposes of such authority have otherwise been achieved.

(11) The governing body or the authority may enter into an agreement with any taxing entity within the boundaries of which property taxes collected as a result of the taxing entity's levy, or any portion of the levy, will be subject to allocation pursuant to subsection (9) of this section. The agreement may provide for the allocation of responsibility among the parties to the agreement for payment of the costs of any additional county infrastructure or services necessary to offset the impacts of an urban renewal project and for the sharing of revenues. Except with the consent of the governing body or the authority, any such shared revenues shall be limited to all or any portion of the taxes levied upon taxable property within the urban renewal area by the taxing entity. The agreement may provide for a waiver of any provision of this part 1 that provides for notice to the taxing entity, requires any filing with or by the taxing entity, requires or permits consent from the taxing entity, or provides any enforcement right to the taxing entity.

(12) (a) Except as provided in paragraph (e) of this subsection (12), the county may enforce the requirements of subparagraphs (III) and (IV) of paragraph (a) of subsection (3.5) and paragraph (h) of subsection (4) of this section by means of the arbitration process established by this subsection (12) where:

(I) Property located within such county is included within an urban renewal plan;

(II) The county has provided information requested pursuant to subsection (3.7) of this section; and

(III) The county has appeared at a public hearing held pursuant to paragraph (a) of subsection (3) of this section and presented evidence at such hearing that development within the urban renewal area will create a need for additional county infrastructure and services; except that the requirements of this subparagraph (III) shall not apply in the case of a county that did not receive an urban renewal plan, a substantial modification to the plan, or an urban renewal impact report, as applicable, pursuant to paragraph (a) of subsection (3.5) of this section.

(b) (I) A county objecting under the provisions of this section to an urban renewal plan approved under subsection (4) of this section that received on a timely basis an urban renewal plan, a substantial modification to the plan, or an urban renewal impact report, as applicable, pursuant to paragraph (a) of subsection (3.5) of this section shall file written notice of the objection with the authority as well as the governing body that has approved the plan within fifteen days of the date of the approval of the plan. A county objecting under the provisions of this section to an urban renewal plan approved under subsection (4) of this section that did not receive on a timely basis an urban renewal plan, a substantial modification to the plan, or an urban renewal impact report, as applicable, pursuant to paragraph (a) of subsection (3.5) of this section shall file written notice of the objection with the authority as well as the governing body that has approved the plan within thirty days of the date of the approval of the plan or within five days of the date of the county's receipt of the plan, whichever date is later. The notice of objection shall include a statement of the grounds upon which the county asserts that the authority or the governing body has failed

to comply with the requirements of subparagraphs (III) and (IV) of paragraph (a) of subsection (3.5) and paragraph (h) of subsection (4) of this section. The notice of objection shall also include the name of one attorney who has been licensed for a minimum of ten years in the state of Colorado, who is experienced in administrative and land use law, and who the board of county commissioners of the county believes to be qualified to serve as a member of the panel of arbitrators charged with resolving the county's objections in accordance with the requirements of this subsection (12).

(II) Within twenty days of receipt of the notice of objection, the governing body shall submit to the county the name of one additional person to serve as a member of the panel of arbitrators, which person shall also satisfy the requirements specified in subparagraph (I) of this paragraph (b). Within twenty days of such submission, the two members of the arbitration panel selected by the county and the governing body shall jointly select an additional person to serve as the third and final member of the panel of arbitrators, which person shall also satisfy the requirements specified in subparagraph (I) of this paragraph (b). The panel of three arbitrators selected pursuant to this paragraph (b) shall be charged with resolving the county's objections in accordance with the requirements of this subsection (12). Notwithstanding the provisions of this paragraph (b), the county, governing body, and authority may agree upon a single arbitrator to resolve the county's objections.

(III) If the county, governing body, and authority have not reached a written agreement resolving the county's objections within thirty days after the receipt by the governing body of the notice specified in subparagraph (I) of this paragraph (b), the objections specified in the notice shall be submitted to arbitration in accordance with the requirements of this subsection (12).

(c) The arbitration hearing, if any, shall commence within sixty days after the receipt by the governing body of the notice of objection. The parties to the arbitration shall be the county, governing body, and authority. At the arbitration hearing, the governing body or the authority, as applicable, shall have the burden of proving by a preponderance of the evidence that it submitted the urban renewal plan, a substantial modification to the plan, and an urban renewal impact report, as applicable, to the county pursuant to paragraph (a) of subsection (3.5) of this section and that it did not abuse its discretion in preparing the estimate or statement provided to the county pursuant to subparagraphs (III) and (IV) of paragraph (a) of subsection (3.5) of this section and that the governing body did not abuse its discretion in connection with the findings it has made under paragraph (h) of subsection (4) of this section. The decision of the arbitrators shall be based upon the objections contained in the notice filed pursuant to subparagraph (I) of paragraph (b) of this subsection (12) and upon the record of the hearing held pursuant to subsection (3) of this section. In rendering a decision, the arbitrators shall take into consideration the goals and objectives of the urban renewal plan, information that has been submitted by the county as contained in the record of the hearing on the urban renewal plan and the impact report provided to the county pursuant to subsection (3.5) of this section, the reasonableness of the county's objections contained in the notice, the extent to which the urban renewal project will improve existing county infrastructure, the extent to which tax increment revenues, if any, to be generated by development within the urban renewal area and collected by the authority pursuant to paragraph (a) of subsection (9) of this section may reasonably be expected to defray the cost of the additional infrastructure and services requested by the county, and the debt service requirements of the authority. The arbitration hearing shall be concluded not later than seven days after its commencement, and the decision of the arbitrators shall be rendered not later than thirty days after the conclusion of the hearing. The order of the arbitrators shall be limited to either approving the urban renewal plan or, upon a finding of abuse of discretion, remanding the plan to the governing body for reconsideration of the county's objections. The order shall be final and binding on the parties and shall not be subject to judicial review except to enforce the order or to determine whether the order was procured by corruption, fraud, or other similar wrongdoing.

(d) Fifty percent of the necessary fees and necessary expenses of any arbitration conducted pursuant to this subsection (12), excluding all fees and expenses incurred by either party in the preparation or presentation of its case, shall be borne by the county, and

fifty percent of such fees and expenses shall be borne by the governing body or the authority.

(e) Notwithstanding any other provision of this section, the provisions of this subsection (12) shall not apply to any urban renewal plan in which less than ten percent of the area identified in such plan:

(I) Has been classified as agricultural land for purposes of the levying and collection of property tax pursuant to section 39-1-103, C.R.S., at any time during the three-year period prior to the date of adoption of the plan; and

(II) Is currently identified for agricultural uses in a master plan adopted by the municipality pursuant to section 31-23-206 and has been so identified for more than one year prior to the date of adoption of the plan.

(f) Notwithstanding any other provision of law, the arbitration process established in this subsection (12) shall be the exclusive remedy available to a county for contesting the sufficiency of compliance by a governing body or an authority with the requirements of this section.

(13) Not later than thirty days after the municipality has provided the county assessor the notice required by paragraph (a) of subsection (10) of this section, the county assessor may provide written notice to the municipality if the assessor believes that agricultural land has been improperly included in the urban renewal area in violation of subparagraph (II) or (III) of paragraph (c) of subsection (1) of this section. If the notice is not delivered within the thirty-day period, the inclusion of the land in the urban renewal area as described in the urban renewal plan shall be incontestable in any suit or proceeding notwithstanding the presence of any cause. If the assessor provides notice to the municipality within the thirty-day period, the municipality may file an action in state district court exercising jurisdiction over the county in which the land is located for an order determining whether the inclusion of the land in the urban renewal area is consistent with one of the conditions specified in subparagraph (II) or (III) of paragraph (c) of subsection (1) of this section and shall have an additional thirty days from the date it receives the notice in which to file such action. If the municipality fails to file such an action within the additional thirty-day period, the agricultural land shall not become part of the urban renewal area.

Source: **L. 75:** Entire title R&RE, p. 1167, § 1, effective July 1; (9) added, p. 1276, § 1, effective July 16. **L. 81:** (9)(a), (9)(c), and (9)(e) amended, p. 1516, § 1, effective July 1. **L. 93:** (9)(f) added, p. 435, § 1, effective April 19; (3.5) added, p. 1255, § 5, effective July 1. **L. 99:** (1), (3), and (4) amended and (10) added, p. 530, § 3, effective May 3. **L. 2004:** (3) amended and (4.5) added, p. 1746, § 5, effective June 4. **L. 2005:** (3.5) and (9)(a)(II) amended and (3.7), (4)(h), (11), and (12) added, pp. 1259, 1263, §§ 1, 2, effective June 3. **L. 2007:** (1) amended, p. 1004, § 1, effective September 1. **L. 2008:** (1)(b) amended, p. 1912, § 121, effective August 5; (9)(a)(III) added and (9)(b) amended, p. 1245, §§ 1, 2, effective August 5. **L. 2010:** (1)(c), IP(3.5)(a), (9)(a)(II), (10)(a), and (11) amended and (1)(d), (3.5)(c), (9)(g), (9)(h), and (13) added, (HB 10-1107), ch. 89, pp. 299, 302, 303, §§ 3, 4, 5, 6, effective June 1; (11) amended, (HB 10-1422), ch. 419, p. 2127, § 193, effective August 11.

Editor's note: This section is similar to former § 31-25-107 as it existed prior to 1975.

ANNOTATION

Subsection (9) does not violate § 1 of art. XI, Colo. Const. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Subsection (3.5), which requires submission of urban renewal plan to the board of county commissioners, does not grant the county authority to assume an advisory role, nor does it grant authority to take any action, to participate in the planning process, or to implement the plan in any way other than that granted

to the general public to receive notice and participate in a public hearing. Boulder County Bd. of Comm'rs v. City of Broomfield, 7 P.3d 1033 (Colo. App. 1999).

Project's commencement requires concurrence. The local governing body must concur with an urban renewal authority's proposed project before the project can be commenced. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Statutory tax-allocation financing scheme provided in section is not improper delegation of power to the authority to supervise or interfere with the levying and collection of taxes. *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980).

Structure of tax allocation. The tax allocation structure provided by subsection (9)(e) has been carefully drafted so that there is a direct relationship between the increased valuation of property within the project area, and thus, increased ad valorem tax revenues, and the project financed by the bond issue. *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980).

City of Denver had standing to challenge validity of subsection (9). *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980).

Applicability of Sherman Antitrust Act to urban renewal plans. Actions of city and related parties involved in the adoption of an urban renewal plan were immune from liability under the Sherman Antitrust Act since the actions were taken pursuant to clearly articulated and affirmatively expressed state policy and there was no evidence of bribery or other illegal activity with respect to the adoption or implementation of the plan. *Oberndorf v. City & County of Denver*, 696 F. Supp. 552 (D. Colo. 1988), *aff'd*, 900 F.2d 1434 (10th Cir. 1990), *cert. denied*, 498 U.S. 845, 111 S. Ct. 129, 112 L. Ed.2d 97 (1990).

Existence of incidental public purpose does not prevent a court from finding bad faith and invalidating determination that a particular acquisition is necessary, if the primary purpose for the condemnation is to advance private interests. *Denver West Metro. District v. Geudner*, 786 P.2d 434 (Colo. App. 1989); *Block 173 Associates v. Denver*, 797 P.2d 771 (Colo. App. 1990), *aff'd*, 814 P.2d 824 (Colo. 1991).

A finding of compliance with this section does not foreclose claims of bad faith and conspiracy to effect an unconstitutional taking of property. *Block 173 Associates v. Denver*, 797 P.2d 771 (Colo. App. 1990), *aff'd*, 814 P.2d 824 (Colo. 1991).

Requirement that the city council make a finding that the area in question is blighted or a slum is a prerequisite to adoption of an urban renewal plan but fact that three blocks dedicated to Centerstone were not blighted did not prevent those blocks from being included in urban renewal plan. *City & County of Denver v. Block 173*, 814 P.2d 824 (Colo. 1991).

Town council's submission of proposed urban renewal plan to electorate did not excuse town council, as the governing body, from complying with statute's requirement that it hold public hearing on plan and to make specific findings before it approved plan. *E. Grand Co.*

Sch. Dist. 2 v. Winter Park, 739 P.2d 862 (Colo. App. 1987).

Remand necessary so trial court can independently examine the public purpose of the condemnation based on the record of proceedings before urban renewal authority and, without either deferring to the authority's blight determination or considering bad faith, make findings from the existing record reflecting that examination. *Sheridan Redevel. Agency v. Knightsbridge Land Co.*, 166 P.3d 259 (Colo. App. 2007).

Res judicata does not apply to bar state action where state and federal claims were based on different claims for relief, and state claims were not truly "available to the parties" in the prior federal action because state claims could only have been asserted in federal court as pendent to federal claims for relief, and federal claim was dismissed on motion for summary judgment, requiring dismissal of pendent state claims. *City & County of Denver v. Block 173*, 814 P.2d 824 (Colo. 1991).

Collateral estoppel. Findings of federal district court insufficient to support summary judgment on state claims where identity of issues necessary to invoke collateral estoppel was absent between issues actually and necessarily decided by the federal district court and those necessary to preclude summary judgment on landowner's "bad faith" claims in state court. *City & County of Denver v. Block 173*, 814 P.2d 824 (Colo. 1991).

School district, board of education, and board of county commissioners had standing to challenge enactment of urban renewal plan, where implementation of tax increment financing could have caused plaintiffs to lose property tax revenues which would otherwise have been available to them. County had authority to sue to protect its interest in property taxes, and school district was entitled to participate in advisory capacity with respect to implementation of tax increment financing. *E. Grand Co. Sch. Dist. 2 v. Winter Park*, 739 P.2d 862 (Colo. App. 1987).

Subject real property is no longer subject to municipality's 1981 blight determination, because the statutory procedures for removing blight were followed. The urban renewal authority disposed of the quarry lake property according to the terms of state's urban renewal law and certified the uses to which the lake was devoted comported with the urban renewal plan. After duly disposing of the lake property, certifying that the property was being used in accordance with the urban renewal plan, and having notice at all relevant times of the developer's efforts to incorporate the lake into its office park, the urban renewal authority cannot now claim that the lake has never been developed in accordance with the urban renewal plan. On the contrary, the quarry lake has been developed in accordance with the procedures laid out in the

state's urban renewal law and, thus, can no longer be considered "blighted" under the municipality's 1981 blight determination. *Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n*, 85 P.3d 1066 (Colo. 2004).

Urban renewal authority lacks statutory authority to condemn subject parcel of real property that is no longer subject to blight determination. Neither lake parcel nor Arvada marketplace parcel is subject to municipality's 1981 blight finding. Once the purpose of eliminating or preventing the spread of blight has been achieved, the urban renewal authority may no longer rely on a municipality's initial blight determination to condemn property because it can no longer exercise its condemnation powers in furtherance of a valid public purpose. Thus, the statutory basis for the urban renewal authority's power to condemn, the elimination of blight, is no longer present. Accordingly, where

blight has been eliminated from a parcel that lies within an urban renewal area, an urban renewal authority no longer has any statutory basis to exercise its condemnation power over or for the benefit of that parcel. *Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n*, 85 P.3d 1066 (Colo. 2004).

Section does not require urban renewal authority to afford landowners any opportunity to redevelop their own land beyond participating in the developer selection process. Here, there is no basis for disturbing the trial court's extensive findings that respondents participated in a fundamentally fair developer selection process. *Sheridan Redev. Agency v. Knightsbridge Land Co.*, 166 P.3d 259 (Colo. App. 2007).

Applied in Thornton Development Authority v. Upah, 640 F. Supp. 1071 (D. Colo. 1986).

31-25-108. Disaster areas. Notwithstanding any other provisions of this part 1, when the governing body certifies that an area within the municipality is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, or other federal law, such area shall be deemed a blighted area, and the authority situated in such municipality may prepare and submit to such governing body a proposed urban renewal plan and proposed urban renewal project for such area or for any portion thereof, and such governing body may, by resolution, approve such proposed urban renewal plan and urban renewal project with or without modifications without regard to the provisions of this part 1 requiring a general or master plan for the physical development of the municipality as a whole, review by the planning commission, or a public hearing.

Source: L. 75: Entire title R&RE, p. 1168, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-108 as it existed prior to 1975.

31-25-109. Issuance of bonds by an authority. (1) An authority has power to issue bonds of the authority from time to time in its discretion to finance its activities or operations under this part 1, including but not limited to the repayment with interest of any advances or loans of funds made to the authority by the federal government or other source for any surveys or plans made or to be made by the authority in exercising its powers under this part 1 and also has power to issue refunding or other bonds of the authority from time to time in its discretion for the payment, retirement, renewal, or extension of any bonds previously issued by it under this section and to provide for the replacement of lost, destroyed, or mutilated bonds previously issued under this section.

(2) (a) Bonds which are issued under this section may be general obligation bonds of the authority to the payment of which, as to principal and interest and premiums (if any), the full faith, credit, and assets (acquired and to be acquired) of the authority are irrevocably pledged.

(b) Such bonds may be special obligations of the authority which, as to principal and interest and premiums (if any), are payable solely from and secured only by a pledge of any income, proceeds, revenues, or funds of the authority derived or to be derived by it from or held or to be held by it in connection with its undertaking of any project of the authority, including, without limitation, funds to be paid to an authority pursuant to section 31-25-107 (9) and including any grants or contributions of funds made or to be made by it with respect to any such project and any funds derived or to be derived by it from or held or to be held by it in connection with its sale, lease, rental, transfer, retention, management, rehabilita-

tion, clearance, development, redevelopment, preparation for development or redevelopment, or its operation or other utilization or disposition of any real or personal property acquired or to be acquired by it or held or to be held by it for any of the purposes of this part 1 and including any loans, grants, or contributions of funds made or to be made to it by the federal government in aid of any project of the authority or in aid of any of its other activities or operations.

(c) Such bonds may be special obligations of the authority which, as to principal and interest and premiums (if any), are payable solely from and secured only by a pledge of any loans, grants, or contributions of funds made or to be made to it by the federal government or other source in aid of any project of the authority or in aid of any of its other activities or operations.

(d) Such bonds may be contingent special obligations of the authority which, as to principal and interest and premiums (if any), are payable solely from any funds available or becoming available to the authority for its undertaking of the project involved in the particular activities or operations with respect to which such contingent special obligations are issued but so payable only in the event such funds are or become available as provided in this subsection (2).

(3) Notwithstanding any other provisions of this section, any bonds which are issued under this section, other than the contingent special obligations covered by paragraph (d) of subsection (2) of this section, may be additionally secured as to the payment of the principal and interest and premiums (if any) by a mortgage of any urban renewal project, or any part thereof, title to which is then or thereafter in the authority or of any other real or personal property or interests therein then owned or thereafter acquired by the authority.

(4) Notwithstanding any other provisions of this section, general obligation bonds which are issued under this section may be additionally secured as to payment of the principal and interest and premiums (if any) as provided in either paragraph (b) or (c) of subsection (2) of this section, with or without being also additionally secured as to payment of the principal and interest and premiums (if any) by a mortgage as provided in subsection (3) of this section or a trust agreement as provided in subsection (5) of this section.

(5) Notwithstanding any other provision of this section, any bonds which are issued under this section may be additionally secured as to the payment of the principal and interest and premiums (if any) by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state of Colorado.

(6) Bonds which are issued under this section shall not constitute an indebtedness of the state of Colorado or of any county, municipality, or public body of said state other than the urban renewal authority issuing such bonds and shall not be subject to the provisions of any other law or of the charter of any municipality relating to the authorization, issuance, or sale of bonds.

(7) Bonds which are issued under this section are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(8) Bonds which are issued under this section shall be authorized by a resolution of the authority and may be issued in one or more series and shall bear such date, be payable upon demand or mature at such time, bear interest at such rate, be in such denomination, be in such form, either coupon or registered or otherwise, carry such conversion or registration privileges, have such rank or priority, be executed (in the name of the authority) in such manner, be payable in such medium of payment, be payable at such place, be subject to such callability provisions or terms of redemption (with or without premiums), be secured in such manner, be of such description, contain or be subject to such covenants, provisions, terms, conditions, and agreements (including provisions concerning events of default), and have such other characteristics as may be provided by such resolution or by the trust agreement, indenture, or mortgage, if any, issued pursuant to such resolution. The seal (or a facsimile thereof) of the authority shall be affixed, imprinted, engraved, or otherwise reproduced upon each of its bonds issued under this section. Bonds which are issued under this section shall be executed in the name of the authority by the manual or facsimile signatures of such of its officials as may be designated in the said resolution or trust

agreement, indenture, or mortgage; except that at least one signature on each such bond shall be a manual signature. Coupons, if any, attached to such bonds shall bear the facsimile signature of such official of the authority as may be designated as provided in this subsection (8). The said resolution or trust agreement, indenture, or mortgage may provide for the authentication of the pertinent bonds by the trustee.

(9) Bonds which are issued under this section may be sold by the authority in such manner and for such price as the authority, in its discretion, may determine, at par, below par, or above par, at private sale or at public sale after notice published prior to such sale in a newspaper having general circulation in the municipality, or in such other medium of publication as the authority may deem appropriate, or may be exchanged by the authority for other bonds issued by it under this section. Bonds which are issued under this section may be sold by it to the federal government at private sale at par, below par, or above par, and, in the event that less than all of the authorized principal amount of such bonds is sold by the authority to the federal government, the balance or any portion of the balance may be sold by the authority at private sale at par, below par, or above par, at an interest cost to the authority of not to exceed the interest cost to it of the portion of the bonds sold by it to the federal government.

(10) In case any of the officials of the authority whose signatures or facsimile signatures appear on any of its bonds or coupons which are issued under this section cease to be such officials before the delivery of such bonds, such signatures or facsimile signatures, as the case may be, shall nevertheless be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery.

(11) Any provision of any law to the contrary notwithstanding, any bonds which are issued pursuant to this section are fully negotiable.

(12) In any suit, action, or proceeding involving the validity or enforceability of any bond which is issued under this section or the security therefor, any such bond reciting in substance that it has been issued by the authority in connection with an urban renewal project or any activity or operation of the authority under this part 1 shall be conclusively deemed to have been issued for such purposes; and such urban renewal project or such operation or activity, as the case may be, shall be conclusively deemed to have been initiated, planned, located, undertaken, accomplished, and carried out in accordance with the provisions of this part 1.

(13) Pending the preparation of any definitive bonds under this section, an authority may issue its interim certificates or receipts or its temporary bonds, with or without coupons, exchangeable for such definitive bonds when the latter have been executed and are available for delivery.

(14) Persons retained or employed by an authority as advisors or consultants for the purpose of rendering financial advice and assistance may purchase or participate in the purchase or in the distribution of its bonds when such bonds are offered at public or private sale.

(15) No commissioner or other officer of an authority issuing bonds under this section and no person executing such bonds is liable personally on such bonds or is subject to any personal liability or accountability by reason of the issuance thereof.

Source: L. 75: Entire title R&RE, p. 1169, § 1, effective July 1; (2)(b) amended, p. 1277, § 2, effective July 16. L. 76: (9) and (14) amended, p. 699, § 1, effective April 3.

Editor's note: This section is similar to former § 31-25-109 as it existed prior to 1975.

ANNOTATION

Applied in *James v. Bd. of Comm'rs*, 42 Colo. App. 27, 595 P.2d 262 (1978).

31-25-110. Property of an authority exempt from taxes and from levy and sale by virtue of an execution. (1) All property of an authority, including but not limited to all funds owned or held by it for any of the purposes of this part 1, shall be exempt from levy

and sale by virtue of an execution, and no such execution or other judicial process shall issue against the same nor shall a judgment against the authority be a charge or lien upon such property; except that the foregoing provisions of this subsection (1) shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, trust agreement, indenture, or other encumbrance of the authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the authority pursuant to this part 1 on its rents, income, proceeds, revenues, loans, grants, contributions, and other funds and assets derived or arising from any project of the authority or from any of its operations or activities under this part 1.

(2) All property of an authority acquired or held by it for any of the purposes of this part 1, including but not limited to all funds of an authority acquired or held by it for any of said purposes, are declared to be public property used for essential public and governmental purposes, and such property and the authority shall be exempt from all taxes of the state of Colorado or any other public body thereof; except that such tax exemption shall terminate when the authority sells, leases, or otherwise disposes of the particular property to a purchaser, lessee, or other alienee which is not a public body entitled to tax exemption with respect to such property.

Source: L. 75: Entire title R&RE, p. 1171, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-110 as it existed prior to 1975.

31-25-111. Title of purchaser, lessee, or transferee. Any instrument executed by an authority and purporting to convey any right, title, or interest of the authority in any property under this part 1 shall be conclusively presumed to have been made and executed in compliance with the provisions of this part 1 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

Source: L. 75: Entire title R&RE, p. 1172, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-111 as it existed prior to 1975.

31-25-112. Cooperation by public bodies with urban renewal authorities. (1) Any public body, within its powers, purposes, and functions and for the purpose of aiding an authority in or in connection with the planning or undertaking pursuant to this part 1 of any plans, projects, programs, works, operations, or activities of such authority whose area of operation is situated in whole or in part within the area in which such public body is authorized to act, upon such terms as such public body shall determine, may:

(a) Sell, convey, or lease any of such public body's property or grant easements, licenses, or other rights or privileges therein to such authority;

(b) Incur the entire expense of any public improvements made by such public body in exercising the powers mentioned in this section;

(c) Do all things necessary to aid or cooperate with such authority in or in connection with the planning or undertaking of any such plans, projects, programs, works, operations, or activities;

(d) Enter into agreements with such authority respecting action to be taken pursuant to any of the powers set forth in this part 1, including agreements respecting the planning or undertaking of any such plans, projects, programs, works, operations, or activities which such public body is otherwise empowered to undertake;

(e) Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, garbage disposal, sewer, sewage, sewerage, or drainage facilities, or any other public works, improvements, facilities, or utilities which such public body is otherwise empowered to undertake, to be furnished within the area in which such public body is authorized to act;

(f) Furnish, dedicate, accept dedication of, open, close, vacate, install, construct, reconstruct, pave, repave, repair, rehabilitate, improve, grade, regrade, plan, or replan public

streets, roads, roadways, parkways, alleys, sidewalks, and other public ways or places within the area in which such public body is authorized to act to the extent that such items or matters are, under any other law, otherwise within the jurisdiction of such public body;

(g) Plan or replan and zone or rezone any part of the area under the jurisdiction of such public body or make exceptions from its building regulations; and

(h) Cause administrative or other services to be furnished to such authority.

(2) If at any time title to or possession of the whole or any portion of any project of the authority under this part 1 is held by any governmental agency or public body (other than such authority) which is authorized by any law to engage in the undertaking, carrying out, or administration of any such project (including any agency or instrumentality of the United States), the provisions of the agreements referred to in paragraph (d) of subsection (1) of this section shall inure to the benefit of and may be enforced by such governmental agency or public body.

(3) Any public body referred to as such in subsection (1) of this section may (in addition to its authority pursuant to any other law to issue its bonds for any purposes) issue and sell its bonds for any of the purposes of such public body which are stated in this section; except that any such bonds of such a public body which are issuable as provided in this subsection (3) may be issued only in the manner and otherwise in conformity with the applicable provisions and limitations prescribed by the state constitution and the laws of this state and, in the case of a home rule municipality, the applicable provisions of its home rule charter for the authorization and issuance by such public body of its general obligation bonds, revenue bonds, special assessment bonds, or special obligation bonds, accordingly as the bonds are general obligation bonds, revenue bonds, special assessment bonds, or special obligation bonds.

(4) Without limiting the generality of any of the provisions of this part 1, but within any limitations provided by the applicable provisions of the state constitution and, in the case of any home rule municipality, the applicable provisions of its home rule charter:

(a) Any public body may appropriate such of its funds and make such expenditures of its funds as it deems necessary for it to undertake any of its powers, functions, or activities mentioned in this part 1 including, particularly, its powers, functions, and activities mentioned in subsections (1) to (3) of this section; and

(b) Any municipality may levy taxes and assessments in order for it to undertake, carry out, or accomplish any of its powers, functions, or activities mentioned in this part 1, including, particularly, its powers, functions, and activities mentioned in the provisions of subsections (1) to (3) of this section.

(5) For the advancement of the public interest and for the purpose of aiding and cooperating in the planning, acquisition, demolition, rehabilitation, construction, or relocation, or otherwise assisting the operation or activities of an urban renewal project located wholly or partly within the area in which it is authorized to act, a public body may enter into agreements which may extend over any period, notwithstanding any provision of law to the contrary, with an authority respecting action taken or to be taken pursuant to any of the powers granted by this part 1.

Source: L. 75: Entire title R&RE, p. 1172, § 1, effective July 1; (5) R&RE, p. 1278, § 3, effective July 16.

Editor's note: This section is similar to former § 31-25-112 as it existed prior to 1975.

ANNOTATION

Urban renewal authority does not have power to require a local governing body to enter into a tax-allocation financing scheme.

Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

31-25-112.5. Inclusion of unincorporated territory in urban renewal area.

(1) Notwithstanding any other provision of this part 1, an urban renewal plan, urban renewal project, or urban renewal area may include unincorporated territory that is outside

the boundaries of a municipality but contiguous to a portion of the urban renewal area located within the municipality. No such territory shall be included in the plan, project, or area without the consent of the board of county commissioners exercising jurisdiction over the unincorporated territory proposed for inclusion and the consent of each owner of, and each holder of a recorded mortgage or deed of trust encumbering, real property within the unincorporated area proposed for inclusion.

(2) In addition to the procedures for approval of a proposed urban renewal plan by the governing body as required by section 31-25-107, the unincorporated territory may be included in the urban renewal plan, project, or area upon satisfaction of each of the following additional requirements:

(a) The board of county commissioners makes a determination that the urban renewal area proposed for inclusion in the plan is a slum or blighted area in accordance with the procedures set forth in section 31-25-107 (1).

(b) The board of county commissioners refers the urban renewal plan to the planning commission of the county for a determination as to the conformity of the urban renewal plan with the general plan for development for the county in accordance with the procedures specified in section 31-25-107 (2).

(c) The board of county commissioners conducts a public hearing and makes findings and a determination to approve inclusion of the unincorporated territory in the urban renewal plan, project, or area in accordance with the procedures set forth in section 31-25-107 (3), (4), (5), and (6).

(d) The board of county commissioners makes an additional finding, prior to approving the inclusion, that each owner of, and each holder of a recorded mortgage or deed of trust encumbering, real property in the unincorporated territory proposed for inclusion in the urban renewal plan, project, or area consents to the inclusion.

(e) The board of county commissioners determines whether the unincorporated territory shall be included in any provision for the division of taxes in the urban renewal area as authorized by section 31-25-107 (9), and, if so determined, the board notifies the county assessor of such inclusion as required by section 31-25-107 (10).

(3) Notwithstanding any other provision of this part 1, the requirements of section 31-25-107 (3.5) shall not apply to any urban renewal plan proposed and approved pursuant to this section.

(4) Any urban renewal plan approved in accordance with this section may be modified as provided in section 31-25-107 (3) (a); except that a modification shall be approved by the board of county commissioners, the governing body, and the authority.

(5) An authority, a municipality, and a county may, consistent with the requirements of this section, enter into an intergovernmental agreement to further effectuate the purposes of this section and to provide for the inclusion of unincorporated territory in an urban renewal area.

Source: L. 2008: Entire section added, p. 278, § 1, effective April 1.

31-25-113. Authorities to have no power of taxation. No authority created by this part 1 has any power to levy or assess any ad valorem taxes, personal property taxes, or any other forms of taxes, including special assessments against any property.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-113 as it existed prior to 1975.

ANNOTATION

Applied in Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

31-25-114. Cumulative clause. The powers conferred by this part 1 shall be in addition and supplemental to the powers conferred by any other law.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-114 as it existed prior to 1975.

31-25-115. Transfer - abolishment. (1) Notwithstanding any other provision of this part 1, the governing body of a municipality may designate itself as the authority when originally establishing said authority. A transfer of an existing authority to the governing body may be accomplished only by majority vote at a regular election.

(2) The governing body of a municipality may by ordinance provide for the abolishment of an urban renewal authority, provided adequate arrangements have been made for payment of any outstanding indebtedness and other obligations of the authority. Any such abolishment shall be effective upon a date set forth in the ordinance, which date shall not be less than six months from the effective date of the ordinance.

Source: L. 77: Entire section added, p. 1468, § 1, effective May 26. **L. 2007:** (1) amended, p. 1984, § 41, effective August 3.

31-25-116. Regional tourism projects. (1) An urban renewal authority that is designated as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of part 3 of article 46 of title 24, C.R.S., including but not limited to the powers to receive state sales tax increment revenue generated within an approved regional tourism zone, as defined in section 24-46-303 (11), C.R.S., and disburse and otherwise utilize such revenue for all lawful purposes, including but not limited to financing of eligible costs and the design, construction, maintenance, and operation of eligible improvements, as such terms are defined in section 24-46-303, C.R.S., or otherwise incorporated into the commission's conditions of approval.

(2) Notwithstanding the provision of section 31-25-107 (7), authorization to receive state sales tax increment revenue pursuant to part 3 of article 46 of title 24, C.R.S., shall not be considered a material modification to the plan and corresponding changes to the plan may be made by the governing body of the authority to incorporate the use of state sales tax increment revenue without the requirement of submission to or approval by the governing body of a municipality that has established the authority pursuant to section 31-25-104 (1).

(3) Any urban renewal authority that receives state sales tax increment revenue, whether pursuant to designation as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., or pursuant to a contract entered into with any such financing entity, shall not use the state sales tax increment revenue to acquire property through the exercise of eminent domain.

(4) Nothing in this section shall be interpreted to eliminate the requirements for the authorization of a new urban renewal authority under this part 1.

Source: L. 2009: Entire section added, (SB 09-173), ch. 434, p. 2418, § 3, effective June 4.

PART 2

PARKS - CITIES

Cross references: For recreational facilities districts, see article 7 of title 29.

31-25-201. Cities may establish parks - recreational facilities - conservation easements. (1) Any city has authority, in the manner provided in this part 2, to establish, maintain, and acquire by gift, devise, purchase, or right of eminent domain such lands or

interest in land, within or without the municipal limits of such city, as in the judgment of the governing body of such city may be necessary, suitable, or proper for boulevards, parkways, avenues, driveways, and roadways or for park or recreational purposes for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest. The power of eminent domain granted by this section, with respect to the acquisition of lands for parks or recreational purposes for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest may not be used by any city or city and county to condemn property lying five miles or further from its corporate limits, unless:

(a) The exercise of its power of eminent domain to condemn property outside its corporate limits is required as a condition of a state or federal permit for construction of a new public facility; or

(b) The use of the power of eminent domain to condemn property is necessary for the acquisition of conservation sites on or contiguous to reservoir sites owned by any city or city and county; or

(c) The use of the power of eminent domain to condemn property is predicated on the prior written approval of the board of county commissioners of the county or counties in which such property is located, in instances not covered by paragraph (a) or (b) of this subsection (1) when the city or city and county has notified such board or boards. The board has sixty days from such notification to deliver its approval or disapproval. If the board fails to take any action or fails to so notify the city or city and county, the city or city and county may proceed with the exercise of its power; or

(d) The land to be condemned is subject to a single comprehensive plan which includes provision of recreational facilities within the county and which has been adopted by both the county and the city seeking to condemn.

(2) "Interests in land", as used in this part 2, means all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land held pursuant to subsection (1) of this section, when recorded, shall run with the land to which it pertains for the benefit of the city holding such interest and may be protected and enforced by such city in any court of general jurisdiction by any proceeding at law or in equity.

(3) Any city may unite with any other similarly authorized political subdivision of this state in acquiring, establishing, and maintaining any property which a city is authorized to acquire, establish, or maintain pursuant to subsection (1) of this section.

Source: **L. 75:** Entire title R&RE, p. 1174, § 1, effective July 1. **L. 83:** (1) amended, p. 1264, § 2, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration contained in the 1983 act amending subsection (1), see section 1 of chapter 367, Session Laws of Colorado 1983.

ANNOTATION

Statute not applicable to extraterritorial condemnation action for stream fishing rights. City of Aurora v. Commerce Group Corp., 694 P.2d 382 (Colo. App. 1984).

31-25-202. Acquisition by purchase. No land or interest in land shall be purchased for the purposes set forth in section 31-25-201 (1) until the governing body adopts an ordinance authorizing such purchase which states the location and legal description of the lands to be

purchased, the price to be paid, and the manner of payment or unless the proposed purchase of such lands is submitted upon petition pursuant to section 31-25-203 and approved by the registered electors of such city.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-202 and 31-25-213 as they existed prior to 1975.

31-25-203. Acquisition by purchase - petition of electors - bonds - park bonds.

(1) No indebtedness shall be created nor shall any bonds be issued for acquiring such lands or interests in land unless the question of incurring such debt and issuing such bonds has been submitted at a regular election to a vote of those persons qualified to vote on authorization of other bonded indebtedness and approved as required by section 31-15-302 (1) (d).

(2) The governing body, upon petition of the registered electors of such city equal in number to at least one-tenth of the number of such registered electors voting at the last regular election of such city, shall submit at the next regular election either or both of the questions of acquisition or of incurring bonded indebtedness by separate ordinance. In the ordinance submitting the question of the acquisition of such lands or interests in land, the governing body shall state the location of the land or interests in land proposed to be acquired, describing the same by legal subdivisions, wherever practicable, and the consideration to be given for purchase and the manner of payment, and, in the ordinance submitting the question of incurring indebtedness, the governing body shall state the maximum net effective interest rate at which the bonds may be issued. If the only question to be submitted is the acquisition of such properties, the question may be submitted at a regular or special election. If the acquisition or incurring of indebtedness or both have been approved as required by section 31-15-302 (1) (d), the governing body shall acquire such lands or interests in land, incur said indebtedness, or both, pursuant to said authorization.

(3) The parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads established in any such city, or such part thereof as may be determined by the mayor and park commission, may be paid for in park bonds of the city of date and form prescribed by the park commission, bearing the name of the city, and payable to bearer at such times and in a sufficient period of years to cover the period of payments provided for, with interest annually at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, as may be determined by the commission. The bonds shall be signed by the mayor, countersigned by the auditor, treasurer, or finance director, and attested by the clerk and have the seal of the city with the approval of the president of the park commission, if such commission exists, endorsed thereon. The interest shall be evidenced by suitable coupons attested by a facsimile of the signature of the city clerk.

(4) For the purposes of this part 2, unless the context otherwise requires, "net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities. "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

Source: L. 75: Entire title R&RE, p. 1175, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-25-204. Acquisition by condemnation. (1) For the purpose of acquiring lands for parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads, the park commission is authorized, with the approval of the mayor, to select and, by a suitable proceeding in the name of the city, without the passage of any ordinance, condemn real estate or, with the approval of the mayor, to purchase any real estate so selected for one or more parks, pleasure grounds, boulevards, parkways, avenues, driveways, or roads and to select routes and streets for the purpose of establishing and maintaining a system of connecting boulevards and pleasure ways or parkways therein. All such condemnation proceedings shall be in accordance with the general laws of the state insofar as the same are applicable, but the benefit to other lands shall be ascertained and assessed.

(2) Payment for any acquisition provided in subsection (1) of this section may be paid for by special assessments upon all the other real estate, except parks, pleasure grounds, avenues, boulevards, streets, and roads in such city or partly out of the proceeds of the sale of the general bonds of the city, in accordance with the powers conferred by this part 2, and partly by such assessments, as the same may be determined by the mayor and park commission.

Source: L. 75: Entire title R&RE, p. 1176, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-216 and 31-25-217 as they existed prior to 1975.

31-25-205. Bequests for park purposes. Real or personal property may be granted, bequeathed, devised, or conveyed to the city for the purpose of the improvement or ornamentation of any park, pleasure ground, boulevard, parkway, avenue, driveway, or road or for the establishment or maintenance in parks or pleasure grounds of museums, zoological or other gardens, collections of natural history, observatories, libraries, monuments, or works of art upon such trusts or conditions as may be approved by the commission. All such property or the rents, issues, and profits thereof shall be subject to the exclusive management and control of the commission. Lands or interests in land given or devised to such city for the purposes mentioned in this section shall be accepted or refused by ordinance passed by the governing body.

Source: L. 75: Entire title R&RE, p. 1176, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-202 and 31-25-212 as they existed prior to 1975.

31-25-206. Park commissioners - vacancies. (1) The care, custody, management, and control of the city parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads may be vested exclusively in a park commission which shall be composed of six members who shall be registered electors in said city and well-known for their ability, probity, and public spirit, one of whom shall be president of the commission. The mayor of the city shall appoint, with the consent of the governing body, for and on behalf of such city, such park commissioners who shall hold office one-half for one year and one-half for two years from the July 1 following their appointment. At their first regular meeting they shall cast lots for the respective terms. Annually thereafter and before July 1 of each year, the mayor, with the consent of the governing body, shall appoint three commissioners for the ensuing two years to take the place of the retiring commissioners. All vacancies in such park commission arising from any cause shall be filled by the mayor with the consent of the governing body.

(2) The governing body may, by ordinance, provide for abolishment of the park commission and consolidation of the functions and activities specified in this part 2 under the general control and administration of the city as provided by ordinance. The powers conferred upon the park commission as specified in this part 2 may be exercised by the city in the manner provided by ordinance. Any provision of this part 2 to the contrary

notwithstanding, the governing body of a city may appoint one or more advisory commissions or boards with respect to parks, recreation, and other municipal functions.

Source: **L. 75:** Entire title R&RE, p. 1176, § 1, effective July 1. **L. 87:** (1) amended, p. 332, § 97, effective July 1.

Editor's note: This section is similar to former § 31-25-203 as it existed prior to 1975.

31-25-207. Members serve without compensation - no interest in contracts. The commissioners shall serve without compensation except for their actual expenses which shall be approved by the mayor. No member of the commission shall have any interest, directly or indirectly, in any contract relating to the establishment or maintenance of any of the properties mentioned in section 31-25-201 or in any contract providing for the expenditure of any money in relation thereto. Any commissioner shall vacate his office upon the acceptance of any other public office.

Source: **L. 75:** Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-204 as it existed prior to 1975.

31-25-208. Meetings - quorum. The commission shall hold a regular meeting on the first Tuesday of each month and may by rule provide for special meetings and service of notice thereof. A majority of the members shall constitute a quorum. No action of the commission shall be binding unless authorized by a majority of the members at a regular or duly called special meeting.

Source: **L. 75:** Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-208 as it existed prior to 1975.

31-25-209. Secretary - salary - duties. The commission may employ a secretary at a salary not exceeding twelve hundred dollars per annum, to be fixed by the commission, payable out of the park fund. The secretary shall keep a record of all proceedings of the commission, have custody of and preserve all its records, and perform such other duties as may be prescribed by the commission.

Source: **L. 75:** Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-205 as it existed prior to 1975.

31-25-210. Office of commission - supplies. The city shall provide the commission with convenient offices, stationery, and the facilities necessary for the performance of its duties as the commission deems necessary and advisable.

Source: **L. 75:** Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-206 as it existed prior to 1975.

31-25-211. Superintendent of parks - assistants - salaries. The commission may appoint a superintendent of parks who shall be a practical landscape gardener who, under the direction of the commission, shall have active charge, control, and direction of all the parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads which are under the control of the commission and who shall perform such other duties as may be prescribed by the commission, with such other assistants and at such salaries payable out of the park fund as may be authorized by the commission, with the approval of the mayor.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-207 as it existed prior to 1975.

31-25-212. Expenditures for park purposes. The commission, with the approval of the mayor, shall have full, complete, and exclusive power and authority to expend, for and on behalf of the city, all sums of money that may be raised by general taxation for park purposes, all other sums of money appropriated by the governing body from the general revenues for the same purposes, and all moneys that may be realized by the commission from the sale of privileges in or near the parks of the city or realized from the sale of the general bonds of the city and set apart for park purposes or from the sale of the park bonds provided for in section 31-25-203 (2).

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-209 as it existed prior to 1975.

31-25-213. Fiscal year - annual report. The fiscal year of the park commission shall end on December 31 of each year. During the month of January of each year the commission shall make an annual report to the mayor and the governing body of all moneys received and expended in the purchase, improvement, and maintenance of parks. The report shall show when, where, how, and in what manner the same were received and expended and what improvements have been made during the year preceding the report.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-210 as it existed prior to 1975.

31-25-214. Park fund - certified vouchers. The park fund shall consist of moneys levied, collected, and appropriated therefor and coming into the fund by donation or otherwise. All moneys collected and credited to the park fund shall be used for the maintenance and improvement of parks, parkways, boulevards, avenues, driveways, and roads and shall be expended by the commission as in its judgment the needs of such property require. The same shall be drawn upon the proper officers of such city upon vouchers properly authenticated by the president and secretary of the park commission.

Source: L. 75: Entire title R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-214 as it existed prior to 1975.

31-25-215. Maximum tax levy - moneys credited. (1) As a part of the annual levies authorized by law, the governing body shall annually levy, assess, and collect upon each dollar of taxable property within the city not more than one and one-half mills for the purposes of said park fund, the proceeds of which shall be collected in the same manner as other city taxes and shall be appropriated by the governing body for the park fund.

(2) All moneys collected, received, levied, or appropriated by the governing body for park purposes shall be deposited in the treasury of such city to the credit of the park fund and shall be kept separate and apart from other moneys of such city. Any portion thereof remaining unexpended at the end of any fiscal year or at any other time shall not in any event be converted into the general fund nor be subject to appropriation for general purposes.

Source: L. 75: Entire title R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-215 as it existed prior to 1975.

31-25-216. Cities control park grounds outside limits. (1) In all cases where any city, or any city or city and county organized under a special charter or created under the state constitution, has acquired lands outside its municipal limits for parks, parkways, boulevards, or roads, said city or city and county has full police power and jurisdiction and full municipal control and full power and authority in the management, control, improvement, and maintenance of and over any such lands so acquired. It has power and authority to provide by ordinance for the regulation and control of its lands so acquired, to prevent the commission of any acts which are or may be declared unlawful pursuant to the provisions of this part 2, and to prosecute and punish the violation of any ordinances in its municipal courts. Such city or city and county also has like power and jurisdiction to prevent pollution of the water in all reservoirs, streams, and pipes which may be included within any such parks, parkways, boulevards, or roads and over the stream or source from which such water is taken as far as ten miles above the point from which it is diverted. Such city or city and county has like power and jurisdiction to regulate and prevent the erection, construction, and maintenance, within three hundred feet of any such park, parkway, boulevard, or road outside its municipal limits, of any advertisement or of any billboard or other structure for advertisements. Such city or city and county also has like power and jurisdiction over the use of any public roads, boulevards, or parkways within such parks and running over or through or between such lands and any public roads, boulevards, or parkways between any such park or pleasure ground and its municipal boundaries and not included within the municipal limits of any incorporated city or town.

(2) In all cases where the right to take private property for public use without the owner's consent or to acquire lands for parks, parkways, boulevards, or roads outside the municipal limits of any such city or city and county is conferred by general laws or by the charter of any such city or city and county, it is lawful for any such city or city and county, or the department or branch thereof having authority in the premises, to take, by right of eminent domain, the property so sought to be taken and appropriated, such condemnation proceedings to be in accordance with the general laws of the state, insofar as the same are applicable, relating to any such city or city and county. The power and authority to so acquire lands for such purposes outside the municipal limits of any such city or city and county by gift, devise, purchase, or right of eminent domain is granted by this section, subject to the limitation imposed by section 31-25-201 (1).

Source: L. 75: Entire title R&RE, p. 1178, § 1, effective July 1. L. 83: (2) amended, p. 1265, § 3, effective July 1.

Editor's note: This section is similar to former § 31-25-219 as it existed prior to 1975.

Cross references: For the legislative declaration contained in the 1983 act amending subsection (2), see section 1 of chapter 367, Session Laws of Colorado 1983.

31-25-217. Management - licenses - franchises. (1) The commission shall have exclusive management and control of all parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads, as mentioned in section 31-25-201, and exclusive power to lay out, regulate, and improve the same, to prohibit certain or heavy traffic therein and thereon, and to grant or refuse licenses to sell goods on the streets or sidewalks within three hundred feet of any park entrance and on the streets and sidewalks adjoining parks. The commission shall establish and maintain necessary rules and regulations for the proper supervision and government thereof and shall have such additional powers as may be prescribed by ordinance. The governing body shall provide, by ordinance, for the enforcement of the rules and orders of the commission.

(2) No franchise, license, or permit for the construction or maintenance of any railway shall ever be granted within the limits of any park or pleasure ground or lengthwise upon any boulevard, parkway, avenue, driveway, or road, nor shall any franchise for the maintenance of any other special privilege within any park or pleasure ground be granted.

Source: L. 75: Entire title R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-211 as it existed prior to 1975.

31-25-218. Conservation trust fund authorized. Each city in this state, including home rule and special territorial charter cities, may create a conservation trust fund as provided in section 29-21-101, C.R.S.

Source: L. 75: Entire title R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 139-88-20 as it existed prior to 1975. (See L. 74, p. 434, § 5.) This section was renumbered on revision as § 31-25-220, but was never printed as such in C.R.S. 1973.

PART 3

PARKS - TOWNS

Cross references: For recreational facilities districts, see article 7 of title 29.

31-25-301. Town may establish parks - recreation facilities - conservation easements. (1) Each town shall have authority to acquire, establish, and maintain, in the manner provided in section 31-25-302, public parks, pleasure grounds, boulevards, parkways, avenues, roads, and land or interests in land which may be necessary, suitable, or proper for the preservation or conservation of sites, scenes, open space, and vistas of recreational, scientific, historic, aesthetic, or other public interest.

(2) "Interest in land", as used in this part 3, means all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land held pursuant to subsection (1) of this section, when recorded, shall run with the land to which it pertains for the benefit of the town holding such interest and may be protected and enforced by such town in any court of general jurisdiction by any proceeding at law or in equity.

(3) Any town may unite with any other similarly authorized political subdivision of this state in acquiring, establishing, and maintaining any property which a town is authorized to acquire, establish, or maintain pursuant to this section.

Source: L. 75: Entire title R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-301 and 31-25-304 as they existed prior to 1975.

ANNOTATION

There are two separate and distinct procedures by which acquisition of land may be initiated: (1) Land may be acquired if the trustees on their own adopt an ordinance to authorize the acquisition; or (2) if a proposal to acquire such lands is submitted upon petition

and approved by the registered electors of such town, then the trustees must draft an ordinance, and submit the matter to the electors. *Bristow v. Town of Castle Rock*, 44 Colo. App. 82, 612 P.2d 1144 (1980).

31-25-302. Questions submitted to registered electors. (1) Lands or interests in land which may be necessary, suitable, or proper for any of the purposes named in section 31-25-301, either within or without the municipal limits of such town, may be set aside by any such town and devoted to such purposes out of any lands or parcels of lands owned or possessed by any such town. Said lands may be acquired by gift, purchase, devise, or other transfer in the manner provided by law. No lands or interests in land shall be purchased for any such purpose unless the board of trustees of such town adopts an ordinance authorizing such acquisition and stating the location and legal description of the lands to be acquired and, in case of purchase, the price to be paid and the manner of payment or unless the proposal to acquire such lands is submitted upon petition pursuant to subsection (3) of this section and approved by the registered electors of such town.

(2) No indebtedness shall be created nor shall any bonds be issued for acquiring such

parks or establishing such boulevards, parkways, or roads unless the question of incurring such debt and issuing such bonds has been submitted, at a regular election in such town, to a vote of those persons qualified to vote on authorization of other bonded indebtedness and approved as required by section 31-15-302 (1) (d).

(3) The board of trustees of such town shall submit, upon petition of the registered electors of such town equal in number to at least one-tenth of the number of such electors voting at the last regular election of such town, at the next regular election, the question of the acquisition of such lands and the establishment of such boulevards, parkways, and roads, or the question of incurring bonded indebtedness, or both such questions. The board of trustees shall state, in the ordinance submitting the question of the acquisition of lands and the establishment of boulevards, parkways, and roads, the location of the land proposed to be acquired, describing the same by legal subdivisions, and the price to be paid in case of purchase and the manner of payment. If the only question to be submitted is the acquisition of such properties, the question may be submitted at a regular or special election. If the majority of those voting upon the acquisition question at such election vote for the acquisition of such lands for such purposes, the board of trustees shall acquire such lands for those purposes. If the bonded indebtedness is approved as required by section 31-15-302 (1) (d), the board of trustees shall contract the necessary indebtedness and issue the necessary bonds therefor.

Source: L. 75: Entire title R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-302 as it existed prior to 1975.

ANNOTATION

There are two separate and distinct procedures by which acquisition of land may be initiated: (1) Land may be acquired if the trustees on their own adopt an ordinance to authorize the acquisition; or (2) if a proposal to acquire such lands is submitted upon petition

and approved by the registered electors of such town, then the trustees must draft an ordinance, and submit the matter to the electors. *Bristow v. Town of Castle Rock*, 44 Colo. App. 82, 612 P.2d 1144 (1980).

31-25-303. Town may improve parks. Any town establishing parks, boulevards, parkways, avenues, or roads under the provisions of this part 3 by its duly constituted authorities shall have full power to cultivate, plant, and otherwise improve the same and shall establish and maintain necessary rules and regulations for the proper supervision and government.

Source: L. 75: Entire title R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-303 as it existed prior to 1975.

31-25-304. Conservation trust fund authorized. Each town in this state, including home rule towns, may create a conservation trust fund as provided in section 29-21-101, C.R.S.

Source: L. 75: Entire title R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 139-87-5, as it existed prior to 1975. (See L. 74, p. 434, § 4.) This section was to be renumbered on revision as § 31-25-305, but was never printed as such in C.R.S. 1973.

PART 4

PUBLIC MALL ACT OF 1970

31-25-401. Short title. This part 4 shall be known and may be cited as the "Public Mall Act of 1970".

Source: L. 75: Entire title R&RE, p. 1181, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-401 as it existed prior to 1975.

31-25-402. Legislative declaration - powers. (1) The general assembly finds and declares that, in certain areas in municipalities and particularly in retail shopping areas thereof, there is need to separate pedestrian travel from vehicular travel and that such separation is necessary to protect the public safety or otherwise to serve the public interest and convenience. The general assembly further finds and declares that such objective can be accomplished, in part, by the establishment of pedestrian malls.

(2) The powers granted in this subsection (2) shall be exercised by the governing body in accordance with the terms of this part 4 and in the same manner as is otherwise provided by law. The governing body of a municipality has the power:

(a) To establish pedestrian malls;

(b) To prohibit, in whole or in part, vehicular traffic on a pedestrian mall, which power shall be in addition to and not by way of a limitation upon the power granted or held by governing bodies under other laws, and this paragraph (b) is not intended to limit powers already held by governing bodies to deal with their public rights-of-way;

(c) To acquire, by gift, purchase, eminent domain, or otherwise, all types of interest in real property and rights-of-way, together with improvements, which will become part of a pedestrian mall or which will otherwise be used by the municipality as part of or for purposes connected with a pedestrian mall, and such land, real property, or rights-of-way may be improved in the same manner as municipal streets may be improved under paragraph (e) of this subsection (2); to retain title to the pedestrian mall or to convey, lease, or transfer the pedestrian mall, in whole or in part, on such terms as it deems advisable, to an improvement district or other body or agency; and to deal with it generally in any manner which it deems appropriate so long as it is used for public purposes and in the public interest;

(d) To construct or ensure the construction of, through an improvement district or other appropriate body or agency, on municipal streets which have been or will be established as a pedestrian mall or on all types of interest in real property and rights-of-way described under paragraph (c) of this subsection (2), improvements of any kind or nature necessary or convenient to the operation of such municipal streets or interests in real property and rights-of-way as a pedestrian mall;

(e) To make such improvements as are authorized under paragraph (d) of this subsection (2) on municipal streets adjacent to or near the pedestrian mall and other improvements as are necessary or convenient to the operation of the mall;

(f) To pay, from general funds of the municipality, from proceeds of general obligation bonds, from other moneys available to the municipality, from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, from funds raised through bonds issued thereagainst, or from any other source whatsoever, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall and to make adequate provisions to secure the payment of said moneys as provided in section 31-25-406;

(g) To pay, from general funds of the municipality, from proceeds of general obligation bonds, from other moneys available to the municipality, from the proceeds of assessments levied on property benefited by any such improvements, from funds raised through bonds issued payable from such assessments, or from any other source whatsoever, the whole or any portion of the cost of such improvements;

(h) To levy assessments against properties benefited by the proposed pedestrian mall in an amount no greater than the total damages or compensation paid to landowners or to assess such damages as part of the total cost of the improvements made in the mall area, so long as the amount assessed does not exceed the special benefits conferred;

(i) To issue special assessment bonds in anticipation of the collection of special assessments payable in installments or to be levied at annual intervals over a designated term and to additionally secure the payment of such bonds by or from a source otherwise provided by law;

(j) To do any and all other acts or things necessary or convenient for the accomplishment of the purposes of this part 4.

(3) The acquisitions and improvements authorized in paragraphs (c) and (e) of subsection (2) of this section shall be deemed improvements as such term or a related term is used in this part 4. The governing body shall also have the power to transfer, lease, and convey, on such terms as it deems advisable, all such improvements and interests in real property.

(4) This part 4 and all of its provisions shall be liberally construed to the end that its purposes may be effectuated. Any proceeding taken pursuant to this part 4 shall not be invalid for failure to comply with the provisions of this part 4 if the acts done and proceedings taken are in substantial compliance with the terms and provisions set forth in this part 4.

Source: L. 75: Entire title R&RE, p. 1181, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-402 as it existed prior to 1975.

ANNOTATION

The establishment of a pedestrian mall does not constitute an unconstitutional taking without compensation of the respondents' rights

of vehicular access. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

31-25-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Improvements" means improvements of any kind or nature necessary or convenient to the operation of municipal streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, gutters, sewers, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, ponds, lakes, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, commercial buildings and facilities, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall and including the reconstruction or relocation of existing municipally-owned works, improvements, or facilities on such municipal streets.

(2) "Intersecting street" means any street which meets or crosses a pedestrian mall at a mall intersection but includes only those portions thereof on either side of a mall intersection which lie between the mall intersection and the first intersection of the intersecting street with a municipal street or highway open to vehicular traffic. If any portion of a pedestrian mall terminates on a street at a place thereon other than a place of intersection with a municipal street or state highway open to vehicular traffic, "intersecting street" also includes that portion of any street which lies between such place of termination and the first intersection of such street with a municipal street or state highway open to vehicular traffic. "Intersecting street" also includes any other street or portion thereof which the governing body, in a measure duly adopted as provided in this part 4, declares to be such.

(3) "Mall intersection" means any intersection of a municipal street which constitutes a part of a pedestrian mall with any other street, which intersection is itself part of the pedestrian mall.

(4) "Municipal street" means a street which exists within the municipal boundaries of a municipality except those designated as state highways by a duly constituted authority. If a state highway is contemplated to be used as part of a pedestrian mall, the transportation commission is authorized to remove the classification of a state highway from such part to be used as a pedestrian mall and to cede complete jurisdiction to the municipality by resolution duly adopted if it is satisfied that satisfactory provisions for the routing of traffic through the municipality can be provided by an alternate route or that the part of the state highway proposed for a pedestrian mall is no longer necessary for state highway purposes.

(5) "Public mall", referred to in this part 4 as "pedestrian mall", means one or more municipal streets or portions thereof on which vehicular traffic is or is to be restricted in

whole or in part and which is or is to be used exclusively or primarily for pedestrian travel, although such mall may have other improvements constructed upon it for appearance and utility.

(6) "Streets", as used in the definitions of the terms "municipal street", "mall intersection", and "intersecting street" in this section, means any public street, road, highway, alley, lane, sidewalk, right-of-way, court, way, or place of any nature open to the use of the public and held by the public for street and road purposes, whether the same was acquired in fee or by grant of dedication or easement or by adverse use.

Source: L. 75: Entire title R&RE, p. 1182, § 1, effective July 1. L. 91: (4) amended, p. 1069, § 42, effective July 1.

Editor's note: This section is similar to former § 31-25-403 as it existed prior to 1975.

31-25-404. Resolution of intention. (1) When the governing body determines that the public interest and convenience require the establishment of a pedestrian mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to establish such pedestrian mall. Such resolution shall contain:

(a) The determination and declaration referred to in the introductory portion of this subsection (1);

(b) A general description of the municipality's streets or portions thereof which are proposed to be established as a pedestrian mall;

(c) A general description of the mall intersections;

(d) A general description of the intersecting streets;

(e) A statement that the governing body proposes to adopt an ordinance prohibiting, in whole or in part, vehicular traffic on such pedestrian mall. If vehicular traffic is proposed to be prohibited only in part, the resolution shall also contain a general statement of the exceptions proposed to be made. Such exceptions may include exceptions in favor of public, emergency, utility, and other classes of vehicles, may include exceptions in favor of all or certain classes of vehicles during certain days or during portions of days, and may include other exceptions of any kind or nature.

(f) A general statement of the source of moneys proposed to be used to pay damages, if any, allowed or awarded to any abutting property owner by reason of the establishment of the pedestrian mall and how and when it is anticipated that such sum will be paid;

(g) Provision for a notice fixing a day, hour, and place for a public hearing by the governing body relative to the establishment of the proposed pedestrian mall. The notice shall also contain a statement that oral presentations from abutting property owners and the public at large in favor of or opposing, objecting to, or protesting the proposed pedestrian mall will be considered by the governing body at the public hearing.

(h) A statement that any person owning or having any legal or equitable interest in any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall shall file a written claim of damages, if any damages are to be considered or allowed, with the clerk at any time prior to the first reading of the ordinance establishing the pedestrian mall.

(2) In such resolution any street may be described by reference thereto by its lawful or official name or the name by which it is commonly known, and the pedestrian mall, the mall intersections, and the intersecting streets may be described by reference to a map or plat thereof on file in the office of the clerk in order that the description is sufficient for one to ascertain which streets and parts of streets are in fact within the proposed mall.

(3) If the governing body intends, at any time in the future, through appropriate action, to levy assessments on lands benefited by the establishment of the mall to help pay the compensation or damages allowed to property owners, a statement to such effect shall be included in the resolution.

(4) If the governing body, in connection with the initial establishment of a pedestrian mall, proposes improvements and a method for paying for the same, the resolution shall also contain statements to satisfy the requirements of applicable law for special assessment

districts, improvement districts, or other governmental bodies or agencies or private nonprofit corporations selected to accomplish and pay for the improvements.

(5) If the governing body foresees improvements being made to the pedestrian mall in the future, a statement shall be included as to how the governing body anticipates the same shall be accomplished and paid for.

Source: L. 75: Entire title R&RE, p. 1183, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-404 as it existed prior to 1975.

31-25-405. Notice and hearing. (1) The resolution of intention shall be published in a newspaper of general circulation published within the county or municipality as the case may be. It shall be published three times: Once less than seventy-five days but more than sixty days prior to the date of the hearing; once less than forty-five days but more than thirty days prior to the date of the hearing; and once less than fifteen days but more than ten days prior to the date of the hearing. In a municipality where no such newspaper is published, the resolution shall instead be so published in a newspaper of general circulation published in the county in which the municipality is located.

(2) Copies of the resolution shall be prepared for posting and for this purpose shall be headed "Notice of Intention to Establish a Pedestrian Mall", the heading to be in letters at least one-half inch in height. Such copies shall be posted not less than sixty days prior to the hearing, and good faith efforts shall be made to maintain the posted copies in existence to the hearing date. These copies of the resolution shall be posted approximately three hundred feet apart, located as follows:

(a) On or near all municipal streets or portions thereof proposed to be established as a pedestrian mall;

(b) On all intersecting streets;

(c) On all streets that are proposed to be left open and which lie within the mall area if, in fact, the area is to be circumscribed by streets to be closed.

(3) (a) A copy of the resolution shall be mailed by registered mail with return receipt requested, not less than sixty days prior to the hearing date, to each person owning of record all or any part of a fee interest or holding an encumbrance of record against any of such lands abutting the proposed mall and, if the mall closes, to all property owners of record and those who hold encumbrances of record within the area so circumscribed. The copies shall be sent to the last known addresses of such owners and encumbrancers.

(b) The governing body may determine that such resolution shall also be mailed to such other persons as it deems should be notified in accordance with the procedures in this section.

(4) The governing body, not less than sixty days prior to the date of the hearing, shall cause to be filed in the office of the county clerk and recorder of the county in which the said properties are located a statement including the names of the parties to whom such notices have been sent and a general description of the property which the notice concerns so that any party receiving or acquiring an interest in such property between the date of the sending of the notice and the date of the hearing shall be put on notice as to the nature of the proceeding and that his claim or protest, if any, shall be filed with the governing body in accordance with the provisions of this part 4. A copy of the resolution shall be attached to the recorded document.

(5) At or before the hearing, any interested person may, severally or with others, file with the clerk a document in writing either supporting, opposing, objecting to, or protesting the establishment of the proposed pedestrian mall. The same may be withdrawn at any time by written notice of such withdrawal signed by the persons who signed the original document, or any person who signed the original document may have his name stricken from such document. Such notice of withdrawal shall be filed with the clerk within the time set forth in this subsection (5) with the same effect as if said written document had never been filed.

(6) (a) At the hearing the governing body shall receive the written objections and written protests to the establishment of the proposed pedestrian mall. The governing body

shall also receive oral presentations from abutting property owners and the public at large in favor of or opposing, objecting to, or protesting the establishment of the proposed pedestrian mall. The hearing may be continued from time to time by order entered on the minutes.

(b) If the owners of lands abutting the proposed pedestrian mall representing a majority of the frontage on the proposed pedestrian mall have made written objection or written protest to the establishment of the proposed pedestrian mall, the governing body shall so find. In the event of such finding, the governing body may terminate the proceedings for such establishment or continue the proceedings in order to put the question of the establishment of the proposed pedestrian mall to a vote of the registered electors of the municipality. If such question is put to a vote of the registered electors of the municipality and a majority of those voting thereon vote in favor of establishing such proposed pedestrian mall, the governing body may go forward to establish the proposed pedestrian mall in accordance with the provisions of this part 4, but all costs and expenses of establishing the pedestrian mall shall be paid by the municipality, and no special assessment shall be levied against the owners of lands abutting the pedestrian mall unless levied against all real property within the municipality. If the majority of those voting thereon vote against establishing such proposed pedestrian mall, the governing body shall terminate the proceedings. In the event proceedings are terminated, no proceeding shall again be commenced for the establishment of the same or substantially the same pedestrian mall until the expiration of one year from the date of termination.

(7) In the event a majority written protest or written objection is not filed, the judgment of the governing body, if it establishes the proposed pedestrian mall, shall be final and conclusive. In the event a majority written protest or written objection is filed, the judgment of the governing body, if it establishes the proposed pedestrian mall, shall be final and conclusive only if an election is held and if the result thereof complies with the provisions of subsection (6) of this section.

(8) If it is determined to establish the pedestrian mall, a resolution to that effect shall be adopted by the governing body. If the governing body at that time or at a later time determines that the pedestrian mall shall not be established, no claim for damages or compensation shall be allowed to any extent whatsoever.

Source: L. 75: Entire title R&RE, p. 1184, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-405 as it existed prior to 1975.

31-25-406. Claims for damages or compensation. (1) Any person owning, or having any legal or equitable interest in, any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall shall file, prior to the first reading of the ordinance establishing the pedestrian mall, a written claim for damages with the clerk. Such written claim shall describe the real property as to which the claim is made, shall state the exact nature of the claimant's interest therein, shall state the exact nature of and grounds for the claimed damage thereto, and shall state the amount of damages claimed. The failure to file such written claim within the time provided in this subsection (1) is a waiver of any claim for damages or compensation and shall operate as a complete bar to any subsequent action seeking to prevent the establishment of said pedestrian mall or to recover damages on account of such establishment, and, in the event a claim is filed, such filing shall operate as a complete bar in any subsequent action for the recovery of any damages or compensation in excess of the amount stated in such claim. Any such claim may be withdrawn by the claimant at any time by written withdrawal with the same effect as if it had never been filed. The governing body shall receipt for the claims that have been filed in accordance with this section for damages or compensation from the establishment of the proposed mall.

(2) The governing body may allow any claim for damages made pursuant to this section. Any claim so allowed shall be for the full amount of damages claimed in the written claim; except that the governing body, with the written consent of the claimant, may allow a claim for a lesser amount. In the event the claim is not allowed in full, or a suitable lesser

amount is not agreed upon between the claimant and the governing body, or the governing body refuses to recognize the claim, the claimant or the governing body, through its legal counsel, may institute proceedings in court to ascertain the amount, if any, due the claimant; however, in no event shall an action be instituted later than two years after the date the claim has been denied. Any amount determined to be due to the claimant shall accrue interest at six percent per annum from the date that vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, which closing in fact is the act from which the claimed damages arise.

(3) Before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, the governing body or another agency to which it is intended the mall will be conveyed shall pay the amounts allowed or enter into agreements with good and sufficient surety to pay the principal amounts allowed or, in the event the claim is to be litigated, an amount which the court determines is sufficient to pay the compensation in that behalf when ascertained. The required surety bond may be waived in writing by the claimant.

(4) Those lawsuits instituted to determine the amount of damages, if any, to be allowed shall be in the nature of a proceeding in eminent domain for the condemnation of the right in real property, the taking of which by the establishment of the pedestrian mall results in the damages claimed. The complaint shall in no way be construed as an admission that the rights in fact exist or that damages or compensation are due therefor. The court shall first determine the nature of the right in real property, if any, being taken. Such proceedings shall then be governed under the applicable statutes and proceedings of articles 1 to 7 of title 38, C.R.S., except as otherwise provided by this part 4.

(5) Nothing in this part 4 shall be construed or interpreted as creating any new right in any person to damages or compensation by reason of the establishment of a pedestrian mall, it being the intention of the general assembly in enacting this part 4 to provide an orderly method for the determination and payment only of such damages and compensation as are required under the constitutions of the state of Colorado and the United States. In this connection, the general assembly expressly declares that, to the extent to which the establishment of a pedestrian mall is justifiable as an exercise of the police power for which no compensation is constitutionally required, no damages or compensation shall be allowed in any action.

(6) The general assembly expressly declares that the establishment of a pedestrian mall and the prohibition of vehicular traffic, in whole or in part, is a legislative act and within the discretion of the governing body except to the extent which may otherwise be provided in this part 4.

(7) Once the pedestrian mall has been established in accordance with the provisions of this part 4, the nature of the title held by the governing body shall be deemed a fee simple.

(8) In the event the governing body vacates the pedestrian mall or any part thereof by official act and such pedestrian mall or part thereof is not designated by the governing body to revert to a public street, the real property thereby vacated shall vest in abutting landowners in the same manner as if a public street were being vacated.

Source: L. 75: Entire title R&RE, p. 1186, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-406 as it existed prior to 1975.

Cross references: For vacation of public streets, see part 3 of article 2 of title 43.

ANNOTATION

Different but not unconstitutional compensation procedure. The compensation procedure under this section is different in its commencement than the usual condemnation suit. Difference in this procedure, however, does not reach a constitutional height. Nothing in the United States or Colorado constitutions proscribes the procedure prescribed by this section. City of

Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

Nature of taking not warranting compensation. The fact that a municipality may under its police power interfere to a certain extent with access to and from premises does not mean necessarily that such interference constitutes a "taking" for which under fifth and fourteenth

amendments to the United States constitution and under §§ 15 and 25 of art. II, Colo. Const., there must be compensation. Rather, to constitute such a taking there must be an unreasonable or substantial deprivation of access. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

There is not a "taking" where pedestrians are deprived of the right to approach establishments after alighting from a vehicle on street in front of or near the establishments. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

31-25-407. Establishment of the mall. (1) Not later than one hundred eighty days following the adoption of the resolution establishing the pedestrian mall as provided in this part 4, the governing body may adopt on first reading an ordinance finally establishing the pedestrian mall. Such ordinance shall contain:

(a) A general description of the pedestrian mall and a declaration and determination that the same is established. The mall as finally established shall be substantially the same as or any portion of that described in the resolution of intention.

(b) Rules and regulations prohibiting vehicular traffic on such pedestrian mall subject to such exceptions as the ordinance may provide. Such rules and regulations and such exceptions are to follow substantially those statements made in the resolution of intention.

(c) Such additional rules and regulations as the governing body may determine pertaining to the interpretation, operation, and enforcement of the rules and regulations promulgated under paragraph (b) of this subsection (1) and otherwise pertaining to the use, operation, maintenance, and control of the pedestrian mall;

(d) Such provisions as the governing body deems necessary pertaining to the effective date of any such rules or regulations.

(2) Such ordinance shall be adopted and published and shall take effect in the manner provided by law or charter for ordinances of the municipality.

(3) Such ordinance shall be subject to referendum in the same manner as other ordinances of the municipality. The pedestrian mall shall not be closed to vehicular traffic, in whole or in part, under such ordinance until all claims for damages have been paid or properly secured as provided in this part 4.

(4) Proceedings under this part 4 and the adoption of such ordinance notwithstanding, the municipality and its governing body shall retain its police powers and other rights and powers relating to the municipal streets and rights-of-way constituting a part of the pedestrian mall. No action taken pursuant to this part 4 shall be interpreted or construed to be a vacation or abandonment, in whole or in part, of any municipal street or any right therein, it being intended that the establishment of a pedestrian mall pursuant to this part 4 be a matter of appropriate additional regulation only.

(5) Nothing in this section shall be interpreted or construed to prevent the municipality and its governing body, at any time subsequent to the adoption of the ordinance provided for in this part 4, from abandoning the operation of the pedestrian mall, from changing the extent of the pedestrian mall, or from changing or repealing any of the rules and regulations pertaining to the pedestrian mall; but any substantial change made after the adoption of the ordinance provided for in this section will create potential liability for new or additional claims which could not have been foreseen prior to the date of the hearing on the original establishment of the pedestrian mall.

Source: L. 75: Entire title R&RE, p. 1188, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-407 as it existed prior to 1975.

Cross references: For validation and time for taking effect of ordinances and resolutions, see §§ 31-16-104 and 31-16-105.

31-25-408. Improvement of the pedestrian mall. (1) The municipality and its governing body may provide for the construction of and payment for improvements on the pedestrian mall through an improvement district under part 6 of this article, or by creation of an improvement district which can levy special assessments under other authority, or by other lawful means. The cost of the improvements shall be the cost of construction and may

include the damages or compensation paid to obtain the mall area. The municipality may also pay all or any part of the cost of improving a pedestrian mall from its general funds or from any other source of moneys available to it.

(2) A pedestrian mall established or to be established pursuant to this part 4 may be so improved either concurrently with the proceedings taken under this part 4 for the establishment of a pedestrian mall or at any time subsequent thereto, but no contract for the work or any improvement shall be awarded until the claims for damages or compensation for establishing the mall have been fully paid or properly secured as provided in this part 4.

(3) The governing body may combine any part of the proceedings taken pursuant to this part 4 with any part of the proceedings taken under any law allowing for the assessment of and payment of the damages and for the construction of and payment for improvements to the end that duplication of ordinances, resolutions, notices, hearings, and other acts or proceedings may be avoided.

Source: L. 75: Entire title R&RE, p. 1188, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-408 as it existed prior to 1975.

31-25-409. Special ad valorem assessments. (1) As used in this section, "district" means the district within which lie the lands deemed by the governing body to be specially benefited by the establishment of the pedestrian mall even though assessments may not be levied to pay for improvements.

(2) Following the establishment of a pedestrian mall pursuant to this part 4 and annually on or before December 1 of each year, the governing body or other body or agency having jurisdiction or responsibility for the improvements may prepare and approve an estimate of the expenditures required during the ensuing fiscal year for the maintenance, operation, and repair of the pedestrian mall and shall deduct from such estimate the amount of revenues, if any, which the governing body estimates will accrue to the municipality during such year from the operation of the pedestrian mall.

(3) The said governing body or agency may then through the levying authority levy and collect in any year upon and against all of the taxable land and improvements within the district a special ad valorem assessment sufficient to raise a sum of money to provide the net amount as so determined, but in no event shall the rate of assessment in any one year exceed one-half mill against the valuation for assessment of each property in the district as shown on the assessment roll used by the county for the municipal taxation. The levy shall be made with notice and hearing to all owners affected thereby. The limitation as set forth in this subsection (3) shall not be construed to limit in any manner the financing of improvements which may be erected in the mall area.

(4) The special ad valorem assessment shall be levied, collected, and enforced at the same times, in the same manner, by the same officers, and with the same interest and penalties as in the case of general taxes levied by the municipality.

(5) The proceeds of the assessment shall be placed in a separate fund by the said governing body or agency and shall be expended only for the maintenance, operation, repair, or improvement of the pedestrian mall.

Source: L. 75: Entire title R&RE, p. 1189, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-409 as it existed prior to 1975.

PART 5

SPECIAL IMPROVEMENT DISTRICTS IN MUNICIPALITIES

Cross references: For public improvement districts, see article 20 of title 30.

Law reviews: For article, "Management and Mismanagement of Municipal Special Improvement Districts", see 22 Colo. Law. 2263 (1993); for article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (January 2001).

31-25-500.2. Legislative declaration - energy efficiency and renewable energy production projects. (1) The general assembly finds, determines, and declares that:

(a) The production and efficient use of energy will continue to play a central role in the future of this state and the nation as a whole; and

(b) The development, production, and efficient use of renewable energy will advance the security, economic well-being, and public and environmental health of this state, as well as contributing to the energy independence of our nation.

(2) The general assembly further finds, determines, and declares that the inclusion of energy efficiency and renewable energy production projects for residential and commercial use in special improvement districts, and powers conferred under this part 5, as well as the expenditures of public moneys made pursuant to this part 5, will serve a valid public purpose and that the enactment of this part 5 is expressly declared to be in the public interest.

Source: L. 2008: Entire section added, p. 1300, § 21, effective May 27.

31-25-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Assessment unit" means an area within a district which is separately defined for determining assessments payable pursuant to this part 5.

(1.5) "District" means the geographical division of the municipality and, in accordance with the provisions of this part 5, the county in which such municipality is situated, or any other municipality within such county, within which any local improvement may be made or, when so declared by the governing body, may include the entire municipal area. One or more noncontiguous parts or sections of property may be included in one district.

(1.7) (a) "Elector of the district" means a person who, at the designated time or event, is registered to vote in the general election in this state and:

(I) Who has been a resident of the district or the area to be included in the district for not less than thirty days; or

(II) Who or whose spouse owns taxable real or personal property within the district or the area to be included in the district whether or not said person resides within the district.

(b) Where the owner of taxable real or personal property specified in subparagraph (II) of paragraph (a) this subsection (1.7) is not a natural person, an "elector of the district" shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the clerk of the municipality. Only one such person may be designated by an owner.

(1.9) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption in residential or commercial buildings and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a residential or commercial building unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(g) Energy recovery systems;

(h) Daylighting systems; and

(i) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the governing body; except that no renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate

issued by the public utilities commission under article 5 of title 40, C.R.S. The public utilities commission shall have primary jurisdiction to adjudicate disputes as to whether a renewable energy improvement interferes with such a right.

(2) "Owner", in reference to petitions, means only persons in whom the record fee title is vested, although subject to lien or encumbrance.

(3) "Property" means all land, whether platted or unplatted, regardless of improvements thereon and regardless of lot or land lines. The term also includes the franchise of any railroad whose tracks lie, either lengthwise or crosswise, within any street improved under this part 5. Lots may be designated in accordance with any recorded map or plat thereof, unplatted lands by any definite description thereof, and franchises by the name of the corporation owning the same.

(3.5) "Qualified community location" means:

(a) If the affected local electric utility is not an investor-owned utility, an off-site location of a renewable energy improvement that:

(I) Is wholly owned, through either an undivided or a fractional interest, by the owner or owners of the residential or commercial building or buildings that are directly benefited by the renewable energy improvement;

(II) Provides energy as a direct credit on the owner's utility bill; and

(III) Is an encumbrance on the property specifically benefited.

(b) If the affected local electric utility is an investor-owned utility, a community solar garden as that term is defined in section 40-2-127 (2), C.R.S. If House Bill 10-1342 does not take effect, there shall be no qualified community locations in the service territories of investor-owned utilities.

(4) (a) "Renewable energy improvement" means a fixture, product, system, device, or interacting group of devices that produces energy from renewable resources, including photovoltaic systems, solar thermal systems, small wind systems, biomass systems, hydro-electric systems, or geothermal systems, as may be authorized by the governing body, and that either:

(I) Is installed behind the meter of a residential or commercial building; or

(II) Directly benefits a residential or commercial building through a qualified community location.

(b) No renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. Nothing in this part 5 limits the right of a public utility, subject to article 3 or 3.5 of title 40, C.R.S., or section 40-9.5-106, C.R.S., to assess fees for the use of its facilities, or modifies or expands the net metering limitations established in section 40-9.5-118, C.R.S. The public utilities commission has primary jurisdiction to adjudicate disputes as to whether a renewable energy improvement interferes with such a right.

Source: **L. 75:** Entire title R&RE, p. 1190, § 1, effective July 1. **L. 86:** (1) R&RE and (1.5) added, p. 1047, §§ 2, 3, effective July 1. **L. 90:** (1.5) amended, p. 1472, § 5, effective July 1. **L. 99:** (1.7) added, p. 518, § 16, effective April 30. **L. 2002:** (1.7) amended, p. 272, § 12, effective August 7. **L. 2008:** (1.9) and (4) added, p. 1300, § 22, effective May 27. **L. 2010:** (3.5) added and (4) amended, (SB 10-100), ch. 207, p. 903, § 7, effective May 5.

Editor's note: (1) This section is similar to former § 31-25-501 as it existed prior to 1975.

(2) House Bill 10-1342, referenced in subsection (3.5)(b), was signed by the Governor and took effect June 5, 2010.

ANNOTATION

No district power. A district has no governing body, no officers, no power to make contracts or to levy taxes; it collects no money and disburses none; it cannot sue or be sued, in

short, it has no power, governmental or otherwise. *City of Aurora v. Krauss*, 99 Colo. 12, 59 P.2d 79 (1936).

31-25-502. Powers to make local improvements. (1) A district may be formed in accordance with the requirements of this part 5 for the purpose of constructing, installing, or acquiring any public improvement so long as the municipality that forms the district is authorized to provide such improvement under the municipality's home rule charter or ordinance passed pursuant to such charter, if any, or the laws of this state. Public improvements shall not include any facility identified in section 30-20-101 (8) or (9), C.R.S.

(2) The improvements authorized by this part 5 may include, where so specified or generally provided for in the ordinance of the governing body forming the district, any renewable energy improvement or energy efficiency improvement to any residential or commercial property within the district.

(3) It is lawful for any municipality to construct any of the local improvements mentioned in this part 5 and to assess the cost thereof, wholly or in part, upon the property especially benefited by such improvements. The improvements shall be authorized by ordinance duly adopted and shall be constructed under the direction of the municipal engineer or other officer having similar duties or under the direction of the governing body in accordance with plans and specifications adopted by the governing body; except that, for districts formed for the purpose of encouraging, accommodating, and financing renewable energy improvements or energy efficiency improvements, the owner of property within a district may arrange improvements that qualify pursuant to the ordinance of the governing body authorizing improvements for the district and may obtain financing for said improvements from the district through the process set forth in the ordinance forming the district.

Source: L. 75: Entire title R&RE, p. 1190, § 1, effective July 1. **L. 2002:** Entire section amended, p. 273, § 13, effective August 7. **L. 2008:** Entire section amended, p. 1301, § 23, effective May 27.

Editor's note: This section is similar to former § 31-25-502 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "An Engineering — Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968).

For constitutionality of similar prior section, see *Gillum v. Town of Rifle*, 70 Colo. 198, 197 P. 1017 (1921).

Town cannot condemn property beyond the corporate limits. The bare right of the town

to construct and maintain sewers cannot be held to include the right to condemn property beyond its corporate limits in connection therewith. *Mack v. Craig*, 68 Colo. 337, 191 P. 101 (1920).

For municipal improvement not being a subject for declaratory judgment until ordinance is approved, see *City & County of Denver v. Denver Land Co.*, 85 Colo. 198, 274 P. 743 (1929); *City & County of Denver v. Widom*, 90 Colo. 147, 7 P.2d 406 (1932).

31-25-503. What improvements may be made - conditions. (1) A district may be created within the boundaries of a municipality and may also include any property in the unincorporated area of the county within which the municipality is situated if such county consents by resolution to such district and the construction or acquisition of improvements therein. In addition, such district may also include any property in another municipality within such county if such municipality consents by ordinance to such district and the construction or acquisition of the improvements therein. If a district includes property within a county by county consent or within another municipality by municipal consent, the municipality shall have full authority to construct or acquire improvements, to assess property within the county or such municipality benefited by such improvements, and to enforce and collect such assessments in the manner provided in this part 5; but:

(a) No improvement, except as provided in paragraph (d) of this subsection (1) and except for sidewalks, water mains, sewers, and sewage disposal works and their appurtenances, shall be ordered under this part 5 unless a petition for the same is first presented. The petition shall be subscribed by the owners of property to be assessed for more than

one-half of the entire costs estimated by the governing body to be assessed. Except as specified in this section, nothing in this part 5 shall restrict the right of such owners from securing any particular kind or variety of improvements petitioned for. In any case where a proposed improvement district includes two or more assessment units, the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed in each assessment unit shall petition as specified in this part 5.

(b) If the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed petition for any particular kind of improvement and for any particular materials to be used in the same, the improvement shall be ordered in accordance with the petition, and the materials so designated shall be used, except as otherwise provided in this section;

(c) If the material petitioned for by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed does not encourage competition, the petitioners shall have the right to state in the petition the maximum price per square yard or linear foot or per unit at which the improvement is desired, and no contract shall be let for any such improvement at a price exceeding the maximum price fixed in said petition, excluding the cost of engineering, collection, inspection, incidentals, and interest;

(d) Any improvement may be initiated directly by the governing body by resolution declaring its intention to construct the improvements. If initiated by such resolution, the governing body shall make a preliminary order as required by subsection (3) of this section in the same manner as if the improvements had been requested by petition. Such preliminary order may be included in the resolution of intention to construct the improvements. However, if written protests are submitted prior to the hearing referred to in subsection (4) of this section subscribed by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed, the governing body shall not proceed with such special improvement district, based on the preliminary order so protested. Such protests shall not prevent the governing body from adopting a subsequent preliminary order for such improvements, subject to notice, hearing, and protest, as provided in this part 5.

(2) The governing body shall encourage competition by advertising for and receiving bids for such construction and, insofar as possible within the limits of the petition, shall describe all materials by standard or quality in the specifications.

(3) Before contracting for or ordering any work to be constructed, a preliminary order shall be made by the governing body, adopting preliminary plans and specifications for the same, definitely describing the materials to be used or stating that one of several specified materials shall be chosen, determining the number of installments and the time in which the cost of the improvement shall be payable, and the property to be assessed for the same, as provided in this part 5, and requiring an estimate of the cost to be made by the municipal engineer or any similar officer or employee, together with a map of the district in which the improvement is to be made and a schedule showing the approximate amounts to be assessed upon the several lots or parcels of property within the district. The cost estimates and approximate amounts to be assessed shall be formulated in good faith on the basis of the best information available to the governing body but shall not be binding.

(4) The clerk shall give notice of the hearing on the construction of the improvements by publication in one issue of a newspaper of general circulation in the municipality, the publication to be at least twenty days prior to the date of the hearing. In addition, notice shall be mailed by first-class mail to each property owner to be assessed for the cost of the improvements who is included within the district. The mailed notice shall be made on or about the date of the publication of the notice of hearing. The notice shall set forth the following information:

- (a) The kind of improvements proposed;
- (b) The number of installments;
- (c) The time in which the cost shall be payable;
- (d) Repealed.
- (e) The extent of the district to be improved;

(f) The probable cost per front foot or other unit basis which, in the judgment of the governing body, reflects the benefits which accrue to the properties to be assessed, as shown by the estimates of the engineer;

(g) The time, not less than twenty days after the publication, when an ordinance authorizing the improvements will be considered;

(h) That said map and estimate and schedule showing the approximate amounts to be assessed and all resolutions and proceedings are on file and can be seen and examined by any interested person at the office of the clerk, or other designated place, at any time within said period of twenty days; and

(i) That all complaints and objections made in writing concerning the proposed improvement by the owners of any property to be assessed will be heard and determined by the governing body before final action is taken.

(4.5) If the petition for an improvement is signed by one hundred percent of the owners of property to be assessed and contains a request for such waiver, the governing body may, at its discretion, waive all or any of the requirements for notice, publication, and a hearing set forth in subsection (4) of this section.

(5) The finding by ordinance or resolution of the governing body that said improvements were duly ordered after notice duly given and after hearing duly held when such notice and hearing are required pursuant to this section, that such petition was presented, and that the petition was subscribed by all or the required number of owners shall be conclusive of the facts so stated in every court or other tribunal.

(6) Any resolution or order in the premises may be modified, confirmed, or rescinded at any time prior to the passage of the ordinance authorizing the improvements.

(7) The specifications for paving may include sidewalks, curbs, gutters, and grading, and sufficient culverts, sewers, or drains necessary to carry off the surface waters across or along the line of the street improved, and such other incidentals to paving as, in the judgment of the governing body, may be required. The specifications may also provide that bidders shall agree to enter into contract to do the work and maintain the same in good repair for a period of five years, and the contract may be entered into in accordance with such specifications.

(8) If, before any such improvements are made, any piece of real estate or any railway company to be assessed already has an improvement conforming to the general plan or satisfactory to the governing body, an allowance therefor may be made to the owner, and such allowance may be deducted from the owner's assessment and from the contract price.

(9) (a) Any other provision of this part 5 to the contrary notwithstanding, the governing body may create a district for the purpose of acquiring existing improvements of a character authorized by this part 5, in which case, the provisions of this part 5 concerning construction of improvements by the municipality, competitive bidding, and preliminary plans and specifications shall not apply.

(b) Any other provision of this part 5 notwithstanding, the governing body may create an improvement district for the purpose of encouraging, accommodating, and financing renewable energy improvements and energy efficiency improvements of a character authorized by section 31-25-502 (2). Any such district shall include only property for which the owner has executed a contract or agreement consenting to the inclusion of such property within the district, and such consent may occur subsequent to the adoption of the ordinance of the governing body forming the district. The inclusion of such property within the district subsequent to the adoption of the ordinance of the governing body forming the district may be made by the adoption of a supplemental or amending ordinance or resolution of the governing body. For districts formed for the purpose of encouraging, accommodating, and financing renewable energy improvements or energy efficiency improvements, the provisions of subsections (2) and (3) of this section concerning preliminary orders, competitive bidding, and preliminary plans and specifications, of section 31-25-516 concerning contracts for construction, and of section 31-25-518 concerning contract provisions shall not apply.

(c) The contract or agreement shall note the existence of any first priority mortgage or deed of trust on the property, the identity of the record holder thereof, and the penalty for default provided in section 31-25-530 clearly stating that default, like the penalties that exist

for default on any mortgage or any other special assessment, may result in the loss of the applicant's home. Within thirty days of a person's submission of an application to the district, the governing body shall provide written notice to the record holder of any first priority mortgage or deed of trust on the real property that the person is participating in the district.

(10) The governing body is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of the cost thereof, the waiver or limitation of legal rights, or any other matter concerning the district.

(11) At or about the time of publication by the governing body of any ordinance creating a district, a copy of such ordinance shall be provided to the county assessor, the county treasurer, and the division of local government in the department of local affairs. The governing body shall make a good faith attempt to comply with this subsection (11), but failure to comply shall not affect or impair the organization of any district, the construction or acquisition of improvements therein, the levying and collection of assessments, or any other matter pursuant to the provisions of this part 5.

Source: **L. 75:** Entire title R&RE, p. 1190, § 1, effective July 1; (1)(a) and IP(4) amended and (1)(d) added, pp. 1279, 1280, §§ 1, 2, effective May 22. **L. 81:** IP(1) amended, p. 1456, § 4, effective May 27. **L. 84:** (4.5) added and (5) amended, p. 839, § 1, effective March 29. **L. 86:** (1), (3), IP(4), (4)(f), (4)(g), and (4)(i) amended, (4)(d) repealed, and (9) to (11) added, pp. 1044, 1062, §§ 1, 39, effective July 1. **L. 90:** IP(1) amended, p. 1472, § 6, effective July 1; (11) R&RE, p. 1473, § 7, effective October 1. **L. 2002:** IP(1) amended, p. 273, § 14, effective August 7. **L. 2008:** (9) amended, p. 1302, § 24, effective May 27. **L. 2010:** (9)(c) added, (SB 10-100), ch. 207, p. 904, § 8, effective May 5.

Editor's note: This section is similar to former § 31-25-503 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

This section must be strictly construed. *Kaiser v. City of Lakewood*, 33 Colo. App. 239, 517 P.2d 471 (1973).

This section includes "water mains" as a local improvement but nowhere does this or any other section of the act say anything about "supplying water". *City of Aurora v. Krauss*, 99 Colo. 12, 59 P.2d 79 (1936).

General assembly did not intend use of singular noun "street" to have special significance in subsection (1)(a). *Kaiser v. City of Lakewood*, 33 Colo. App. 239, 517 P.2d 471 (1973).

Separate streets not required to be considered noncontiguous units. Fact that the general assembly used the singular noun "street" instead of "streets" in subsection (1)(a) did not require that separate streets should be considered as noncontiguous units nor require that the owners of a majority of property abutting each street within the district sign a petition before the district could be created. *Kaiser v. City of Lakewood*, 33 Colo. App. 239, 517 P.2d 471 (1973).

Owners not burdened by inclusion of two streets in district. Inclusion of two streets in a single improvement district will not result in

burdening the owners of property on one street with the substantial costs of creating the larger, undeveloped second street, because assessments are apportioned on the basis of benefit. *Kaiser v. City of Lakewood*, 33 Colo. App. 239, 517 P.2d 471 (1973).

Purpose of separate signatures from non-contiguous areas. Requirement of subsection (1)(a) that signatures be separately obtained from noncontiguous portions of a district is designed to insure that property owners, unlikely to use or benefit from improvements in one part of a district, need not have their streets improved based upon the desires of property owners from another isolated area. *Kaiser v. City of Lakewood*, 33 Colo. App. 239, 517 P.2d 471 (1973).

The purpose in requiring the city council to enter this preliminary order and the city clerk to give the preliminary notice, is to permit persons thereby affected to object, if they see fit, to the proposed improvement being made at all, and to settle, in the inception of the enterprise, the regularity of the preliminary steps antecedent to the passage of the ordinance authorizing the proposed improvement. *Ellis v. Town of La Salle*, 72 Colo. 244, 211 P. 104 (1922).

Under subsection (3) detailed matters may be left to the engineer in charge. Where the nature of a public improvement is such that an

accurate predetermination of details in every respect cannot be made, like in the construction of a sewer, such matters as cannot be determined in advance with certainty may be left to the judgment of the engineer in charge under the direction of the lawfully constituted authorities. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

Subsection (5) is constitutional. *Gillum v. Town of Rifle*, 70 Colo. 198, 197 P. 1017 (1921).

Statutory provisions respecting the manner in which protests against public improvements shall be made must be substantially followed in order to avail the protestant. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

There is no necessity for persons in response to the preliminary notice to object to the cost of the assessment against them. By failing to respond to the preliminary notice their right to object to the rate of assessment under

§ 31-25-504 is not affected, but they waive their right to be heard upon any objection they might have to the creation of the proposed improvement. *Watson v. City of Ft. Collins*, 86 Colo. 305, 281 P. 355 (1929).

Questions as to sufficiency of notice must be raised when objections are presented. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

Subsection (5) did not preclude judicial review where the issue to be resolved was whether, under subsection (1)(a), city council properly applied the law in reaching its conclusion that a petition was in conformity with the law and signed by the requisite number of people, and was not a factual determination of whether a petition was properly signed by the requisite number of property owners. *Kaiser v. City of Lakewood*, 33 Colo. App. 239, 517 P.2d 471 (1973).

31-25-504. Municipality may establish sewer systems. Any municipality may establish and maintain sewer systems and sewage disposal plants for sanitary or storm drainage.

Source: L. 75: Entire title R&RE, p. 1192, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-525 as it existed prior to 1975.

ANNOTATION

The city council in establishing the sewer district was exercising a legislative power for police purposes, such power being conferred upon it by § 7 of art. X, Colo. Const., and by this section. *Denver v. Capelli*, 4 Colo. 25 (1877); *City of Pueblo v. Robinson*, 12 Colo.

593, 21 P. 899 (1889); *City of Denver v. Knowles*, 17 Colo. 204, 30 P. 1041 (1892); *Lewis v. Denver City Waterworks Co.*, 19 Colo. 236, 34 P. 993 (1893); *Tebbetts v. People*, 31 Colo. 461, 73 P. 869 (1903); *Wolff v. City of Denver*, 20 Colo. App. 135, 77 P. 364 (1904).

31-25-505. District sanitary sewers - contracts - contiguous towns. When the governing body declares the same necessary for sanitary reasons, it may order the construction of district sanitary sewers in districts to be prescribed by ordinance so as to connect with any public or district sewer or with some natural drainage or disposal plant. Such districts, by like authority, may be divided into subdistricts or enlarged, diminished, or otherwise altered by ordinance at any time in accordance with the provisions of this part 5. The contract for district sewers may include all necessary manholes, inlets, and appurtenances and such mains of such reasonable extent outside the district as may be necessary to connect the district with a public sewer or some natural drainage or disposal plant. Contiguous municipalities may unite in the construction of a common sewer or cooperate in such construction or extend to each other the right to use any sewer constructed or to be constructed when such use may be deemed necessary for the discharge of the sewage of either, and such cooperation, common construction, or use shall be upon such terms as regards the apportionment of cost as may be agreed upon between the governing bodies of such contiguous municipalities.

Source: L. 75: Entire title R&RE, p. 1192, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-526 as it existed prior to 1975.

ANNOTATION

This section has intrusted to the judgment and discretion of city councils the determination of the boundaries of sewer districts, and the courts cannot review the judgment and dis-

cretion of the council in fixing such boundaries. *Wolff v. City of Denver*, 20 Colo. App. 135, 77 P. 364 (1904); *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

31-25-506. Private sewers - connection. Private sanitary sewers connecting with public or district sanitary sewers may be constructed under such restrictions and subject to such regulations as may be prescribed by ordinance. No expense shall be incurred by the municipality in constructing or maintaining private sewers. The owner of any premises in any sewer district may be compelled by ordinance to connect the same with the district sewer at his own expense.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-527 as it existed prior to 1975.

31-25-507. Determination of special benefits - factors considered. (1) The term "benefit", for the purposes of assessing a particular property within a district, includes, but is not limited to, the following:

- (a) Any increase in the market value of the property;
- (b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;
- (c) Any adaptability of property to a superior or more profitable use;
- (d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district, if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;
- (e) Any reduction in the maintenance costs of particular property or of public property in the improvement district, if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;
- (f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets;
- (g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

(2) As used in connection with any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2), the term "benefit" shall include, but not be limited to, any acknowledged value set forth in the contracts and agreements entered into by the owner of the assessed property.

Source: L. 75: Entire section added, p. 997, § 3, effective July 1. L. 86: IP(1) amended, p. 1046, § 4, effective July 1. L. 2008: (2) added, p. 1302, § 25, effective May 27.

Editor's note: This section was originally numbered as § 31-25-506.5 in Senate Bill 75-052 but was renumbered on revision in 1977 for ease of location.

31-25-508. Storm drainage sewers - districts. The governing body may order the construction of district sewers for storm drainage in districts to be known as storm sewer districts, the same to be prescribed by ordinance. Such sewers may include the necessary manholes, inlets, and appurtenances and shall be so constructed as to connect with some other sufficient public sewer or some natural drainage. Such districts may be divided into subdistricts to be especially named or numbered in said ordinance.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-528 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-507 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

City is not bound to protect property below street level. It is a general doctrine in which the authorities almost universally concur, that a city is not bound to protect from surface waters those who may be so unfortunate as to own property which is below the general level of the street. *City & County of Denver v. Stanley Aviation Corp.*, 143 Colo. 182, 352 P.2d 291 (1960).

The owner of a dominant estate has a legal as well as a natural easement for servitude on the lands downstream for drainage of surface water flowing in its natural course. *Ambrosio v.*

Perl-Mack Constr. Co., 143 Colo. 49, 351 P.2d 803 (1960).

Thus, the city of Denver has a legal as well as a natural easement for servitude on the lands downstream for drainage of surface water flowing in its natural channel, and if not negligent in the installation of a drainage pipe and in failing to foresee probability of unusual flood occurring 20 years thereafter, no liability attended. *City & County of Denver v. Stanley Aviation Corp.*, 143 Colo. 182, 352 P.2d 291 (1960).

31-25-509. Subdistricts in sewer districts. At the time of ordering the construction of district sanitary or storm sewers or at any time thereafter, the construction may be ordered in like manner in subdistricts, in such manner as to connect the subdistricts, or such part thereof, with the district sanitary or storm sewer for the purpose of sanitary or storm drainage. The cost of subdistrict sanitary or storm sewers in each subdistrict or part thereof, with the appurtenances, may be assessed upon all the land in the subdistrict or in the part improved in proportion as the area of each piece of land in the subdistrict or in the part improved is to the area of all the land in the subdistrict or in the part improved exclusive of public highways. Combined sewers for sanitary and storm drainage may be authorized and constructed in the same manner as provided for the construction of sanitary or storm sewers and the cost thereof assessed in the same manner and proportion.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-529 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-508 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-510. Improvements may be constructed under other laws. Nothing in this part 5 shall prejudice or affect the right to construct local improvements by virtue of any other law of this state. No other act or law shall prejudice the right to construct local improvements under this part 5. If constructed in pursuance of this part 5, the same shall be made to appear in the original petition and in the ordinance authorizing the improvements.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-504 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-509 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

For city not being liable for faulty drainage system, see *Malvern Inv. Co. v. City of Trinidad*, 123 Colo. 394, 229 P.2d 945 (1951).

31-25-511. Property of irregular form - assessment. When any lot or parcel of land is V-shaped or of any irregular form, such allowance may be made by ordinance in any assessment as may be equitable and just, or any allowance may be refused, and, in case of

any unusual area or proportion of intersections, the municipality may pay not exceeding one-half of the cost of any such intersection, and in such case the remainder only shall be assessed against the property improved.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-505 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-510 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-512. Cost assessed in proportion to area. The costs of any district sanitary sewer, including inlets, manholes, connecting mains, and appurtenances, with interest, and of district storm sewers may be assessed by ordinance upon all the real estate in the district, in proportion as the area of each piece of real estate in the district bears to the area of all the real estate in the district, exclusive of public highways.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former §§ 31-25-506 and 31-25-512 as they existed prior to 1975.

(2) This section was originally numbered as § 31-25-511 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

This section is not unconstitutional because a general method has been prescribed by which to apportion upon the property of a district the expense of constructing a sanitary sewer. Parties whose property is thus assessed may still question the benefits accruing as the result of its construction. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

For if an injustice results, relief may be granted. Building lots abutting a sanitary sewer

system are prima facie presumed to be benefited as the result of its construction. The rule of apportionment according to area is, therefore, prima facie valid, but where any general method employed, though, prima facie, legal, would work an injustice, relief in proper circumstances may be granted. *City of Denver v. Dumars*, 33 Colo. 94, 80 P. 114 (1905); *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

31-25-513. Cost assessed in accordance with benefits. (1) The cost of improvements constructed or acquired pursuant to this part 5, or such part thereof as may be assessed against the property specially benefited, including the intersections of streets and alleys except the share to be assessed against railway companies, may be assessed on property, without regard to lot or land lines, on a frontage, zone, or other equitable basis in accordance with benefits as the same may be determined by the governing body.

(2) When the governing body determines that the improvement of any street or alley, including the intersections of streets and alleys, or any other improvement authorized by this part 5 results in special benefits to both the municipality and the owners of property within the district, that portion of the cost of the improvement which results in a special benefit to the municipality may be assessed against the municipality and be payable in installments, as provided in this part 5. The determination by the governing body as to the property to be assessed and the amount of special benefits shall be conclusive of the facts stated therein.

(3) No cost of improvements to streets or alleys shall be assessed to any property where reasonable access to the street or alley is denied the owner of the property.

(4) Any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2) shall assess the costs of the improvements to each property whose owner has entered into a contract or agreement for the improvements. The contracts and agreements entered into with the owner of property, as authorized by the governing body, shall be conclusive regarding the special benefit to the property and the amount that may be assessed against the property.

Source: **L. 75:** Entire title R&RE, p. 1193, § 1, effective July 1. **L. 77:** Entire section amended, p. 1469, § 1, effective June 4. **L. 86:** (1) and (2) amended, p. 1047, § 5, effective July 1. **L. 2008:** (4) added, p. 1302, § 26, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-513 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-512 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Special improvement districts have as their objective improvement of the respective properties and are financed by a special assessment on each by reason of the relationship to the improvement bestowed. *Ruberoid Co. v. North Pecos Water & San. Dist.*, 158 Colo. 498, 408 P.2d 436 (1965).

The theory upon which the owner of property abutting upon a city street may be required to pay the cost of paving the same is that the property is benefited in addition to the benefits received by the public at large. *Watson v. City of Ft. Collins*, 86 Colo. 305, 281 P. 355 (1929).

Owners not burdened by inclusion of two streets in district. Inclusion of two streets in a single improvement district will not result in burdening the owners of property on one street with the substantial costs of creating the larger, undeveloped second street, because assessments are apportioned on the basis of benefit. *Kaiser v.*

City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

Front-foot, square-foot basis of attributing benefits and assessing costs has long been considered a valid method of apportionment. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

An abutting landowner may not be assessed for paving land along railway. As abutting landowners in a street paving district are taxed for the improvement to the extent of the special benefit to their property, and any tax in addition thereto on account thereof is invalid, in an action to determine who should pay for paving the right-of-way of a municipally owned street railway, it is held that the abutting landowners may not be assessed for the cost of the paving of the strip of land along which the railway extends, nor for the paving at street intersections. *Watson v. City of Ft. Collins*, 86 Colo. 305, 281 P. 355 (1929).

31-25-514. Streets - railway companies subject to tax. (1) Whenever any grading, paving, or other kind of street improvement district is created under this part 5, the governing body may include in the area to be paved, graded, or otherwise improved the entire width of street from curb to curb or any part thereof, including the portion of said street occupied by or required by franchise obligation to be paid by or chargeable or assessable to any railway company whose railroad runs through or across any street in said district, and shall charge to, assess, and collect the proper proportion of the cost of the improvement from such railway company in the same manner as is provided for in case of other property, and shall issue bonds for the same, which bonds shall be issued and made payable in like manner as bonds issued for the improvement to be assessed against the real estate specially benefited.

(2) In the meaning of this section, in the absence of a franchise obligation to grade or pave or otherwise improve, a railway company shall be held to occupy and is liable for the grading, paving, or other improvement of that part of the street lying between the rails of each track and two feet outside of each rail, and every railway company, whether street railway or otherwise, shall be assessed for the cost of such improvement of any part of any street or alley occupied by or required by franchise obligation to be so improved. The assessment levied for the cost of said improvements chargeable to a railway company shall be a perpetual tax lien against the entire franchise and property of the company, both within and without said district but within the limits of the municipality where such improvement is made, superior to all other liens except general tax liens.

(3) All the terms, conditions, and provisions in this part 5 relative to the collection of the amounts chargeable against property specially benefited shall be applicable in the enforcement and collection of such assessment against such railway company, and the

property of such railway company, in case of default in payment of such assessment, shall be sold as in cases of default in payment of general taxes levied thereon; but railway trackage shall not be considered or computed as assessable frontage in determining the sufficiency of petitions.

Source: L. 75: Entire title R&RE, p. 1194, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-508 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-513 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-514 is similar to former § 31-25-508 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Assessment against railroad is the same as for abutting property. From this section and the following section it appears that the proportionate amount of assessment which a railway company is required to pay for the cost of a special improvement for grading or paving is to

be determined by the same method applicable to abutting property owners. *House v. Bd. of Comm'rs*, 89 Colo. 196, 300 P. 998 (1931).

Such assessment is against the railroad, and is not specific property within the improvement district. *House v. Bd. of Comm'rs*, 89 Colo. 196, 300 P. 998 (1931).

The procedure upon default in payment is the same as in default of the payment of its general taxes. *House v. Bd. of Comm'rs*, 89 Colo. 196, 300 P. 998 (1931).

31-25-515. Utility connections may be ordered before paving - costs - default. Before paving in any district in pursuance of this part 5, the governing body may order the owners of the abutting property to connect their several premises with the gas or water mains or with any other utility in the street in front of their several premises. Upon default of any owner for thirty days after such order to make such connections, the municipality may contract for and make the connections at such distance, under such regulations, and in accordance with such specifications as may be prescribed by the governing body. The whole cost of each connection shall be assessed against the property with which the connection is made, and the cost shall be paid upon the completion of the work in one sum. The cost shall be assessed, shall become a lien, and shall be collected in the same manner as is provided in this part 5 for the assessment and collection of the cost of other special improvements. Upon default in the payment of any such assessment, the property shall be sold in like manner and with like effect.

Source: L. 75: Entire title R&RE, p. 1194, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-536 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-514 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-516. Contracts for construction - bond - default. (1) Except as provided in this section, all local improvements made under the provisions of this part 5 shall be constructed by independent contract, and all contracts shall be let by the mayor with the approval of the governing body. All such contracts shall be let to the lowest reliable and responsible bidder after public advertisement once a week for three consecutive weeks in a newspaper of general circulation in such municipality; but, after such advertisement, if it is determined by the governing body that the bids are too high or that the proposed improvement can be made by the municipality for less than the bid of the lowest reliable and responsible bidder, such municipality is hereby empowered to provide for doing the work by hiring labor by the day or otherwise and to arrange for purchasing necessary material, all under the supervision of the governing body.

(2) Except when the municipality does the work, no contract shall be made without a surety bond for its faithful performance with sufficient sureties to be approved by the governing body. No surety shall be accepted or approved by the governing body or mayor, other than a corporate surety company, unless he is the owner of real estate in this state, free and clear of all encumbrances, in double the amount of his liability on all bonds upon which he may then be surety. Upon default in the performance of any contract, the governing body may advertise and relet the remainder of the work in like manner without further ordinance and deduct the cost from the original contract price or, with the approval of the governing body, advance any excess out of the funds of the municipality and recover the same by suit on the original bond. In all advertisements the right shall be reserved to reject any or all bids and, upon rejecting all bids, if deemed advisable by the governing body, other bids may be advertised for.

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-534 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-515 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-517. Sidewalks - water mains - sewers. In ordering the construction of sidewalks, water mains, or sewers, the procedure shall be as required in section 31-25-503 (2), (3), (4), (5), (6), and (8) but shall not be subject to section 31-25-503 (1) (a) to (1) (c) and (7).

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-524 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-516 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-518. Provisions to be inserted. Every contract shall provide that it is subject to the provisions of the laws under which the municipality exists and of the ordinance authorizing the improvement; that the aggregate payment thereon shall not exceed the amount appropriated; that, upon ten days' written notice by the mayor to the contractor, the work under such contract, without cost or claim against the municipality, may be suspended for substantial cause; and that, upon complaint by any owner of land to be assessed for the improvement that the improvement is not being constructed in accordance with the contract, the governing body may consider the complaint and make such order in the premises as shall be just. Such order shall be final.

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1. **L. 86:** Entire section amended, p. 1048, § 6, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-535 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-517 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-519. Statement of expenses - apportionment. Upon completion of any local improvement or upon completion from time to time of any part thereof and upon acceptance thereof by the governing body or when the total cost of any improvement or of any such part thereof can be reasonably ascertained, either prior to, during, or subsequent to the construction of the improvements, the governing body shall cause to be prepared a statement showing the whole cost of the improvement, including costs of inspection and collection, capitalized interest on any bonds for such period as the governing body may deem necessary, capitalized bond reserves, and all other incidental costs, the portion thereof, if any, to be paid by the municipality, and the portion thereof to be assessed upon

each lot or tract of land to be assessed for the same, which statement shall be filed in the office of the clerk. If the governing body determines that the basis of assessment is inequitable in any case, a just and equitable assessment shall be made upon the basis of benefits accruing to the property assessed by reason of the improvements made.

Source: **L. 75:** Entire title R&RE, p. 1195, § 1, effective July 1. **L. 86:** Entire section amended, p. 1048, § 7, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-514 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-518 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-519 is similar to former § 31-25-514 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Generally speaking, only such benefits are to be assessed as it is reasonably apparent the

property will receive, other than the general benefit to the community, and nothing is to be considered a benefit which does not enhance the value of the property. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

31-25-520. Notice of hearing on assessments. (1) The clerk shall give notice that the assessment roll has been completed and of a hearing on the assessment roll by publication in an issue of a newspaper of general circulation in the municipality, the publication to be at least fifteen days prior to the date of hearing. The same notice of the hearing shall be mailed by first-class mail to each property owner to be assessed for the cost of the improvements who is included within the district. The mailed notice shall be made on or about the date of the publication of the notice of hearing. The notices shall specify: The whole cost of the improvement; the portion, if any, to be paid by such municipality; the share apportioned to each lot or tract of land; that any complaints or objections that may be made in writing by the property owners or any citizen to the governing body, and filed in writing on or prior to the date of the hearing, will be heard and determined by the governing body before the passage of any ordinance assessing the cost of said improvements; and the date when and the place where such complaints or objections will be heard.

(2) Any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2) shall not be required to provide a notice of the hearing on assessments by publication; rather, such notice, if any, may be provided in the time and manner set forth in the contract or agreement entered into by the owner for each property included in the district.

Source: **L. 75:** Entire title R&RE, p. 1196, § 1, effective July 1; entire section amended, p. 1280, § 3, effective May 22. **L. 2008:** Entire section amended, p. 1303, § 27, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-515 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-519 in House Bill 75-1089 and House Bill 75-1377 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

For necessity of giving landowner opportunity to be heard, see *City & County of Denver v. State Inv. Co.*, 49 Colo. 244, 112 P. 789 (1910)

(decided prior to L. 23, p. 634, § 17, the earliest source of former section).

31-25-521. Hearing on objections. At the time specified in said notice or at some adjourned time, the governing body shall hear and determine all such complaints and objections and may make such modifications and changes as may seem equitable and just or may confirm the first apportionment. The governing body shall by ordinance assess the cost of said improvements, and the passage of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied.

Source: L. 75: Entire title R&RE, p. 1196, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-516 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-520 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-521 is similar to former § 31-25-516 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Effect of omission of property that should have been assessed. The omission of property which should have been assessed to pay the cost of a public improvement does not render the assessment or the proceedings void. All that could be claimed in such circumstances would be, that the assessment on property taxed for such improvement should be reduced to the extent it would have been had the omitted property been charged with its proportionate share of the expense. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

Burden of proof. Granting the city the benefit of this statute puts upon the property owner the burden of showing that the property assessed was not benefited. The trial court correctly found that no benefit inured to the railroad from ample evidence in the record. *Town of Fort Lupton v. Union P. R. R.*, 156 Colo. 352, 399 P.2d 248 (1965).

To overcome prima facie evidence. The passage of an ordinance of assessment for such improvements shall be prima facie evidence of the fact that the property assessed for such improvements is benefited and that such assessments have been lawfully levied. The burden is upon the plaintiff under said statute to overcome this presumption. *Heron v. City of Englewood*, 155 Colo. 480, 395 P.2d 356 (1964).

Time for objections. Objections to the assessment of cost for a municipal improvement need not be urged by property owners until after the assessments are made. *Watson v. City of Fort Collins*, 86 Colo. 305, 281 P. 355 (1929).

Right to relief in equity. Where the body having authority to correct errors and inequalities in the assessment renounces such authority and refuses to hear testimony, the proceeding cannot be regarded as a hearing, and the assessment is void. Equity will, at the suit of the property owner, annul the assessment, ascertain the just amount chargeable against the property, and, upon payment thereof into court, restrain the collection of the residue. *City & County of Denver v. State Inv. Co.*, 49 Colo. 244, 112 P. 789 (1910).

31-25-522. Assessment of lien - filing with county clerk and recorder - corrections.

(1) All assessments made in pursuance of this part 5, together with all interest thereon and penalties for default in payment thereof and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing ordinance, a perpetual lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens except general tax liens. As to any subdivisions of any land assessed in pursuance of this part 5, the assessment lien may be apportioned by the governing body in such manner, if any, as may be provided in the assessing ordinance.

(2) The clerk shall file copies of the assessing ordinance after its final adoption by the governing body with the county clerk and recorder of the county wherein each lot or tract of land assessed is located for recording on the land records of such lots or tracts of land, as provided in article 30, 35, or 36 of title 38, C.R.S. In addition, the clerk shall also file copies of such assessing ordinance after its adoption by the governing body with the county treasurer and the county assessor. The county assessor is authorized to create separate schedules for each lot or tract of land assessed within the municipality pursuant to the ordinance.

(3) No delays, mistakes, errors, or irregularities in any act or proceeding authorized or required by this part 5 shall prejudice or invalidate any final assessment; but the same may be remedied by subsequent filings, amending acts, or proceedings, as the case may require. When so remedied, the same shall take effect as of the date of the original filing, act, or proceeding.

(4) To provide for unanticipated increases in the costs of improvements, the amount of any assessment imposed before the completion of the related improvements may be increased to a total amount not in excess of the special benefit conferred upon the affected property if, not more than ninety days following the completion of such improvements, the governing body gives notice of its intent to consider the amendment of such assessment, stating the time and place that a public hearing shall be held thereon, and holds such public hearing, in the same manner as provided for hearings held pursuant to sections 31-25-520 and 31-25-521. At the conclusion of such public hearing, the governing body may determine whether to amend one or more assessments within a district. Any such amendment shall take effect as of the date of the original assessment.

(5) If, as the result of any subdivision, resubdivision, vacation of right-of-way, or other action taken subsequent to the adoption of the assessment ordinance, any new lot or parcel is created within a district, the governing body may, without a public hearing and with the consent of the owner of the new lot or parcel, modify the assessment ordinance to reapportion all or any part of the total amount assessed in the district to such new lot or parcel.

Source: **L. 75:** Entire title R&RE, p. 1196, § 1, effective July 1. **L. 86:** Entire section amended, p. 1055, § 19, effective July 1. **L. 88:** (2) amended, p. 1432, § 18, effective June 11. **L. 90:** (2) amended, p. 1473, § 8, effective October 1. **L. 2008:** (4) and (5) added, p. 1303, § 28, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-511 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-521 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Law reviews. For note, "The Effect of a General Tax Sale on the Special Assessment Lien", see 20 Rocky Mt. L. Rev. 288 (1948). For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Annotator's note. Since § 31-25-522 is similar to former § 31-25-511 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Under this section an assessment for storm drainage sewers became a lien against the property. The vendor of property upon which the assessment had not been paid held liable for breach of warranty — the premises not being clear of all assessments. *Wilson v. Barney*, 90 Colo. 461, 9 P.2d 1058 (1932).

Parity between lien for general levies and lien for special assessment. Under the provisions of this section that the lien of a special improvement assessment shall be on a parity with a lien for general taxes, so long as the title

to the land involved remains in the owner at the inception of the two different assessments, or in grantees through mesne conveyances, both liens continue in full force, and perpetually, as the 1923 statute provides, and by the payment of neither assessments may the owner avoid the effect of the lien of the other assessment. *City Real Estate v. Sullivan*, 116 Colo. 169, 180 P.2d 504 (1947).

And the issuance of a tax deed to the holder of a certificate of sale based on general levies extinguishes the lien of the special assessment, notwithstanding this section. *City Real Estate v. Sullivan*, 116 Colo. 169, 180 P.2d 504 (1947).

A city's tax lien for creation of a special improvement district is transferred, by operation of law, from defendant's real estate to the fund created by the payment of the award into court by the state highway department in a condemnation proceeding. *Southworth v. Dept. of Hwys.*, 176 Colo. 82, 489 P.2d 204 (1971).

31-25-523. Assessment roll. The clerk shall prepare a local assessment roll in book form showing in suitable columns each piece of land assessed, the total amount of

assessment, the amount of each installment of principal and interest if, in pursuance of this part 5, the same is payable in installments, and the date when each installment will become due. The assessment roll shall have suitable columns for use in case of payment of the whole amount or of any installment or penalty. The clerk shall deliver the assessment roll, duly certified, under the corporate seal, to the municipal treasurer for collection.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-507 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-522 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-524. Payment - assessment roll returned. (1) Payment may be made to the municipal treasurer at any time within thirty days after the final publication of the assessing ordinance.

(2) At the expiration of said thirty-day period, the municipal treasurer shall return the local assessment roll to the clerk, therein showing all payments made with the date of each payment. Said roll shall thereafter be certified by the clerk under the seal of the municipality and delivered by him to the county treasurer of the same county with his warrant for the collection of the same. The county treasurer shall receipt for the same, and all such rolls shall be numbered for convenient reference.

(3) If the municipal treasurer is directed by ordinance to collect assessment payments as provided in section 31-25-526 (1), in lieu of the procedure specified in subsection (2) of this section, the municipal treasurer may keep the assessment roll, numbered for convenient reference, in such a manner as to best facilitate the collection and recording of assessment payments.

(4) All special assessments for local improvements authorized in section 31-25-502 (2) may be due and payable at such alternate time or times as set forth in the assessing ordinance.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1. L. 86: Entitle section amended, p. 1049, § 9, effective July 1. L. 90: (1) amended, p. 1474, § 9, effective October 1. L. 2008: (4) added, p. 1304, § 29, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-520 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-523 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-525. Owner of interest may pay share. The owner of any divided or undivided interest in the property assessed may pay his share of any assessment upon producing evidence of the extent of his interest satisfactory to the treasurer having charge of the roll.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-523 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-524 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-526. Collection of assessment payments - by municipal treasurer - by county treasurer. (1) The governing body may, by ordinance, direct the municipal treasurer to collect any amount payable as an assessment pursuant to this part 5 or authorize the municipal treasurer or other appropriate municipal official to enter into contracts with third parties for assistance in the administration and collection of assessments. If the governing body does not direct, by ordinance, that assessment payments be collected by the municipal treasurer, then such payments shall be collected by the county treasurer.

(2) All collections made by the county treasurer upon an assessment roll in any calendar month shall be accounted for and paid over to the municipal treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement.

Source: **L. 75:** Entire title R&RE, p. 1197, § 1, effective July 1. **L. 86:** Entire section amended, p. 1049, § 8, effective July 1. **L. 2008:** (1) amended, p. 1304, § 30, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-510 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-525 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-527. When assessments payable - installments. All special assessments for local improvements shall be due and payable within thirty days after the final publication of the assessing ordinance without demand; but all such assessments may be paid, at the election of the owner, in installments with interest as provided in section 31-25-528. All special assessments for local improvements authorized in section 31-25-502 (2) may be due and payable at such alternate time or times as set forth in the assessing ordinance.

Source: **L. 75:** Entire title R&RE, p. 1197, § 1, effective July 1. **L. 2008:** Entire section amended, p. 1304, § 31, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-509 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-526 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-528. How installments paid - interest. In case of such election to pay in installments, the assessments shall be payable in two or more installments of principal with interest in all cases on the unpaid principal. The first installment shall be payable as prescribed by the governing body in not more than five years, and the last installment shall be payable in not more than twenty years. Except as otherwise provided in this section, the number, amounts, and times of payment of installments, the period of payment, and the rate and times of payment of interest shall be determined by the governing body and set forth in the assessing ordinance. If assessments are to be collected by the county treasurer, the times of payment of installments shall be the same as the times of payment of installments of property taxes as specified in section 39-10-104.5 (2), C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1197, § 1, effective July 1; entire section amended, p. 1280, § 4, effective May 22. **L. 86:** Entire section amended, p. 1050, § 11, effective July 1. **L. 90:** Entire section amended, p. 1474, § 10, effective October 1. **L. 92:** Entire section amended, p. 2184, § 64, effective June 2.

Editor's note: (1) This section is similar to former § 31-25-517 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-527 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-529. Effect of payment in installments. Failure to pay the whole assessment within said period of thirty days shall be conclusively considered to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. All persons so electing to pay in installments shall be conclusively considered to have consented to said improvements. Such election shall be conclusively considered to be a waiver of any right to question the power or jurisdiction of the municipality to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof; except that, with respect to local improvements authorized in section 31-25-502 (2), the owner for each

property included in the district shall retain all rights otherwise existing by contract or by law against parties other than the county with respect to the financed energy efficiency improvement or renewable energy improvement.

Source: **L. 75:** Entire title R&RE, p. 1197, § 1, effective July 1. **L. 2008:** Entire section amended, p. 1304, § 32, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-518 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-528 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-530. Penalty for default - payment of balance. Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the day of sale; but, at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at the penalty rate set by the assessing ordinance, and all penalties and costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal; except that any owner who pays the whole of the unpaid balance pursuant to this section may be assessed a prepayment premium not to exceed three percent of the unpaid principal, the amount of which premium shall be specified in the ordinance imposing the assessment.

Source: **L. 75:** Entire title R&RE, p. 1198, § 1, effective July 1. **L. 86:** Entire section R&RE, p. 1057, § 22, effective July 1. **L. 2002:** Entire section amended, p. 274, § 15, effective August 7.

Editor's note: (1) This section is similar to former § 31-25-519 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-529 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-25-531. Sale of property for nonpayment. (1) The county treasurer or the municipal treasurer pursuant to section 31-25-526 shall receive payment of all assessments appearing upon the assessment roll with interest.

(2) In case of default in the payment of any installment of principal or interest on assessed property when due:

(a) The municipal treasurer, if collecting assessment payments pursuant to section 31-25-526, shall certify to the county treasurer the whole amount of the unpaid assessments; and

(b) The county treasurer shall advertise and sell all property concerning which such default is suffered for the payment of the whole of the unpaid assessments thereon, plus penalties and costs of collection.

(3) Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate in default of payment of the general property tax.

Source: **L. 75:** Entire title R&RE, p. 1198, § 1, effective July 1. **L. 86:** Entire section amended, p. 1049, § 10, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-521 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-530 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

Cross references: For the sale of tax liens, see article 11 of title 39.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-25-532. Municipality may purchase property on default. (1) At any sale by the county treasurer of any property for the purpose of paying any special assessment for local improvements made under the provisions of this part 5, the municipal treasurer, having written authority from the governing body, may purchase any such property without paying for the same in cash and shall receive certificates of purchase therefor in the name of the municipality. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessments in pursuance of which the sale was made. The certificates may thereafter be sold by the municipal treasurer at their face value, with all interest and penalties accrued, and assigned by him to the purchaser in the name of the municipality. The proceeds of such sale shall be credited to the fund created by ordinance for the payment of such assessments respectively. In the event that all bonded indebtedness incurred in payment for said local improvements has been discharged in full, said certificates may be sold by the governing body for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as is provided in subsection (3) of this section. The proceeds shall be credited to the general fund of said municipality or to the special surplus and deficiency fund provided for by section 31-25-534 (2), as the circumstances may require. Such assignments shall be without recourse, and the sale and assignments shall operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property tax.

(2) Any municipality as such purchaser has the right to apply for tax deeds on such certificates of purchase at any time after three years from the date of issuance of said certificates, and such deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of the general property tax.

(3) Cumulatively with all other remedies, any municipality which is the owner of property by virtue of a tax deed, or is the owner of property otherwise acquired, in satisfaction or discharge of the liens represented by such certificates of sale, may sell such property for the best price obtainable at public sale, at auction, or by sealed bids. Such sales shall be after public notice by the municipal treasurer or clerk to all persons having or claiming any interest in the property to be sold or in the proceeds of such sale by publication of such notice three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. Such notice shall describe the property and state the time, place, and manner of receiving bids; except that the time fixed for the sale shall not be less than ten days after the last publication. The municipality may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the municipality a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest is denied, such person, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the municipality from completing the sale. If no such action is commenced, all protests or objections to the sale shall be waived and the municipality shall then convey the property to the successful bidder by quitclaim deed.

(4) In addition to all other remedies, any municipality which is a holder of certificates of purchase may bring a civil action for foreclosure thereof in accordance with article 38 of title 38, C.R.S., joining as defendants all persons holding record title, persons occupying or in possession of the property, persons having or claiming any interest in the property or in

the proceeds of foreclosure sale, all governmental taxing units having taxes or other claims against said property, and all unknown persons having or claiming any interest in said property. Any number of certificates may be foreclosed in the same proceeding. In such proceeding the municipality, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property, including actions to quiet title.

(5) The proceeds of any such sale of property shall be credited to the appropriate special assessment fund. The municipality shall deduct therefrom the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

(6) When any municipality has sold or conveyed at a fair market value certificates of purchase or property which it has acquired in satisfaction or discharge of special assessment liens, such sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in such property or the proceeds of such sale.

(7) It is hereby declared that the purpose of this section is to restore delinquent property to the tax rolls and to realize the greatest possible amount from such property for the benefit of all persons and taxing bodies having liens thereon.

Source: L. 75: Entire title R&RE, p. 1198, § 1, effective July 1. L. 81: (1) amended, p. 1615, § 17, effective July 1. L. 86: (1) amended, p. 1051, § 14, effective July 1. L. 93: (4) amended, p. 82, § 3, effective March 26.

Editor's note: (1) This section is similar to former § 31-25-522 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-531 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-533. Power of governing body to contract debt - question submitted to registered electors. The governing body has power to contract an indebtedness on behalf of the municipality and upon the credit thereof by borrowing money or issuing the negotiable interest-bearing bonds of the municipality for the purpose of providing a fund to pay such part of the cost of said improvements as may be determined by the governing body. No such indebtedness shall be created except by ordinance subject to and otherwise in accordance with the provisions of section 31-15-302 (1) (d).

Source: L. 75: Entire title R&RE, p. 1199, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-530 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-532 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-533 is similar to former § 31-25-530 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

For necessity for maturity period of bonds to be within constitutional limitations of § 8 of art. XI, Colo. Const., see *Deter v. City of Delta*, 73 Colo. 589, 217 P. 67 (1923); *Town of Aurora v. Krauss*, 99 Colo. 12, 59 P.2d 79 (1936).

31-25-534. Issuing bonds - property specially benefited. (1) For the purpose of paying all or such portion of the cost of any improvement constructed under this part 5 as may be assessed against the property specially benefited, special assessment bonds of the municipality may be issued of such date, in such form, and on such terms, including, without limitation, provisions for their sale, payment, and redemption, as may be prescribed by the governing body, bearing the name of the street, alley, or district improved and payable in a sufficient period of years after such date to cover the period of payment provided and in convenient denominations. All such bonds shall be issued upon estimates approved by the governing body, and the municipal treasurer shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the

mayor, countersigned by the municipal treasurer, with the corporate seal thereto affixed, and attested by the clerk. Such bonds shall be payable out of the moneys collected on account of the assessments made for said improvements, from reserve accounts, if any, established to secure payment of such bonds, and from any other legally available moneys. Whenever three-fourths of the bonds for an improvement constructed under this part 5 have been paid and cancelled and for any reason any remaining assessments are not paid in time to pay the remaining bonds for the district and the interest due thereon, the municipality may pay, from legally available moneys, the bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due the district. All moneys collected from such assessments for any improvement shall be applied to the payment of the bonds issued until payment in full is made of all the bonds, both principal and interest, or to fund or replenish reserve accounts, if any, established to secure the payment of such bonds. The bonds may be used in payment of the cost of the improvement as specified; or the governing body, upon advertisement published at least once in a newspaper of general circulation in such municipality and in such other newspapers as may be designated by the governing body, may sell a sufficient number of said bonds to pay such cost in cash for the best bid submitted in accordance with the terms of the notice of sale. All bids may be rejected at the discretion of the governing body. In addition, the bonds may be sold on such terms and conditions at a private sale if determined by the governing body to be in the best interests of the municipality.

(2) When all bonds of a district have been paid, any moneys remaining to the credit of such district may be transferred to a special surplus and deficiency fund, and, whenever there is a deficiency in any improvement district bond fund to meet the payment of outstanding bonds for other improvement districts and interest due thereon or to redeem such outstanding bonds in accordance with any estimated redemption schedule used in connection with the sale of such bonds, the deficiency may be paid from the moneys available therefor in the surplus and deficiency fund.

(3) In connection with the issuance of bonds payable solely from special assessments, the governing body of the municipality may provide by ordinance or resolution for the submission of the question of issuing such bonds to the electors eligible to vote on the question. The governing body of the municipality may provide by ordinance or resolution that all registered electors of the municipality shall be eligible to vote on the question or that only electors of the district shall be eligible to vote on the question.

(4) In connection with the issuance of bonds payable from special assessments which are additionally secured by a pledge of any other funds of the municipality, including the surplus and deficiency fund, the governing body of the municipality may provide by ordinance or resolution for the submission of the question of issuing the bonds to all registered electors of the municipality.

(5) Notwithstanding any other provision of this part 5, bonds issued in accordance with the requirements of this section may be payable from the assessments levied in one or more improvement districts.

(6) Notwithstanding any other provision of this part 5, any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2) may be authorized to issue one or more series of bonds, and bonds of any such district may be payable from the assessments levied pursuant to one or more assessment ordinances.

Source: **L. 75:** Entire title R&RE, p. 1200, § 1, effective July 1; entire section amended, p. 1281, § 5, effective May 22. **L. 77:** Entire section amended, p. 1470, § 2, effective June 4. **L. 86:** Entire section amended, p. 1050, § 13, effective July 1. **L. 94:** (3) and (4) added, p. 1193, § 95, effective July 1. **L. 99:** (3) amended, p. 518, § 17, effective April 30. **L. 2002:** (1) amended and (5) added, p. 274, § 16, effective August 7. **L. 2005:** (1) amended, p. 775, § 60, effective June 1. **L. 2008:** (1) amended and (6) added, p. 1305, § 33, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-531 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-533 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-534 is similar to former § 31-25-531 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision has been included in the annotations to this section.

For special improvement bonds not constituting a debt of a municipality in a constitu-

tional sense, see *Montgomery v. City & County of Denver*, 102 Colo. 427, 80 P.2d 434 (1938).

Bondholder may sue municipality when its agent makes unlawful payments of a special improvement fund. *Wagnild v. Town of Haxtun*, 106 Colo. 180, 103 P.2d 474 (1940).

31-25-534.5. Issuing refunding bonds. (1) The governing body of a municipality may issue one or more series of bonds to refund all or any portion of the outstanding bonds issued by one or more improvement districts pursuant to section 31-25-534. Any such bonds shall be issued in accordance with the provisions of article 56 of title 11, C.R.S. In such case, for purposes of complying with the requirements of article 56 of title 11, C.R.S., any bonds issued to refund all or any portion of the outstanding bonds of one or more improvement districts shall be deemed to be revenue bonds, the refunded bonds shall be deemed to be revenue obligations, and the assessments shall be deemed to be revenue.

(2) Any bonds issued pursuant to this section may refund all or any portion of the outstanding bonds of one or more improvement districts and may be secured by a combination of assessments levied on all or a specifically identified portion of the assessed property located within such districts.

(3) Two or more series of bonds may be issued to refund the outstanding bonds of one or more districts, and each series may be secured by assessments levied on different portions of the assessed property located within the districts that have outstanding bonds.

(4) Except as otherwise provided in subsection (5) or (6) of this section, in connection with the issuance of refunding bonds pursuant to this section, the governing body may amend the ordinance imposing the assessment to modify all or any portion of the following terms describing the assessment as specified in the ordinance:

- (a) The rate of interest the governing body charges on unpaid installments;
- (b) Any penalty for prepayment of an assessment;
- (c) The principal balance due and owing on the assessment;
- (d) The dates upon which unpaid assessments are due;
- (e) The number of years over which unpaid assessments are due; or
- (f) Any other term specified in the ordinance as necessary to make the ordinance conform to the requirements of this section.

(5) Before the governing body may amend the ordinance imposing the assessment to increase the amount of principal and interest due and owing under the assessment, the number of years over which unpaid assessments are due, or the amount of any unpaid assessments, the governing body shall:

- (a) Obtain consent in writing to the amendment to the ordinance from the owner of each tract of land that would be affected by the amendment; or
- (b) (I) Set a place and time, not less than twenty days nor more than forty days after the date of such setting, for a hearing on the proposed amendment.

(II) Thereupon, the clerk of the governing body shall cause notice by publication to be made of the pendency of the proposed amendment, a summary of the terms of such amendment as described in subsection (4) of this section, and of the time and place of the hearing on the proposed amendment.

(III) All complaints and objections made in writing concerning the proposed amendment by the owners of any property in the district shall be heard and determined by the governing body before final action is taken. If the owners of the tracts upon which more than one-half of the affected assessments, measured by the unpaid assessment balance, submit written protests to the amendment to the governing body on or before the date

specified in the notice, the governing body shall not adopt the proposed amendment. Any proposed amendment may be modified, confirmed, or rescinded prior to passage of the ordinance authorized under subsection (4) of this section.

(6) Notwithstanding any other provision of law, in order either to issue refunding bonds or to amend an ordinance of the governing body imposing an assessment pursuant to this section, the governing body shall make written findings that:

(a) The obligation of the municipality shall not be materially or adversely impaired with respect to any outstanding bond secured by the assessments; and

(b) The principal balance of any assessment shall not increase to an amount such that the aggregate amount that is assessed against any one particular tract of land exceeds the maximum benefit to the tract that is estimated to result from the project that is financed by the assessment and refunding of the outstanding bonds.

Source: L. 2002: Entire section added, p. 275, § 17, effective August 7.

31-25-535. Bonds negotiable - interest. All such bonds shall be negotiable in form and bear interest as may be fixed by the governing body not exceeding a maximum net effective interest rate specified by the governing body prior to the use of said bonds in payment for improvements or the sale thereof pursuant to section 31-25-534.

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1. **L. 86:** Entire section amended, p. 1050, § 12, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-532 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-534 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-536. Manner of redemption. (Repealed)

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1. **L. 86:** Entire section amended, p. 1057, § 24, effective July 1. **L. 2002:** Entire section repealed, p. 278, § 22, effective August 7.

Editor's note: (1) This section was similar to former § 31-25-533 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-535 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-537. When mandamus will issue. When any improvement authorized by this part 5 is petitioned for by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed, it is the duty of the municipal officials whose duty it is to act to authorize said improvement, and an order in the nature of mandamus may issue out of any court of competent jurisdiction requiring said officials to take such action as is required by this part 5; but, if the material petitioned for is known to be worthless or of poor quality or would not make a good, substantial, and reasonable permanent improvement, the governing body may refuse to grant a petition for that reason. If a material petitioned for or designated in the specifications is a patented or proprietary article on which there can be but one bid, the governing body may refuse to award a contract if the entire bid is excessive as compared with improvements of equal value or may reject the bid or readvertise.

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1. **L. 86:** Entire section amended, p. 1052, § 15, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-538 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-536 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-538. No action maintainable - exception - grounds - limitations. (1) No legal or equitable action shall be brought or maintained except to enjoin the collection of assessments levied under this part 5 upon the grounds:

(a) That notice of a hearing upon the amount of the assessment was not given as required in this part 5. Any person presenting objections to the governing body at or before the hearing on assessment shall be deemed to have waived this ground.

(b) That the hearing upon the amount of the assessment as provided in this part 5 was not held;

(c) That the improvement ordered was not one authorized by this part 5;

(d) That the assessment levied exceeds the benefits received by the property assessed.

(2) No action shall be brought on the grounds provided in paragraph (c) of subsection (1) of this section unless a hearing on the proposed improvements is required pursuant to section 31-25-503 and unless the objections on which such action is based have been presented to the governing body in writing prior to or at such hearing. No action shall be brought on the grounds provided in paragraph (d) of subsection (1) of this section unless the objections on which such action is based have been presented to the governing body in writing prior to or at the hearing on the assessment roll. Any action brought with respect to the ordering of any improvements, the creation of any district, the authorization or issuance of any bonds, the levying of any assessments, or any other action taken under this part 5 shall be commenced within thirty days after the passage of the ordinance or resolution ordering the improvements, creating the district, authorizing or issuing bonds, or levying assessments or within thirty days after performance of any other action complained of or else shall be forever barred.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1. L. 86: (2) amended, p. 1052, § 16, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-539 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-537 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-538 is similar to former § 31-25-539 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Right of appeal exists only by statute. Right to appeal to courts from a special assessment for public improvements does not exist except by statute. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

Section does not specify nature of review to be taken. Although this section requires that court review must be brought within 30 days from the effective day of the ordinance in question, it does not specify the nature of the review that may be taken. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

Time limitations for attacking assessments. Reasonable limitations regarding the time within which actions can be commenced attacking the validity of special assessments for public improvements are necessary. To meet the expenses of such improvements bonds must be negotiated, and unless there is some reasonable limit within which actions may be commenced

to attack assessments levied for the purpose of liquidating such bonds when they mature, they could not be disposed of advantageously because parties purchasing would never know when an action might be commenced by some dissatisfied taxpayer; and on the other hand, after the lapse of the statutory period they would have the right to presume no such actions could be maintained, and their rights ought to be protected by a statute which fixes a time within which suits must be commenced, unless it is apparent that thereby some constitutional right of the taxpayer has been denied or invaded. *Hildreth v. City of Longmont*, 47 Colo. 79, 105 P. 107 (1909).

Determination of assessments is left to discretion of municipal authorities. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

And conclusive unless fraudulent or unreasonable. Determination of assessments is conclusive on the courts unless it appears such was fraudulent or unreasonable. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

When a formula designed to produce a reasonable approximation of assessments to ben-

efits is prescribed, the results obtained should not be disturbed absent fraud or unreasonableness in the apportionment process. *Satter v. City of Littleton*, 185 Colo. 90, 522 P.2d 95 (1974).

Court's duty in reviewing assessment proceedings is to determine if the assessing tribunal abused its power. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

De novo evidentiary hearing beyond court's power. A de novo evidentiary hearing for the purpose of making independent findings concerning a home-rule city's assessments would clearly be beyond the court's power and authority. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

Presumption of validity inheres in council's determination that the benefits specially accruing to properties equal or exceed the assessments thereon. *Satter v. City of Littleton*, 185 Colo. 90, 522 P.2d 95 (1974).

Burden of proof was upon objectors to assessments to affirmatively show that the result

of the apportionment was not according to the benefits. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973); *Satter v. City of Littleton*, 185 Colo. 90, 522 P.2d 95 (1974).

Benefit must be occasioned to premises assessed at least equal to burden imposed. *Satter v. City of Littleton*, 185 Colo. 90, 522 P.2d 95 (1974).

But standard of apportionment of costs to benefits received is not one of absolute equality, but rather one of reasonable approximation. *Satter v. City of Littleton*, 185 Colo. 90, 522 P.2d 95 (1974).

Front-foot, side-foot formula applied by city in determining amount of assessments has long been approved as an essentially fair method of apportionment of paving costs. *Satter v. City of Littleton*, 185 Colo. 90, 522 P.2d 95 (1974).

31-25-539. Effect of court order. If in any court of competent jurisdiction any final assessment made in pursuance of this part 5 is set aside or if the governing body determines it to be necessary to alter any final assessment made pursuant to this part 5, the governing body, upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this part 5.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1. L. 90: Entire section amended, p. 1474, § 11, effective October 1.

Editor's note: (1) This section is similar to former § 31-25-511 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-538 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-540. Figures instead of words - when general description used. In all proceedings and notices authorized by this part 5, figures may be used instead of words, and in districts of extended areas it is not necessary to designate each piece of land separately. In such case general descriptions and quantities may be used, except in the assessment rolls. Except in such rolls, the cost may be stated as being of probable or certain amount per front foot or per square foot or per lot of given size.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-537 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-539 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-541. Interim warrants. The governing body, from time to time as work proceeds in a local improvement district, may authorize the issuance of interim warrants: For not to exceed ninety percent in value of the work theretofore done upon estimates of the engineer of the municipality; after completion of the work and acceptance thereof by the engineer of the municipality and by the governing body, for one hundred percent of the value of the work so completed; and, where improvements in the district require the acquisition of property, for an amount not exceeding the value of the property. The warrants may be issued to a contractor to apply at par value on the contract price for the improvements or to the owner of the property to apply at par value on the property price.

The warrants may also be issued and sold at not less than par value in such manner as the governing body may determine, and the proceeds may be used to apply towards payment of the contract price and property price. Interim warrants shall bear interest from date of issue until paid at such rate as may be fixed by the governing body. Interest accruing on interim warrants shall be included as a cost of the improvements in the local improvement district. Interim warrants and interest thereon shall be paid by the issuance of or by proceeds from the sale of special improvement bonds issued or in cash received from the payment of assessments not pledged to the payment of the bonds or from any of such sources.

Source: L. 77: Entire section added, p. 1470, § 3, effective June 4.

31-25-542. County treasurer - policies and procedures. The county treasurer may adopt policies and procedures which the county treasurer deems necessary and reasonable for the administration and collection of assessments which are to be collected by the county treasurer and which are imposed and payable pursuant to the provisions of this part 5 or pursuant to any home rule charter and any ordinances adopted pursuant thereto; however, prior to adoption, copies of such proposed policies and procedures shall be delivered to all municipalities located in the county and, after giving notice to such municipalities, a public hearing shall be held by the county treasurer on such proposed policies and procedures.

Source: L. 90: Entire section added, p. 1474, § 12, effective October 1.

PART 6

IMPROVEMENT DISTRICTS IN MUNICIPALITIES (1949 ACT)

Cross references: For public improvement districts, see article 20 of title 30.

Law reviews: For article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (January 2001).

31-25-601. Legislative declaration. The general assembly hereby declares that the organization of public improvement districts, having the purposes and powers provided in this part 6, will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of said districts.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-601 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

The article is permissive but not mandatory if the improvement sought to be constructed is one of local and municipal concern. Davis v. Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

The article refers to improvement districts. Davis v. Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

And the provisions of this article do not apply to off-street parking revenue bonds; the statute alluded to refers to improvement districts. Davis v. Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

31-25-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "District" means an improvement district that is a taxing unit and that may be created by any municipality in this state for the purpose of acquiring, constructing, installing, operating, or maintaining any public improvement or for the purpose of providing any service so long as the municipality that forms the district is authorized to perform such service or provide such improvement under the municipality's home rule charter, if

any, or the laws of this state. "Public improvement" or "service" shall not include any facility identified in section 30-20-101 (8) or (9), C.R.S., nor shall the terms include services identified in section 30-15-401 (4) to (7.7), C.R.S., unless the district provides such services consistent with part 4 of article 15 of title 30, C.R.S. No such improvement or facility shall duplicate or interfere with any municipal improvement already constructed or planned to be constructed within the limits of such district.

(2) (a) "Elector of a district" means a person who, at the designated time or event, is qualified to register to vote in general elections in this state and:

(I) Has been a resident of the district or of the area to be included in the district for not less than thirty days; or

(II) Owns, or whose spouse owns, taxable real or personal property within the district or within the area to be included within the district, whether the person resides within the district or not.

(b) Where the owner of taxable real or personal property specified in subparagraph (II) of paragraph (a) of this subsection (2) is not a natural person, an "elector of a district" shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the clerk of the municipality. Only one such person may be designated by an owner.

(3) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(4) "Publication", if no manner is specified therefor, means publication once a week in three consecutive weekly editions of a newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three weeks; but not less than fourteen days, excluding the day of first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Source: **L. 75:** Entire title R&RE, p. 1202, § 1, effective July 1. **L. 84:** (1) amended, p. 839, § 2, effective March 29. **L. 92:** (2) amended, p. 2180, § 45, effective June 2. **L. 94:** (2)(a) amended, p. 1775, § 44, effective January 1, 1995. **L. 99:** (1) amended, p. 518, § 18, effective April 30. **L. 2002:** (2) amended, p. 277, § 18, effective August 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-25-603. Authority of governing body. (1) The governing body of a municipality is hereby vested with jurisdiction, power, and authority to establish districts within the municipality in which the improvement is to be acquired, constructed, installed, operated, or maintained or the service is to be provided. The governing body of a municipality may establish a district partially within the boundaries of any other municipality or within the unincorporated territory of a county if such municipality or county consents by resolution to the establishment of such district. No such district may provide the same improvement or service as an existing special district within the territory of such existing special district unless the existing special district consents.

(2) If a municipality other than the municipality that established the district annexes or incorporates any territory within an established district, such territory shall remain in the district unless the municipality notifies the district's board of the municipality's intent to exclude the territory annexed or incorporated from the district. If the municipality notifies the board of its intent to exclude such territory, such exclusion shall take effect January 1 of the year following such notice. Any property excluded from the district under this subsection (2) shall remain subject to payment of its share of any indebtedness or bonds that are outstanding on the date of such exclusion.

Source: **L. 75:** Entire title R&RE, p. 1202, § 1, effective July 1. **L. 84:** Entire section amended, p. 840, § 3, effective March 29. **L. 99:** Entire section amended, p. 519, § 19, effective April 30.

Editor's note: This section is similar to former § 31-25-603 as it existed prior to 1975.

31-25-604. Organization petition - contents. (1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the governing body vested with jurisdiction. The petition shall be signed by not less than thirty percent or two hundred of the electors of the proposed district, whichever is less. After the filing of a petition, no signer shall be permitted to withdraw his or her name from the petition.

(2) The petition shall set forth:

(a) The name of the proposed district, which shall include the name of the municipality creating the district, a descriptive name or number, and the words "general improvement district";

(b) A general description of the improvements to be acquired, constructed, installed, operated, or maintained or the services to be provided within and for the district;

(c) The estimated cost of the proposed improvements or the estimated annual cost of providing the proposed services;

(d) A general description of the boundaries of the district or the territory to be included therein with such certainty as to enable a property owner to determine whether or not his or her property is within the district;

(e) The names of three persons of the district who shall represent the petitioners and who have the power to enter into agreements relating to the organization of the district, which agreements shall be binding on the district, if created;

(f) A request for the organization of the district; and

(g) A statement that either:

(I) The boundaries of the proposed district include at least one hundred electors of the district;

(II) The boundaries of the proposed district include at least one elector of the district for each five acres of land included within the proposed district; or

(III) The petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed district.

(3) No petition with the requisite signatures shall be declared void on account of alleged defects. The governing body, at any time, may permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and together shall be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the governing body the same as though included with the first petition placed on file.

Source: **L. 75:** Entire title R&RE, p. 1202, § 1, effective July 1. **L. 84:** (2)(b) amended, p. 840, § 4, effective March 29. **L. 99:** (1) and (2) amended, p. 519, § 20, effective April 30. **L. 2002:** (2)(e) amended, p. 277, § 19, effective August 7.

Editor's note: This section is similar to former § 31-25-604 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "An Engineering-Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968).

31-25-605. Bond of petitioners. At the time of filing the petition or at any time prior to the time of hearing on said petition, a bond shall be filed, with security approved by the governing body, or a cash deposit made sufficient to pay all expenses connected with the

proceedings in case the organization of the district is not effected. If at any time during the organization proceedings the governing body is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days thereafter, and, upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 75: Entire title R&RE, p. 1203, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-605 as it existed prior to 1975.

31-25-606. Notice of hearing. (1) Except as provided in section 31-25-607 (3.5), as soon as possible after the filing of such petition, the governing body shall fix by order a place and time, not less than twenty days nor more than forty days after the petition is filed, for a hearing thereon. Thereupon the clerk of the governing body shall cause notice by publication to be made of the pendency of the petition, of the purposes and boundaries of the proposed district, and of the time and place of hearing thereon. The clerk shall also cause a copy of said notice to be mailed to each elector of the district at the elector's last-known address, as disclosed by the tax and official voter registration records of the counties in which said district is proposed to be located.

(2) No member of a governing body shall be disqualified to perform any duty imposed by this part 6 by reason of ownership of property within any proposed district.

(3) The notice of hearing on the petition shall set forth the fact that all the property in the district is subject to the lien of the indebtedness, if any, and shall set forth the amount of the proposed indebtedness, if any.

Source: L. 75: Entire title R&RE, p. 1203, § 1, effective July 1. L. 84: (1) amended, p. 840, § 5, effective March 29. L. 99: (1) and (3) amended, p. 520, § 21, effective April 30.

Editor's note: This section is similar to former § 31-25-606 as it existed prior to 1975.

ANNOTATION

This section is not violative of due process.

Anderson v. Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952).

31-25-607. Hearing - dismissal - findings - declaration - when action barred.

(1) On the day fixed for such hearing or at any adjournment thereof or, if the hearing is waived under subsection (3.5) of this section, at any meeting at which an ordinance creating a district is considered, the governing body shall ascertain from the tax rolls of the counties in which the district is located, from the last official registration list and from such other evidence which may be adduced, the total number of electors of the district and the total valuation for assessment of the real and personal property therein.

(2) If it appears that said petition is not signed by at least the number of electors required under section 31-25-604 (1) or if it is shown that the proposed improvement or service will not confer a general benefit on the district or that the cost of the improvement or service would be excessive as compared with the value of the property in the district, the governing body shall dismiss the petition and adjudge the cost against those executing the bond filed to pay such costs. No appeal or other remedy shall lie from an order dismissing said proceeding. Nothing in this section shall prevent the filing of subsequent petitions for similar improvements or services or for a similar district. The right so to renew such proceeding is hereby expressly granted and authorized.

(3) The finding of the governing body upon the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive on all parties in interest, whether appearing or not.

(3.5) If the petition for organizing a district is signed by one hundred percent of the owners of taxable real property to be included in the district and contains a request for such waiver, the governing body may, at its discretion, waive all or any of the requirements for notice, publication, and a hearing set forth in this section and in section 31-25-606.

(4) (a) Upon the hearing if required, or without a hearing pursuant to subsection (3.5) of this section, if it appears that a petition for the organization of a district has been duly signed and presented in conformity with this part 6 and that the allegations of the petition are true, the governing body, by ordinance duly adopted and made effective, shall adjudicate all questions of jurisdiction and may order that the question of the organization of the district and such other matters as the governing body deems appropriate including, but not limited to, the issuance of bonds or other matters for which voter approval is required under section 20 of article X of the Colorado constitution, be submitted to the electors at an election to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S., or article 10 of this title. Unless provided otherwise in section 20 of article X of the Colorado constitution, such election may be held either at a special election held not less than sixty days but not more than one hundred eighty days after the governing body adopts the ordinance or in conjunction with a regular municipal election, general election, ballot issue, or ballot question election.

(b) At an election held under paragraph (a) of this subsection (4), the electors of the district shall vote for or against the organization of the district and such other matters as the governing body deems appropriate including, but not limited to, the issuance of bonds or matters for which voter approval is required under section 20 of article X of the Colorado constitution. If a majority of the votes cast at the election are in favor of the organization, the governing body shall adopt an ordinance declaring the district organized.

(c) If a petition filed with the governing body complies with subsection (3.5) of this section, the governing body may adopt an ordinance declaring the district organized without any notice, hearing, election, or filing of a bond.

(d) If the governing body adopts an ordinance in accordance with paragraph (b) or (c) of this subsection (4), the governing body shall give the district the corporate name specified in the petition by which, in all proceedings, it shall thereafter be known. The district shall be a public or quasi-municipal subdivision of this state and a body corporate with the limited proprietary powers set forth in this part 6.

(e) Nothing in this subsection (4) authorizes a governing body to waive an election otherwise required under section 20 of article X and section 6 of article XI of the Colorado constitution or to hold an election inconsistent with the election requirements in said section 20.

(5) If an ordinance is adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adoption of such ordinance. Thereafter, any such action shall be perpetually barred. The organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding.

Source: L. 75: Entire title R&RE, p. 1204, § 1, effective July 1. L. 84: (3.5) added and (4) amended, p. 840, § 6, effective March 29. L. 99: (1), (2), (3.5), and (4) amended, p. 521, § 22, effective April 30.

Editor's note: This section is similar to former § 31-25-607 as it existed prior to 1975.

31-25-608. Recording of ordinance. Within thirty days after the district has been declared duly organized, the clerk of the governing body shall transmit for recording to the county clerk and recorder in each of the counties in which the district or a part thereof extends a copy of the ordinance establishing said district.

Source: L. 75: Entire title R&RE, p. 1204, § 1, effective July 1. L. 83: Entire section amended, p. 1227, § 9, effective July 1.

Editor's note: This section is similar to former § 31-25-608 as it existed prior to 1975.

31-25-609. Governing body constitutes board - duties. The governing body of the municipality in which the district is located shall constitute ex officio the board of directors of the district. The presiding officer of the governing body shall be ex officio the presiding officer, the clerk of the governing body shall be ex officio the secretary, and the treasurer of the municipality shall be ex officio the treasurer of the board and district. The secretary and the treasurer may be one person. Such board shall adopt a seal. The secretary shall keep in a visual text format that may be transmitted electronically a record of all its proceedings, minutes of all meetings, certificates, contracts, and all corporate acts, which shall be open to inspection of all owners of property in the district, as well as to all other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the district.

Source: L. 75: Entire title R&RE, p. 1205, § 1, effective July 1. L. 2009: Entire section amended, (HB 09-1118), ch. 130, p. 562, § 7, effective August 5.

Editor's note: This section is similar to former § 31-25-609 as it existed prior to 1975.

ANNOTATION

The general assembly almost made it impossible for two political subdivisions to exercise the same functions at the same time, by providing that the directors of the district created for a special and limited purpose should be the same persons as the trustees of the municipal corporation having the broad general powers. Here is an almost automatic assurance that the

trustees of the town would not allow a quasi-municipal corporation to come into existence to function within their territory, unless the town government itself was either unable to act or, in fact, refused to function in the field proposed to be occupied by the quasi-municipal organization. *Anderson v. Town of Westminster*, 125 Colo. 408, 244 P.2d 371 (1952).

31-25-610. Meetings. The board shall hold meetings, on notice to each member of the board, which shall be open to the public in a place to be designated by the board as often as the needs of the district require. A quorum of the governing body shall constitute a quorum at any meeting.

Source: L. 75: Entire title R&RE, p. 1205, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-610 as it existed prior to 1975.

31-25-611. General powers of district. (1) The district has the following limited powers:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued and be a party to suits, actions, and proceedings;
- (d) To enter into contracts and agreements, except as otherwise provided in this part 6, affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a district receives aid from an agency of the federal government, a notice shall be published for bids on all construction contracts for work or material or both involving an expense of one thousand dollars or more. The district may reject any and all bids, and, if it appears that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do.

(e) To borrow money and incur general obligation indebtedness and evidence the same by bonds, certificates, warrants, notes, and debentures and to issue revenue bonds or special assessment bonds in accordance with the provisions of this part 6;

(f) To acquire, construct, install, operate, and maintain the improvements or provide the services contemplated by this part 6, as described in the petition or as later authorized by the voters of the district, including improvements located outside the boundaries of the district, and all property, rights, or interests incidental or appurtenant thereto and to dispose

of real and personal property and any interest therein, including leases and easements in connection therewith;

(g) To refund any general obligation indebtedness, revenue bonds, or special assessment bonds of the district without an election; otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds of the district;

(h) To have the management, control, and supervision of all the business and affairs of the district and of the acquisition, construction, installation, operation, and maintenance of district improvements or the provision of services;

(i) To exercise the power of eminent domain and dominant eminent domain and, in the same manner provided by law for the condemnation of private property for public use, to take any property necessary to the exercise of the powers granted in this part 6;

(j) To construct and install improvements across or along any public street, alley, or highway and to construct works across any stream of water or watercourses. However, the district shall promptly restore any such street or highway to its former state of usefulness as nearly as possible and shall not use the same in such manner as completely or unnecessarily to impair the usefulness thereof. The use and occupation of streets, alleys, and highways and the construction or installation of improvements by any district shall be in accordance with the provisions of all applicable municipal ordinances and with such reasonable rules and regulations as may be prescribed by the governing body of the municipality affected. Plans and specifications of proposed improvements shall be approved by the governing body of the municipality before construction or installation of improvements is commenced.

(k) To fix and from time to time to increase or decrease rates, tolls, or charges for any revenue-producing services or facilities furnished by the district and to pledge such revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens. With respect to revenue-producing services or facilities, the board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls, or charges or for delinquencies in the payment of taxes levied pursuant to this part 6 and shall prescribe and enforce rules and regulations for connecting with and disconnecting from such services and facilities.

(l) To adopt and amend bylaws not in conflict with the constitution and laws of the state or with the ordinances of the municipality affected for carrying on the business, objects, and affairs of the board and of the district;

(m) To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 6. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 6.

(n) To conduct an election in accordance with articles 1 to 13 of title 1, C.R.S., or article 10 of this title for any purpose the board deems necessary or required.

Source: L. 75: Entire title R&RE, p. 1205, § 1, effective July 1. L. 84: (1)(h) amended, p. 840, § 7, effective March 29. L. 99: (1)(e) to (1)(h) amended and (1)(n) added, p. 522, § 23, effective April 30. L. 2004: (1)(f) amended, p. 952, § 9, effective May 21.

Editor's note: This section is similar to former § 31-25-611 as it existed prior to 1975.

31-25-611.5. Special improvement districts - authority to establish. In order to defray all or any portion of the costs of the improvements or services provided by the district, the board may establish special improvement districts within the boundaries of the district in accordance with part 5 of this article. Such special improvement districts may be established whenever the board determines that property in the district will be especially benefitted by such improvements or services. The method of creating special improvement districts, making the improvements or providing the services, and assessing the costs thereof shall be as provided in part 5 of this article. However, the electors eligible to vote

on any question under this section shall either be electors of the district or electors within the local improvement district, as determined by the board. In addition, the board shall perform the duties of the governing body set forth in part 5 of this article, and the secretary of the district shall perform the duties of the clerk set forth in part 5 of this article. The improvements that the special improvement district may construct and the services that the special improvement district may provide shall be the improvements and services that the district may provide pursuant to this part 6.

Source: L. 99: Entire section added, p. 523, § 24, effective April 30.

31-25-612. Power to levy taxes. In addition to the other means of providing revenue for such districts, the board has the power to levy and collect ad valorem taxes on and against all taxable property within the district. Such power shall not prevent the issuance of obligations payable solely from the income of revenue-producing facilities.

Source: L. 75: Entire title R&RE, p. 1206, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-612 as it existed prior to 1975.

ANNOTATION

Section 8 of art. XI, Colo. Const., concerning municipalities is not applicable to the districts created by this section. Anderson v.

Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952).

31-25-613. Determining and fixing rate of levy. The board shall determine the amount of money necessary to be raised by a levy on the taxable property in the district, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable property within the district and with other revenues, shall raise the amount required by the district during the ensuing fiscal year to supply funds for paying expenses of organization and the costs of acquiring, constructing, installing, operating, and maintaining the improvements or works of the district or providing the services of the district and promptly to pay in full when due all interest on and principal of general obligation bonds, indebtedness, and other obligations of the district. In the event of accruing defaults or deficiencies, additional levies may be made as provided in section 31-25-614. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county in which the district or a portion thereof lies the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district.

Source: L. 75: Entire title R&RE, p. 1206, § 1, effective July 1. L. 87: Entire section amended, p. 1407, § 3, effective April 4. L. 99: Entire section amended, p. 523, § 25, effective April 30.

Editor's note: This section is similar to former § 31-25-613 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "An Engineering-Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968).

31-25-614. Levies to cover deficiencies. The board, in certifying annual levies, shall take into account the maturing indebtedness for the current and ensuing year as provided in

its contracts, maturing bonds, and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient to punctually pay the annual installments on its contracts or bonds and interest thereon and to pay defaults and deficiencies, the board, from year to year, shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district is fully paid.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-614 as it existed prior to 1975.

31-25-615. County officers to levy and collect taxes - lien. It is the duty of the body having authority to levy taxes within such county to levy the taxes certified to it as provided in this part 6. It is the duty of all officials charged with the duty of collecting taxes to collect and enforce such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and, when collected, to pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this part 6, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute a lien, until paid, on and against the property taxed, and such lien shall be a lien as for all other general taxes.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-615 as it existed prior to 1975.

31-25-616. Property sold for taxes. The taxes provided in this part 6 shall be included as a part of general taxes and shall be paid accordingly. Upon sale of properties for delinquencies, sales shall be in the manner provided by the statutes of this state for selling property for nonpayment of taxes.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-616 as it existed prior to 1975.

Cross references: For the sale of tax liens, see article 11 of title 39.

31-25-617. Reserve fund. When any indebtedness has been incurred by a district, it is lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine which may be used to meet the obligations of the district for operating charges and depreciation and to provide extensions of and betterments to the improvements of the district.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-617 as it existed prior to 1975.

31-25-618. Inclusion or exclusion - petition - notice - hearing - order. (1) The boundaries of any district organized under the provisions of this part 6 may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made. The owners of property proposed to be included or excluded

may file with the board a petition, in writing, requesting that such property be included in or excluded from the district. The petition shall describe the property owned by the petitioners and shall be verified. The petition shall be accompanied by a deposit of moneys sufficient to pay all costs of the inclusion or exclusion proceedings. The secretary of the board shall cause notice of filing of such petition to be given and published, which notice shall state the filing of such petition, names of petitioners, descriptions of property sought to be included or excluded, and the request of said petitioners.

(2) Such notice shall notify all persons having objections to appear at the office of the board at the time stated in said notice and show cause why the petition should not be granted. The board, at the time and place mentioned or at such times to which the hearing may be adjourned, shall proceed to hear the petition and all objections thereto which may be presented by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed as an assent on his part to the inclusion or exclusion of such property as requested for in the petition. If the petition is granted, the board shall adopt an ordinance to that effect and file a certified copy of the same with the county clerk and recorder of the county in which the property is located. Thereupon said property shall be included or excluded from the district.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-618 as it existed prior to 1975.

31-25-619. Liability of property. All property included within or excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion.

Source: L. 75: Entire title R&RE, p. 1208, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-619 as it existed prior to 1975.

31-25-620. Board can issue bonds - form. (1) To carry out the purposes of this part 6, the board is hereby authorized pursuant to a duly adopted ordinance to issue bonds of the district. Such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable at such times as determined by the board, and shall be due and payable in installments at such times as determined by the board extending not more than twenty years from date of issuance. The form and terms of said bonds, including provisions for their sale, payment, and redemption, shall be determined by the board. To the extent required by section 20 of article X of the Colorado constitution, such bonds shall not be issued unless first approved at an election held for that purpose in accordance with articles 1 to 13 of title 1, C.R.S., or article 10 of this title. If the board so determines, such bonds may be redeemable prior to maturity, with or without payment of a premium, but no premium shall exceed three percent of the principal thereof. The bonds shall be executed in the name of and on behalf of the district and signed by the presiding officer of the board with the seal of the district affixed thereto and attested by the secretary of the board. Such bonds shall be in such denominations as the board shall determine. Interest coupons, if any, shall bear the original or facsimile signature of the presiding officer of the board. Under no circumstances shall any of said bonds be held to be an indebtedness, obligation, or liability of the municipalities or counties in which the district is located, and bonds issued pursuant to the provisions of this part 6 shall contain a statement to that effect.

(2) (a) As used in this part 6, "net effective interest rate" means the net interest cost of securities divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(b) For the purpose of determining the net effective interest rate, "net interest cost" means the total amount of interest to accrue on securities from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said bonds are being or have been sold. In all cases net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

Source: **L. 75:** Entire title R&RE, p. 1208, § 1, effective July 1. **L. 84:** (1) amended, p. 841, § 8, effective March 29. **L. 99:** (1) amended, p. 524, § 26, effective April 30. **L. 2002:** (1) amended, p. 277, § 20, effective August 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-25-621. Submission of debt question - ordinance. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1209, § 1, effective July 1. **L. 81:** (1) amended, p. 1616, § 18, effective July 1. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-621 as it existed prior to 1975.

31-25-622. Notice of election. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1209, § 1, effective July 1. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-622 as it existed prior to 1975.

31-25-623. Conduct of election - canvass. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1209, § 1, effective July 1. **L. 81:** Entire section amended, p. 1616, § 19, effective July 1. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-623 as it existed prior to 1975.

31-25-624. Effect - subsequent elections. (Repealed)

Source: **L. 75:** Entire title R&RE, p. 1210, § 1, effective July 1. **L. 81:** Entire section amended, p. 1616, § 20, effective July 1. **L. 84:** Entire section amended, p. 841, § 9, effective March 29. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-624 as it existed prior to 1975.

31-25-625. Procedure. Any district organized pursuant to this part 6 may be dissolved after notice is given and a hearing held in the manner prescribed by sections 31-25-606 and 31-25-607. After hearing any protests against or objections to dissolution, if the board determines that it is for the best interests of all concerned to dissolve the district, it shall so provide by an effective ordinance, a certified copy of which shall be filed in the office of the county clerk and recorder in each of the counties in which the district or part thereof is located. Upon such filing, the dissolution shall be complete. However, no district shall be dissolved until it has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities or until funds are on deposit and available therefor.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-625 as it existed prior to 1975.

31-25-626. Correction of faulty notices. In any case where a notice is provided for in this part 6, if the governing body finds for any reason that due notice was not given, the governing body shall not thereby lose jurisdiction and the proceeding in question shall not thereby be void or be abated, but the governing body, in that case, shall order due notice given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-626 as it existed prior to 1975.

31-25-627. Early hearings. All actions in which there arises a question of the validity of the organization of a district or a question of the validity of any proceeding under this part 6 shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-627 as it existed prior to 1975.

31-25-628. Construction. This part 6, being necessary to secure and preserve the public health, safety, convenience, and welfare, shall be liberally construed to effect its purposes.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-628 as it existed prior to 1975.

31-25-629. Municipal jurisdiction unimpaired. Nothing in this part 6 shall affect or impair the control and jurisdiction which a municipality has over all property within its boundaries. All powers granted by this part 6 shall be subject to such control and jurisdiction.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-629 as it existed prior to 1975.

31-25-630. Method not exclusive. No part of this part 6 shall repeal or affect any other law or any part thereof, it being intended that this part 6 shall provide a separate method of accomplishing its objects and not an exclusive one.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-630 as it existed prior to 1975.

31-25-631. Confirmation of board actions and powers. (1) In its discretion, the board may file a petition at any time in the district court in any county in which the district or a portion thereof is located for a judicial examination and determination of any power conferred, any securities issued by the district or authorized to be issued by the district, any taxes, assessments, or service charges levied or otherwise made by the district or contracted to be levied by the district or otherwise made by the district, or of any other act, proceeding,

or contract of the district whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement, proposed securities of the district to defray in whole or in part the cost of the project, the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto, or any combination thereof.

(2) A petition filed under subsection (1) of this section shall set forth the facts upon which the validity of such power, securities, taxes, assessments, charges, act, proceeding, or contract is founded. The presiding officer of the district shall verify the petition before it is filed with the district court by signing said petition.

(3) Any action filed under this section shall be in the nature of a proceeding in rem. The district court shall have jurisdiction over all parties interested in the proceeding upon the publication and posting of a notice in accordance with this part 6.

(4) The clerk of the district court in which a petition is filed shall provide notice of such filing. The notice shall include a brief outline of the contents of the petition; the time, date, and location of the hearing; and the location where a complete copy of any documents at issue in the petition may be examined. The clerk shall serve the notice by:

(a) Publishing the notice at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the municipalities and counties in which the district is located; and

(b) Posting the notice in the office of the district at least thirty days prior to the date of the hearing on the petition.

(5) Any owner of property within the boundaries of the district or any other person interested in the petition filed by the board may appear at the hearing by either filing a motion to dismiss or an answer to the petition at least five days prior to the hearing date or within such time as the court may allow. The petition shall be taken as confessed by all persons who fail to appear.

(6) The petition and notice shall be sufficient to give the district court jurisdiction, and, upon hearing, the district court shall examine and determine all matters affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(7) Unless otherwise specified in this part 6, the Colorado rules of civil procedure shall govern any actions filed under this section in matters of pleading and practice.

(8) Costs may be divided or apportioned among any contesting parties in the discretion of the district court.

(9) Review of the judgment of the district court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days.

(10) The district court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

(11) All cases in which there may arise a question of validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 99: Entire section added, p. 524, § 27, effective April 30.

31-25-632. Exemption from taxation - securities laws. The income or other revenues of the district, any property owned by the district, any bonds issued by the district, and the transfer of and any income from any bonds issued by the district shall be exempt from all taxation and assessments by the state. In the resolution authorizing the bonds, the district may waive the exemption from federal income taxation for any interest on the bonds.

Source: L. 99: Entire section added, p. 524, § 27, effective April 30.

31-25-633. Limitation of actions. Any legal or equitable action brought with respect to any acts or proceedings of the district, the creation of a district, the authorization of any

bonds, or any other action taken under this part 6 shall be commenced within thirty days after the performance of such action or else shall be thereafter perpetually barred.

Source: L. 99: Entire section added, p. 524, § 27, effective April 30. **L. 2002:** Entire section amended, p. 278, § 21, effective August 7.

PART 7

CEMETERIES

31-25-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Burial space" means a lot or portion thereof in any cemetery designed and intended for the interment of a human body but not used for such purpose.

(2) "Cemetery" means any cemetery owned, managed, or controlled by any municipality in this state.

(3) "Owner" means any person owning or possessing the privilege, license, or right of interment in any burial space.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-601 as it existed prior to 1975.

31-25-702. Power to establish cemeteries. The governing body of any municipality has power to establish and regulate cemeteries within or without the municipality, to acquire lands therefor, by purchase or otherwise, and to cause cemeteries to be removed and prohibit their establishment within one mile of the municipality.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-101 (32) as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-25-702 is similar to former § 31-12-101 (32) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The statutory right to establish cemeteries is to be found in this section. *Town of Eaton v. Bouslog*, 133 Colo. 130, 292 P.2d 343 (1956).

But not required. The power to establish and regulate cemeteries by incorporated towns does not impose a duty to establish or maintain a cemetery, and a finding of board of trustees that enlargement of cemetery was necessary does not place it in the category of matters required for the public health and safety or the exercise of a governmental function, and the constitutional right of eminent domain for the taking of private property has not been extended to the taking

thereof for cemetery purposes. *Town of Eaton v. Bouslog*, 133 Colo. 130, 292 P.2d 343 (1956).

No implied authority. Authority of an incorporated town to condemn land for use as a cemetery, being against the common law right to own and keep property, must be given expressly or by clear implication and is never implied from doubtful language. *Town of Eaton v. Bouslog*, 133 Colo. 130, 292 P.2d 343 (1956).

The general assembly has given incorporated towns express power to condemn private lands for public uses, and such uses are designated in this section, and are such as are necessary to the governmental functions of the city; however, in granting this special power and authority the general assembly carefully protected the rights of the individual property owner. *Town of Eaton v. Bouslog*, 133 Colo. 292 P.2d 343 (1956).

31-25-703. Foreclosure proceedings. (1) When, pursuant to section 31-25-702, a municipality has established a cemetery, and the ordinance establishing the same requires the owners of burial spaces to pay annual assessments for or provide for the care and maintenance of such spaces, and the owner of any burial space has failed and neglected for a period of five years or more to pay such annual assessments for or to provide for the care

and maintenance of such space, and no other provisions have been made in the ordinance, deed, or contract for the case of such a default, the governing body or the other official having jurisdiction over such cemetery may institute proceedings for the forfeiture, termination, or foreclosure of the rights and interests of such owner. When the governing body or other official determines there has been such failure and neglect, a resolution reciting such determination shall be duly adopted, and a certified copy shall be served on the owner personally by any competent person over the age of eighteen years or shall be sent by registered mail to the owner's last known address.

(2) If compliance with said ordinances, rules, and regulations is not effected or provisions made therefor within a period of thirty days, the governing body may file a petition in the district court in and for the county in which said cemetery is located. The petition shall set forth the facts relating to the sale and ownership of such burial space as revealed by the records of said municipality and cemetery, a description of the burial space described in the same manner as such burial space is known and described on the books and records of the municipality and cemetery, and the failure and neglect to comply with the ordinances, rules, and regulations for the care and maintenance of said burial space. The petition shall ask for the forfeiture, termination, or foreclosure of all right, title, and interest of such owner in said burial space and that title thereto be vested in the municipality. The proceeding provided for in this section is deemed and held to be a proceeding in rem, and the procedure for forfeiture, termination, or foreclosure under this part 7 shall conform to the Colorado rules of civil procedure for the courts of record except as otherwise provided in this part 7. A copy of said petition with a notice of hearing thereon shall be served upon said owner in such manner and form as may be provided for the service of process by the Colorado rules of civil procedure. Thereupon it is the duty of such owner to appear and answer the allegations of said petition. If the owner fails to appear and answer on or prior to the day set for hearing, his default may be entered in the same manner as is provided by the Colorado rules of civil procedure for the entering of defaults generally.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-602 as it existed prior to 1975.

31-25-704. Hearing and decree. On the day set for hearing of the petition or on any subsequent day to which the hearing of the cause is continued, the proofs and allegations of the parties shall be presented to the court. If the court determines that the owner has failed and neglected for a period of five years next prior to the filing of said petition to comply with the ordinances, rules, and regulations relating to the maintenance and care of said burial space, a decree shall be entered accordingly forfeiting, terminating, or foreclosing the right, title, and interest of such owner in and to said burial space, subject to the provisions of this part 7. The decree shall fix a reasonable attorney fee for and recite the costs of said proceeding and shall further provide that title to said burial space shall be vested in the municipality, which municipality shall have the right to resell said burial space and to use the proceeds derived from such sale in the manner and for the purposes provided by law or ordinance for funds derived from sale of burial lots or spaces.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-603 as it existed prior to 1975.

31-25-705. Fees and costs. The docket fees, court costs, and other fees and costs charged and collected for the proceeding provided for by this part 7 shall be the same as the fees and costs that are provided for by law in actions concerning title to real property. Any municipality has the right to pay all costs, attorney's fees, and expenses of such proceeding under this part 7 from any funds available.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-604 as it existed prior to 1975.

31-25-706. Used burial space proviso. Nothing in this part 7 shall authorize the forfeiture, termination, or foreclosure of rights or interests in and to any burial space that has been used for interment nor shall any such space be subject to resale under the provisions of this part 7.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-605 as it existed prior to 1975.

31-25-707. Joint proceedings. Any number of separate burial spaces or lots and any number of separate owners may be joined in one proceeding under this part 7.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-606 as it existed prior to 1975.

31-25-708. Abandoned burial sites - right to reclaim. (1) If there is a burial space in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, the governing body of the municipality may initiate the process of reclaiming title to the burial space in accordance with this section.

(2) The governing body of a municipality seeking to reclaim a burial space shall:

(a) Send written notice of the municipality's intent to reclaim title to the burial space to the owner's last-known address by first-class mail; and

(b) Publish a notice of the municipality's intent to reclaim title to the burial space in a newspaper of general circulation in the area in which the cemetery is located once per week for four weeks.

(3) The notice required by subsection (2) of this section shall clearly indicate that the municipality intends to terminate the owner's rights and title to the burial space and include a recitation of the owner's right to notify the municipality of the owner's intent to retain ownership of the burial space.

(4) If the governing body of the municipality does not receive from the owner of the burial space a letter of intent to retain ownership of the burial space within sixty days after the last publication of the notice required by paragraph (b) of subsection (2) of this section, all rights and title to the burial space shall transfer to the municipality. The municipality may then sell, transfer, or otherwise dispose of the burial space without risk of liability to the prior owner of the burial space.

(5) A municipality that reclaims title to a burial space in accordance with this section shall retain in its records for no less than one year a copy of the notice sent pursuant to paragraph (a) of subsection (2) of this section and a copy of the notice published pursuant to paragraph (b) of subsection (2) of this section.

(6) If a person submits to the governing body of a municipality a legitimate claim to a burial space that the governing body has reclaimed pursuant to this section, the governing body shall transfer to the person at no charge a burial space that, to the extent possible, is equivalent to the reclaimed burial space.

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, the governing body of a municipality shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. The governing body of a municipality may grant interment rights to a burial space in a cemetery.

Source: L. 2006: Entire section added, p. 444, § 4, effective August 7.

Editor's note: Section 5 of chapter 128, Session Laws of Colorado 2006, provides that the act enacting this section applies to cemetery lots, grave spaces, niches, and crypts purchased before, on, or after August 7, 2006.

PART 8

DOWNTOWN DEVELOPMENT AUTHORITIES

31-25-801. Legislative declaration. (1) The general assembly declares that the organization of downtown development authorities having the purposes and powers provided in this part 8 will serve a public use; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within central business districts, will halt or prevent the growth of blighted areas within such districts, and will assist municipalities in the development and redevelopment of such districts and in the overall planning to restore or provide for the continuance of the health thereof; and will be of especial benefit to the property within the boundaries of any authority created pursuant to the provisions of this part 8.

(2) The general assembly determines, finds, and declares that because of a number of atypical factors and special conditions concerning downtown development unique to each locality, the rule of strict construction shall have no application to this part 8, but it shall be liberally construed to effect the purposes and objects for which it is intended.

Source: **L. 76:** Entire part added, p. 701, § 1, effective April 26. **L. 77:** (1) amended, p. 1472, § 1, effective June 19. **L. 81:** (1) amended, p. 1517, § 2, effective July 1.

ANNOTATION

Law reviews. For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law 2527 (1982). For article, "Eco-

nomic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Authority" means a downtown development authority created pursuant to the provisions of this part 8 in any municipality of this state and any successor to its functions, authority, rights, and obligations.

(1.5) "Blighted area" means an area within the central business district which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, unusual topography, defective or unusual conditions of title rendering the title nonmarketable, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the central business district, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(2) "Board" means the board of the authority.

(3) "Central business district" means the area in a municipality which is and traditionally has been the location of the principal business, commercial, financial, service, and governmental center, zoned and used accordingly.

(3.5) "Development project" or "project" means undertakings and activities of an authority or municipality as authorized in this part 8 in a plan of development area for the development or redevelopment of said area in accordance with a plan of development.

(4) "Director" means the chief executive officer of the authority.

(4.5) "District" means the authority or the area within which the authority may exercise its powers.

(5) "Downtown" means a specifically defined area of the municipality in the central business district, established by the governing body of the municipality pursuant to this part 8.

(5.5) "Governing body" means the city council, town council, board of trustees, or other governing board of any municipality of this state.

(6) “Landowner” means the owner in fee of any undivided interest in real property or any improvement permanently affixed thereto within the district. As used in this part 8, “owner in fee” includes a contract purchaser obligated to pay general taxes, an heir, and a devisee under a will admitted to probate and does not include a contract seller of property with respect to which the contract purchaser is deemed to be the owner in fee for purposes of this subsection (6).

(6.2) “Lessee” means the holder of a leasehold interest in real property within the district. As used in this part 8, “leasehold interest” does not include a license or mere contract right to use real property within the district.

(6.4) “Planning board” means the agency designated by the governing body of the municipality which is chiefly responsible for planning in the municipality; and, if no separate agency exists, “planning board” means the governing body of the municipality.

(6.6) “Plan of development” means a plan, as it exists from time to time, for the development or redevelopment of a downtown development area, including all properly approved amendments thereto.

(6.8) “Plan of development area” means an area in the central business district which the board and the governing body designate as appropriate for a development project.

(7) “Public body” means the state of Colorado or any municipality, quasi-municipal corporation, board, commission, authority, or other political subdivision or public corporate body of the state.

(8) “Public facility” includes but is not limited to any streets, parks, plazas, parking facilities, playgrounds, pedestrian malls, rights-of-way, structures, waterways, bridges, lakes, ponds, canals, utility lines or pipes, and buildings, including access routes to any of the foregoing, designed for use by the public generally or used by any public agency with or without charge, whether or not the same is revenue-producing.

(9) “Qualified elector” means a resident, a landowner, or a lessee as said terms are defined in this section. Any landowner or lessee which is not a natural person may vote only if it designates by some official action a representative thereof to cast its ballot. This subsection (9) shall not be construed so as to permit any qualified elector to cast more than one vote, even though any person qualified or lawfully designated may be entitled to cast the vote of more than one qualified elector.

(10) “Resident” means one who is a citizen of the United States and a resident of the state of Colorado, eighteen years of age or older, who makes his primary dwelling place within the district.

Source: **L. 76:** Entire part added, p. 701, § 1, effective April 26. **L. 77:** (3.5), (4.5), (5.5), (6.2), (6.4), (6.6), and (6.8) added and (6), (9), and (10) amended, p. 1472, § 2, effective June 19. **L. 81:** (1.5) added and (3.5) and (6.4) amended, p. 1518, § 3, effective July 1. **L. 2009:** (6.4), (6.6), (6.8), and (7) amended, (SB 09-292), ch. 369, p. 1978, § 108, effective August 5.

31-25-803. Powers of governing body. The governing body of every municipality in this state may create and establish a downtown development authority, pursuant to the provisions of this part 8, which authority shall have all the powers provided in this part 8 that are authorized by the ordinance, or any amendment thereto, authorizing such authority and which, when established, shall be a body corporate and capable of being a party to suits, proceedings, and contracts, the same as municipalities in this state. Any such authority may be dissolved by ordinance of the governing body, if there is no outstanding indebtedness of the authority or if adequate provision for the payment of such indebtedness has been provided.

Source: **L. 76:** Entire part added, p. 702, § 1, effective April 26.

31-25-804. Organizational procedure - election. (1) When the governing body of a municipality determines it is necessary to establish a downtown development authority for the public health, safety, prosperity, security, and welfare and to carry out the purposes of

an authority as stated in section 31-25-801, it shall by ordinance submit, at the next regular election or at a special election called for that purpose, the question of the establishment of a downtown development authority. In the ordinance submitting said question, the governing body shall state the boundaries of the downtown development district within which the authority shall exercise its powers and may provide for submission to the voters of any local government matters arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), C.R.S. If any such matters are to be submitted to the voters, the election shall be conducted at the time and in the manner required by section 20 of article X of the state constitution. If a majority of the qualified electors voting at the election vote for the establishment of a downtown development authority, the authority shall be established pursuant to the provisions of this part 8.

(2) Any ordinance creating a downtown development authority shall provide that any ordinance or resolution by which bonds are issued pursuant to this part 8 shall specify the maximum net effective interest rate of such bonds.

Source: **L. 76:** Entire part added, p. 702, § 1, effective April 26. **L. 77:** Entire section amended, p. 1473, § 3, effective June 19. **L. 81:** (1) amended, p. 1518, § 4, effective July 1. **L. 94:** (1) amended, p. 1193, § 96, effective July 1.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-805. Board - membership - term of office. (1) The affairs of the authority shall be under the direct supervision and control of a board consisting of not less than five nor more than eleven members appointed by the governing body. A majority of the members appointed shall reside or own property in the downtown development district.

(2) The board shall be constituted as follows:

(a) At least one member shall be a member of the governing body, appointed to serve at the pleasure of the governing body.

(b) Two members shall be appointed for terms expiring June 30 of the year following the date of the ordinance adopted by the governing body establishing the authority.

(c) Two members shall be appointed for terms expiring June 30 of the second year following the date of the ordinance adopted by the governing body establishing the authority.

(d) Two members, if the board consists of seven or more members, shall be appointed for terms expiring June 30 of the third year following the date of the ordinance adopted by the governing body establishing the authority.

(e) All other members shall be appointed for terms expiring June 30 of the fourth year following the date of the ordinance adopted by the governing body establishing the authority.

(3) A member shall hold office until his successor has been appointed and qualified. After the terms of the initial members of the board have expired, the terms of all members (except any member who is a member of the governing body) shall expire four years from the expiration date of the terms of their predecessors. Appointments to fill vacancies shall be for the unexpired term. In any municipality in which the charter provides that the appointive authority is the mayor, the mayor shall make appointments to the board.

Source: **L. 76:** Entire part added, p. 703, § 1, effective April 26.

31-25-806. Board membership - qualifications - nominations - rules - removal. (1) Each appointed member of the board, except any member from the governing body, shall reside, be a business lessee, or own real property in the downtown development district within the municipality in which the authority is located. A manager, as that term is

defined in section 7-90-102, C.R.S., an agent, or an employee of an entity, as that term is defined in section 7-90-102, C.R.S., having its place of business in the downtown development district shall be eligible for appointment to the board. No officer or employee of the municipality where the authority is located, other than any appointee from the governing body, shall be eligible for appointment to the board. Within thirty days after the occurrence of a vacancy, the governing body, except as provided in section 31-25-805 (3), shall appoint a successor.

(2) Before assuming the duties of the office, each appointed member shall qualify by taking and subscribing to the oath of office required of officials of the municipality.

(3) The board shall adopt and promulgate rules governing its procedure, including election of officers, and said rules shall be filed in the office of the clerk. The board shall hold regular meetings in the manner provided in the rules of the board. Special meetings may be held when called in the manner provided in the rules of the board. All meetings of the board shall be open to the public except those dealing with land acquisition or sales, personnel matters, or legal matters. Members of the board shall serve without compensation, but they may be reimbursed for actual and necessary expenses.

(4) After notice and an opportunity to be heard, an appointed member of the board may be removed for cause by the governing body.

Source: L. 76: Entire part added, p. 703, § 1, effective April 26. L. 2009: (1) amended, (HB 09-1248), ch. 252, p. 1136, § 22, effective May 14.

31-25-807. Powers - duties. (1) The board, subject to the provisions of this part 8 and subject to other applicable provisions of law, shall have all powers customarily vested in the board of directors of a corporation. It shall exercise supervisory control over the activities of the director and the staff of the authority in carrying out the functions authorized by this part 8.

(2) In addition to the powers granted by subsection (1) of this section, the board may:

(a) Appoint and remove a director and other staff members, who shall be employed upon recommendation of the director, and prescribe their duties and fix their compensation which shall be paid from funds available to the authority;

(b) At the request of the governing body, prepare an analysis of economic changes taking place in the central business district of the municipality;

(c) Study and analyze the impact of metropolitan growth upon the central business district;

(d) Plan and propose, within the downtown development area, plans of development for public facilities and other improvements to public or private property of all kinds, including removal, site preparation, renovation, repair, remodeling, reconstruction, or other changes in existing buildings which may be necessary or appropriate to the execution of any such plan which in the opinion of the board will aid and improve the downtown development area;

(e) To implement, as provided in this part 8, any plan of development, whether economic or physical, in the downtown development area as is necessary to carry out its functions;

(f) In cooperation with the planning board and the planning department of the municipality, develop long-range plans designed to carry out the purposes of the authority as stated in section 31-25-801 and to promote the economic growth of the district and may take such steps as may be necessary to persuade property owners and business proprietors to implement such plans to the fullest extent possible;

(g) Retain and fix the compensation of legal counsel to advise the board in the proper performance of its duties;

(h) Make and enter into all contracts necessary or incidental to the exercise of its powers and the performance of its duties.

(3) (a) Notwithstanding any law to the contrary and subject to the provisions of subparagraph (IV) of this paragraph (a), any such plan of development as originally adopted by the board or as later modified pursuant to this part 8 may, after approval by the governing body of the municipality, contain a provision that taxes, if any, levied after the effective date

of the approval of such plan of development by said governing body upon taxable property within the boundaries of the plan of development area each year or that municipal sales taxes collected within said area, or both such taxes, by or for the benefit of any public body shall be divided for a period not to exceed thirty years or such longer period as provided for in subparagraph (IV) of this paragraph (a) after the effective date of approval by said governing body of such a provision, as follows:

(I) That portion of the taxes which are produced by the levy at the rate fixed each year by or for each such public body upon the valuation for assessment of taxable property within the boundaries of the plan of development area last certified prior to the effective date of approval by said governing body of the plan, or, as to an area later added to the boundaries of the plan of development area, the effective date of the modification of the plan, or that portion of municipal sales taxes collected within the boundaries of said development area in the twelve-month period ending on the last day of the month prior to the effective date of approval of said plan, or both such portions, shall be paid into the funds of each such public body as are all other taxes collected by or for said public body.

(II) That portion of said property taxes or all or any portion of said sales taxes, or both, in excess of such amount shall be allocated to and, when collected, paid into a special fund of the municipality for the payment of the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the municipality for financing or refinancing, in whole or in part, a development project within the boundaries of the plan of development area. Any excess municipal sales tax collection not allocated pursuant to this subparagraph (II) shall be paid into the funds of the municipality. Unless and until the total valuation for assessment of the taxable property within the boundaries of the plan of development area exceeds the base valuation for assessment of the taxable property within such boundaries, as provided in subparagraph (I) of this paragraph (a), all of the taxes levied upon the taxable property in such boundary area shall be paid into the funds of the respective public bodies. Unless and until the total municipal sales tax collections in the plan of development area exceed the base year municipal sales tax collections in such area, as provided in subparagraph (I) of this paragraph (a), all such sales tax collections shall be paid into the funds of the municipality. When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith, and including any refunding securities therefor, have been paid, all taxes upon the taxable property or the total municipal sales tax collections, or both, in such boundary area shall be paid into the funds of the respective public bodies.

(III) In calculating and making payments as described in subparagraph (II) of this paragraph (a), the county treasurer may offset the authority's pro rata portion of any property taxes that are paid to the authority under the terms of subparagraph (II) of this paragraph (a) and that are subsequently refunded to the taxpayer against any subsequent payments due to the authority for the plan of development area. The authority shall make adequate provision for the return of overpayments in the event that there are not sufficient property taxes due to the authority to offset the authority's pro rata portion of the refunds. The authority may establish a reserve fund for this purpose or enter into an intergovernmental agreement with the governing body of the municipality that established the authority in which the municipality assumes responsibility for the return of the overpayments. The provisions of this subparagraph (III) shall not apply to a city and county.

(IV) (A) During the final ten years of the thirty-year period during which a portion of the property taxes or sales taxes, or both, may be allocated to and, when collected, paid into the special fund of the municipality in accordance with the requirements of subparagraph (II) of this paragraph (a), the governing body may by ordinance extend the period during which property taxes shall be allocated for one additional extension of twenty years, which extension shall commence upon the expiration of the original thirty-year period, if on the first day of the twenty-year extension period the established base year for the allocation of property taxes pursuant to subparagraph (II) of this paragraph (a) is advanced forward by ten years and, subsequent to the completion of the first ten years of the twenty-year extension, the base year is advanced forward by one year for each additional year through the completion of the twenty-year extension. The governing body may also by ordinance

extend the period during which sales taxes shall be allocated for one additional extension of twenty years with no change to the established sales tax base year. Notwithstanding any other provision of this subparagraph (IV), any extension authorized pursuant to this subparagraph (IV) may only be considered by the governing body during the final ten years of the original thirty-year period.

(B) In connection with an extension implemented pursuant to sub-subparagraph (A) of this subparagraph (IV), on an annual basis fifty percent of the property taxes levied, or such greater amount as may be set forth in an agreement negotiated by the municipality and the respective public bodies, and allocated in accordance with the requirements of subparagraph (II) of this paragraph (a) shall be paid into the special fund of the municipality and the balance of such taxes shall be paid into the funds of the other public bodies by or for which such taxes are collected. Not later than August 1 of each calendar year, the governing body shall certify to the county assessor an itemized list of the property tax distribution percentages attributable to the special fund of the municipality pursuant to this sub-subparagraph (B) from the mill levies to be certified by each public body. When certifying values to taxing entities pursuant to sections 39-1-111 (5), 39-5-121 (2), and 39-5-128, C.R.S., the assessor shall certify only the percentage of increment value attributable to the special fund pursuant to this sub-subparagraph (B) as certified by the governing body.

(b) The special fund described in subparagraph (II) of paragraph (a) of this subsection (3) and the tax moneys paid into such fund may be irrevocably pledged by the municipality for the payment of the principal of, the interest on, and any premiums due in connection with such bonds, loans, advances, or indebtedness if the question of issuing such bonds or otherwise providing for such loans, advances, or indebtedness and the question of any such intended pledge are first submitted for approval to the qualified electors of the district at a special election to be held for that purpose. Any such election required by this paragraph (b) shall be called by resolution of the board adopted at a regular or special meeting thereof and approved by the governing body by a vote of a majority of the members thereof at least thirty days prior to such election. Except with respect to the qualifications of electors, such election together with all attendant preparations therefor and proceedings thereafter shall be held and conducted in the manner prescribed by law for the holding and conducting of other regular or special elections in the municipality. This irrevocable pledge shall not extend to any taxes that are placed in a reserve fund to be returned to the county for refunds of overpayments by taxpayers; except that this limitation on the extension of the irrevocable pledge shall not apply to a city and county.

(c) As used in this subsection (3), "taxes" shall include, but not be limited to, all levies authorized to be made on an ad valorem basis upon real and personal property or municipal sales taxes; but nothing in this subsection (3) shall be construed to require any public body to levy taxes.

(d) In the case of such plan of development areas, school districts which include all or any part of such plan of development area shall be permitted to participate in an advisory capacity with respect to the inclusion in a plan of development of the provision provided for by this subsection (3).

(e) In the event there is a general reassessment of taxable property valuations in any county including all or part of the plan of development area subject to division of valuation for assessment under paragraph (a) of this subsection (3) or a change in the sales tax percentage levied in any municipality including all or part of the downtown development area subject to division of sales taxes under paragraph (a) of this subsection (3), the portions of valuations for assessment or sales taxes under both subparagraphs (I) and (II) of paragraph (a) of this subsection (3) shall be proportionately adjusted in accordance with such reassessment or change.

(f) The manner and method by which the requirements of subparagraph (IV) of paragraph (a) of this subsection (3) are to be implemented by the county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109 (1) (e), C.R.S.

(4) (a) An authority shall not actually undertake a development project for a plan of development area unless the governing body, by resolution, has first approved the plan of development which applies to such development project.

(b) Prior to its approval of a plan of development, the governing body shall submit such plan to the planning board of the municipality, if any, for review and recommendations. The planning board shall submit its written recommendations with respect to the proposed plan of development to the governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning board or, if no recommendations are received within said thirty days, without such recommendations, the governing body may proceed with the hearing on the proposed plan of development prescribed by paragraph (c) of this subsection (4).

(c) The governing body shall hold a public hearing on a plan of development or substantial modification of an approved plan of development after public notice thereof by publication once by one publication during the week immediately preceding the hearing in a newspaper having a general circulation in the municipality. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the plan of development area covered by the plan, and shall outline the general scope of the development project under consideration.

(d) Following such hearing, the governing body may approve a plan of development if it finds that there is a need to take corrective measures in order to halt or prevent deterioration of property values or structures within the plan of development area or to halt or prevent the growth of blighted areas therein, or any combination thereof, and if it further finds that the plan will afford maximum opportunity, consistent with the sound needs and plans of the municipality as a whole, for the development or redevelopment of the plan of development area by the authority and by private enterprise.

Source: **L. 76:** Entire part added, p. 704, § 1, effective April 26. **L. 77:** (3) and (4) added, p. 1474, § 4, effective June 19. **L. 81:** (2)(d), (2)(f), (3)(a), (3)(c), (3)(e), and (4)(d) amended, p. 1518, § 5, effective July 1. **L. 82:** (3)(a)(II) amended, p. 627, § 36, effective April 2. **L. 2002:** IP(3)(a) amended, p. 1943, § 1, effective August 7. **L. 2008:** IP(3)(a) amended and (3)(a)(IV) and (3)(f) added, pp. 974, 975, §§ 1, 2, effective August 5; (3)(a)(III) added and (3)(b) amended, p. 1246, §§ 3, 4, effective August 5.

31-25-808. Additional and supplemental powers. (1) In addition and supplemental to the other powers granted by this part 8, the authority shall have all powers, except as limited in the ordinance or any amendments thereto, establishing such authority, necessary or convenient to carry out and effectuate the purposes and provisions of this part 8, including but not limited to the following powers:

(a) To acquire by purchase, lease, license, option, gift, grant, devise, or otherwise any property or any interest therein;

(b) In connection with public facilities, to improve land and to construct, reconstruct, equip, improve, maintain, repair, and operate buildings and other improvements, whether on land of the authority or otherwise;

(c) To lease or sublease as lessor any property owned or leased by it or under its control on such terms and conditions as may be established by the board for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the plan of development;

(d) To sell or otherwise dispose of property of the authority or any interest therein, subject to such covenants, conditions, and restrictions as it may deem necessary or desirable to carry out the purposes and objectives of the authority for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the plan of development;

(e) To fix, charge, and collect fees, rates, tolls, rents, and charges for the use of any property of the authority or any property under its control and to pledge any such revenues in support of any bonds or other obligations of the authority;

(f) To cooperate with the municipality in which the authority is located and any other governmental agency or other public body and to enter into contracts with any such agency or body;

(g) To make to or receive from the municipality or the county in which the authority is located conveyances, leasehold interests, grants, contributions, loans, and any other rights and privileges;

(h) (I) To invest any funds of the authority not required for immediate disbursement in property or in securities in which public bodies may invest funds subject to their control pursuant to part 6 of article 75 of title 24, C.R.S., and to redeem any bonds it has issued at the redemption price established therein or to purchase such bonds at less than the redemption price, all such bonds so redeemed or purchased to be cancelled;

(II) To deposit any funds not required for immediate disbursement in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the funds of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(i) To borrow money on such terms and conditions as the board may approve and to issue bills, notes, bonds, or other evidence of indebtedness therefor and to pledge and hypothecate any property or revenue in support of any such debt;

(j) To demolish and remove buildings and improvements located on, and to install, construct, or reconstruct improvements and facilities, including public facilities, on or about, any land owned by an authority or a municipality, in preparation for conveyance to purchasers or lessees, or otherwise.

(2) Any sale or letting of property by the authority shall be at not less than its fair value (as determined by the authority and the governing body) for uses in accordance with the plan of development. In determining the fair value of real property for such uses, an authority shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee; and the objectives of such plan.

Source: **L. 76:** Entire part added, p. 705, § 1, effective April 26. **L. 77:** (1)(c) amended, p. 1476, § 5, effective June 19. **L. 79:** (1)(h) amended, p. 1619, § 22, effective June 8. **L. 81:** (1)(b) to (1)(d) amended and (1)(j) and (2) added, pp. 1520, 1521, §§ 6, 7, effective July 1. **L. 89:** (1)(h)(I) amended, p. 1116, § 28, effective July 1.

31-25-809. Authorization of bonds. (1) By ordinance adopted by the governing body at a regular or special meeting, by a vote of a majority of the members of the governing body, the municipality may issue bonds, payable solely from revenues or from taxes pledged pursuant to section 31-25-807 (3) (b) or from both such revenues and taxes, to pay all or any part of the cost of any project or for furthering any purpose of this part 8.

(2) The governing body, in determining such costs, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; any discount on the sale of the bonds; the cost of any financial, professional, or other expert advice; contingencies; any administrative, operating, or other expenses of the municipality incurred pursuant to the issuance of such bonds, as may be determined by the governing body; all such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of any development project or for furthering any purpose of this part 8; sufficient provision of reserves for working capital, operation, or maintenance or replacement expense or for payment or security of principal of or interest on any bonds during or after an acquisition or improvement and equipment as the governing body may determine; and reimbursements to any governmental agency or instrumentality for any moneys expended pursuant to agreement on any project or for furthering any purpose of this part 8.

(3) In each such project financed by the proceeds of bonds issued under this part 8, the governing body shall determine the costs of, and may budget a percentage therefrom for, operation and administration of the total cost of the actual project.

(4) The proceeds of the bonds may be expended by the municipality or, with the consent of the municipality, by the authority as agent for, and on behalf of, the municipality. If the proceeds of the bonds are applied for the acquisition of real or personal properties, the governing body may:

(a) Retain title to such properties in its own name and lease or grant licenses or privileges in such properties to the authority in order that the authority may, as principal or agent, exercise its powers with respect to such properties; or

(b) Convey title to such properties to the authority for such consideration and subject to such terms and conditions as the governing body may prescribe without regard to any restriction, limitation, or condition otherwise imposed by statute on the sale or disposition of such properties by a municipality.

Source: L. 76: Entire part added, p. 705, § 1, effective April 26. L. 77: Entire section amended, p. 1476, § 6, effective July 1. L. 81: (4) added, p. 1521, § 8, effective July 1.

31-25-810. Bond provisions. (1) Bonds issued pursuant to this part 8 shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the municipality; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The ordinance authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued as term or serial bonds, in one or more series, may bear such date, may mature at such time not exceeding twenty years' duration, may be in such denomination or denominations, may be payable in such medium of payment at such place or places within or without the state (including but not limited to the office of any county treasurer in which the municipality is located wholly or in part), may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either bearer coupon or registered, with such recitals, terms, covenants, conditions, and other details as may be provided by the governing body, subject to the provisions of this part 8.

(2) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to be issued pursuant to this part 8 to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) Said bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) Said bonds may be sold at public or private sale as determined by the governing body to be in the best interest of the issuer.

(3) Bonds may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and, where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon.

(4) Subject to the payment provisions of this part 8, said bonds, any interest coupons attached thereto, and any temporary bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds pursuant to this part 8:

(a) May provide for the initial issuance of one or more bonds, referred to in this subsection (5) as "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing

thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds;

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(6) If lost or completely destroyed, any security authorized by this part 8 may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the governing body, proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(7) Any officer authorized to execute any bond, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any bond authorized in this part 8, if such a filing is not a condition of execution with a facsimile signature of any interest coupon, and if at least one signature required or permitted to be placed on each such bond, excluding any interest coupon, is manually subscribed. An officer's facsimile signature shall have the same legal effect as his manual signature.

Source: L. 76: Entire part added, p. 706, § 1, effective April 26. L. 77: (1) amended, p. 1476, § 7, effective June 19.

31-25-811. Refunding bonds. (1) By ordinance adopted by the governing body at a regular or special meeting, by vote of a majority of the members of the governing body, any bonds issued under this part 8 may be refunded by the municipality without an election, subject to the provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise relating thereto.

(2) Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this part 8 for the sale of other bonds.

(3) No bonds may be refunded under this part 8 unless the holders thereof voluntarily surrender them for exchange or payment or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within said period of time. No maturity of any bonds refunded may be extended over fifteen years. The rate of interest on such refunding bonds shall be determined by the authority. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except to the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of the refunding bonds. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

(4) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow or in trust to be applied to the payment of the bonds refunded upon their presentation therefor. Any proceeds held in escrow or in trust, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow or in trust, together with any interest or other gain to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent or trustee payable therefrom to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption dates upon which the authority shall be obligated to call the refunded bonds for prior redemption.

(5) The relevant provisions pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes, and revenues, and other aspects of the bonds.

Source: **L. 76:** Entire part added, p. 707, § 1, effective April 26. **L. 77:** (1) amended, p. 1477, § 8, effective June 19. **L. 89:** (4) amended, p. 1116, § 29, effective July 1.

31-25-812. Tax exemption. The bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

Source: **L. 76:** Entire part added, p. 708, § 1, effective April 26.

31-25-813. No municipal liability on bonds. Bonds issued pursuant to this part 8 shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitations. Each bond issued pursuant to this part 8 shall recite in substance that said bond, including interest thereon, is payable solely from the revenues or special funds pledged to the payment thereof and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitations.

Source: **L. 76:** Entire part added, p. 708, § 1, effective April 26. **L. 77:** Entire section amended, p. 1477, § 9, effective June 19.

31-25-813.5. Limitation of actions. After the expiration of thirty days from the effective date of any ordinance or resolution authorizing the issuance of bonds pursuant to this part 8, all actions or suits attacking its findings, determinations, or contents or challenging the validity of the bonds shall be perpetually barred.

Source: **L. 77:** Entire section added, p. 1477, § 10, effective June 19.

31-25-814. Remedies of bondholders. (1) Subject to any contractual limitations binding upon the holders of any issue of bonds or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds or trustee therefor has the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By an action in the nature of mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the municipality and to require and compel the governing body to perform its duties and obligations under this part 8 and its covenants and agreements with the bondholders;

(b) By action or suit in equity to require the governing body to account as if they were the trustees of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) To bring suit upon the bonds.

(2) No right or remedy conferred by this part 8 upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 8 or by any other law.

Source: **L. 76:** Entire part added, p. 708, § 1, effective April 26. **L. 77:** (1)(a) and (1)(b) amended, p. 1478, § 11, effective June 19.

31-25-815. Employees - duties - compensation. (1) The board shall employ and fix the compensation, subject to the approval of the governing body, of the following, who shall serve at the pleasure of the board:

(a) A director, who shall be a person of good moral character and possessed of a reputation for integrity, responsibility, and business ability. No member of the board shall be eligible to hold the position of director. Before entering upon the duties of his office, the director shall take and subscribe to the oath of office and furnish a bond as required by the

board. He shall be the chief executive officer of the authority. Subject to the approval of the board and directed by it when necessary, he shall have general supervision over and be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by this part 8. He shall attend all meetings of the board and shall render to the board and to the governing body a regular report covering the activities and financial condition of the authority. In the absence or disability of the director, the board may designate a qualified person to perform the duties of the office as acting director. The director shall furnish the board with such information or reports governing the operation of the authority as the board may from time to time require.

(b) A treasurer, who shall keep the financial records of the authority and who, together with the director, shall approve all vouchers for the expenditure of funds of the authority. He shall perform such other duties as may be delegated to him by the board.

(c) A secretary, who shall maintain custody of the official seal and of all records, books, documents, or other papers not required to be maintained by the treasurer. He shall attend all meetings of the board and keep a record of all its proceedings. He shall perform such other duties as may be delegated to him by the board.

(d) Upon recommendation of the director, such clerical, technical, and professional assistants, including but not limited to persons in the fields of engineering, planning, and economic research, as shall, in the opinion of the board, be necessary to provide for the efficient performance of the functions of the board.

(2) Any provision of this section and section 31-25-807 to the contrary notwithstanding and subject to any limitations in the ordinance creating the authority or in any amendments thereto, the board may by resolution establish alternate administrative provisions relating to the administrative organization and structure of the authority and responsibilities of board members, officers, and employees.

Source: L. 76: Entire part added, p. 709, § 1, effective April 26.

31-25-816. Funding - budget. (1) The authority shall adopt a budget for each fiscal year, shall maintain accounts, and shall cause an annual audit to be made pertaining to the fiscal affairs of the authority. Administrative review of the proposed budget shall be in accordance with the policies of each municipality, prior to submission of the proposed budget to the governing body for approval.

(2) The operations of the authority shall be principally financed from the following sources and such other sources as may be approved by the governing body:

(a) Donations to the authority for the performance of its functions;

(b) Proceeds of an ad valorem tax, not exceeding five mills on the valuation for assessment of property in the downtown development area designated by the governing body;

(c) Moneys borrowed and to be repaid from other funds received under the authority of this part 8.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-817. Ad valorem tax. The governing body may impose and levy an ad valorem tax on all real and personal property in the downtown development district not exceeding five mills on the valuation for assessment of such property for the purposes set forth in section 31-25-807, nondebt funded expenditures allowed under section 31-25-808 (1) (a) and (1) (b), and budgeted operations of the authority. This levy shall be in addition to the regular ad valorem taxes and special assessments for improvements imposed by the governing body. The tax collector shall transmit funds so collected to the appropriate officer of the municipality responsible for the handling of the public money who shall deposit same in the municipal treasury to the credit of the authority. Such funds shall be used for no purpose other than those purposes authorized by this part 8 and upon approval of the board, pursuant to vouchers signed by the designated officer of the authority. The funds of the

authority shall be secured as other public funds are secured. Other moneys received by the authority shall forthwith be deposited in the municipal treasury to the credit of the authority, subject to disbursement as authorized by this part 8.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-818. Assessments. The governing body shall have the power to assess against the funds of the authority for the use and benefit of the general fund of the municipality a reasonable pro rata share of such funds for the cost of handling and auditing, which assessment when made shall be paid annually by the board pursuant to an appropriate item in its budget.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-819. Conflict of interest. No board member nor any employee of the board shall vote or otherwise participate in any matter in which he has a specific financial interest, defined as a matter in which the member or employee would receive a benefit or incur a cost substantially greater than other property owners within the district. When such interest appears, it is the duty of the board member or employee to make such interest known, and he shall thenceforth refrain from voting on or otherwise participating in the particular transaction involving such interest. Willful violation of the provisions of this section constitutes malfeasance on the part of a member of the board and is grounds for instant dismissal of any employee. The governing body may by ordinance provide for automatic forfeiture of office by a board member for violation of this section.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-820. Construction. All powers conferred upon municipalities by this part 8 are and shall be cumulative and in addition to those conferred by any other general or special law or municipal charter or ordinance and shall be liberally construed to effectuate the purposes of this part 8. This part 8 is an alternative method of accomplishing its purposes independent of and in addition to any other powers conferred upon municipalities electing to exercise the authority granted by this part 8.

Source: L. 76: Entire part added, p. 711, § 1, effective April 26.

31-25-821. Property subject to debt. Subject to section 31-25-807, all real and personal property located within the district shall continue to be subject to ad valorem taxes levied by the municipality to pay the principal and interest on all existing general obligation debts of the municipality and any future debts which may be authorized by law.

Source: L. 76: Entire part added, p. 711, § 1, effective April 26. **L. 77:** Entire section amended, p. 1478, § 12, effective June 19.

31-25-822. Inclusion of additional property. Subsequent to the organization of an authority, additional property may be included in the district. Proceedings for inclusion shall be initiated by petition to the board of the authority signed by the owner or owners in fee of each parcel of land adjacent to the existing district sought to be included. Any such petition shall include evidence satisfactory to the board concerning title to the property and an accurate legal description thereof. If the board approves said application, it shall then submit the same to the governing body of the municipality. If the governing body also approves said application, it shall then, at a regular or special meeting by amendment to the ordinance treating the authority, redescribe the district so as to include the additional property as described in the petition. From the effective date of said amendment such

additional property shall be included within the district and shall be subject to any taxes thereafter imposed by the municipality for the use and benefit of the authority.

Source: L. 77: Entire section added, p. 1478, § 13, effective June 19.

PART 9

ESTABLISHMENT OF PUBLIC AUTHORITIES BY MUNICIPALITIES - ENERGY RESOURCES

31-25-901. Legislative declaration. (1) The general assembly hereby declares that decreasing supplies of energy resources and the increasing cost thereof is causing severe financial burdens and constitutes a threat to the health and welfare of the citizens of this state and that it is in the public interest that the development of alternative sources of energy proceed expeditiously to avert energy shortages and threats to the public health and welfare.

(2) To encourage the use and development by municipalities of alternate energy resources in the form of unconventional gas supplies for the use of the inhabitants of the municipalities of this state and for all citizens as alternate fuels for use by municipal utilities and others, the powers of municipalities are hereby expanded to authorize the formation of authorities for the purpose of financing municipal operations for the exploration, development, and production of unconventional gas, the use thereof for the purposes of municipal utilities, and the marketing and sale thereof to others.

Source: L. 80: Entire part added, p. 658, § 1, effective July 1.

31-25-902. Duties of authority - development and financing of unconventional gas supplies. (1) An authority formed pursuant to this part 9, referred to in this part 9 as the "authority", shall be known as a municipal energy finance authority. Its duties shall include the financing of municipal operations for the exploration, development, and production of unconventional gas, as defined in this section, for the purposes specified in section 31-25-901.

(2) For the purposes of this part 9, "unconventional gases" means gases which are predominantly methane, not obtained from ordinary, porous sands; and which generally are said to be in tight sands and shales where permeability is low, in coal beds where pressure is low, and in geopressured sediments, or gas from all sources other than sandstone or limestone with permeability less than one millidarcy. "Unconventional gases" also includes gases which are predominantly methane obtained from or in connection with wastewater treatment operations.

Source: L. 80: Entire part added, p. 659, § 1, effective July 1.

31-25-903. Formation of authority by municipality. The governing board of any municipality, referred to in this part 9 as the "governing body", may create and establish a municipal energy finance authority by the passage of an ordinance therefor. The authority shall have all the powers provided in this part 9 that are authorized by the ordinance, or any amendment thereto, authorizing such authority. When established, the authority shall be a body corporate, and capable of being a party to suits, proceedings, and contracts, the same as municipalities in this state. Any such authority may be dissolved by ordinance of the governing body, if there are no outstanding bonds or other obligations of the authority or if adequate provision for the payment of such bonds or obligations has been provided.

Source: L. 80: Entire part added, p. 659, § 1, effective July 1.

31-25-904. Board - membership - term of office. (1) The affairs of the authority shall be under the direct supervision and control of a board, which is referred to in this part 9 as the "board", consisting of five members appointed by the governing body.

(2) The board shall be constituted as follows:

(a) At least one member shall be a member of the governing body, appointed to serve at the pleasure of the governing body.

(b) Two members shall be appointed for terms expiring June 30 of the year following the date of the ordinance adopted by the governing body establishing the authority.

(c) Two members shall be appointed for terms expiring June 30 of the second year following the date of the ordinance adopted by the governing body establishing the authority.

(3) A member shall hold office until his successor has been appointed and qualified. After the terms of the initial members of the board have expired, the terms of all members, except any member who is a member of the governing body, shall expire four years from the expiration date of the terms of their predecessors. Appointments to fill vacancies shall be for the unexpired term. In any municipality in which the charter provides that the appointive authority is the mayor, the mayor shall make appointments to the board.

Source: L. 80: Entire part added, p. 659, § 1, effective July 1.

31-25-905. Board membership - qualifications - nominations - rules - removal.

(1) Each appointed member of the board, except any member from the governing body, shall be a registered elector of the municipality. No officer or employee of the municipality where the authority is located, other than any appointee from the governing body, shall be eligible for appointment to the board. Within thirty days after the occurrence of a vacancy, the governing body, except as provided in section 31-25-904 (3), shall appoint a successor.

(2) Before assuming the duties of the office, each appointed member shall qualify by taking and subscribing to the oath of office required of officials of the municipality.

(3) The board shall adopt and promulgate rules governing its procedure, including election of officers, and said rules shall be filed in the office of the municipal clerk. The board shall hold regular meetings in the manner provided in the rules of the board. Special meetings may be held when called in the manner provided in the rules of the board. All meetings of the board shall be open to the public except those dealing with land acquisition or sales, personnel matters, or legal matters.

(4) After notice and an opportunity to be heard, an appointed member of the board may be removed for cause by the governing body.

Source: L. 80: Entire part added, p. 660, § 1, effective July 1. **L. 87:** (1) amended, p. 332, § 98, effective July 1.

31-25-906. Powers - duties of board. (1) Subject to the provisions of this part 9 and subject to other applicable provisions of law, the board shall have all powers customarily vested in the board of directors of a corporation. It shall appoint a director, who shall recommend the hiring of such staff as may be required. The board shall exercise supervisory control over the activities of the director and the staff of the authority in carrying out the functions authorized by this part 9.

(2) In addition to the powers granted by subsection (1) of this section, the board, acting on behalf of the authority, shall also have the power:

(a) To conduct investigations for the purposes of locating reserves of unconventional gas and the means and methods of exploring, developing, and producing such gas;

(b) To take over, by purchase, lease, or otherwise, any project undertaken by any government or by the municipality; except that such takeover shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use;

(c) To act as agent for the federal government in connection with the acquisition, construction, operation, or management of the project or any part thereof.

(3) To the extent authorized by the governing body, the board may provide, out of project funds, for the compensation and the reimbursement of actual and necessary expenses of the board of the authority.

Source: L. 80: Entire part added, p. 660, § 1, effective July 1.

31-25-907. Powers of authority to effect purposes specified. (1) To accomplish the purposes specified in sections 31-25-901 and 31-25-902, authorities are granted the following additional powers:

(a) To acquire, hold, use, transfer, and convey any real property or any interest therein, in fee or a leasehold interest, for purposes of initiating projects involving unconventional gas exploration, production, and development;

(b) To engage in any and all activities respecting the exploration, development, production, distribution, marketing, and sale of unconventional gas to any person or public or private entity or for municipal uses;

(c) To issue revenue bonds authorized by action of the governing body, without the approval of the qualified electors of the municipality, for purposes of financing the exploration, development, production, distribution, and marketing of unconventional gas.

Source: L. 80: Entire part added, p. 660, § 1, effective July 1.

31-25-908. Provisions relating to revenue bonds. (1) Revenue bonds issued by the authority shall be issued in the manner provided in part 4 of article 35 of this title for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the authority, in its discretion, shall determine.

(2) Revenue bonds issued by the authority and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers.

(3) Revenue bonds and the income issued by the authority therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(4) Revenue bonds issued by the authority shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized.

Source: L. 80: Entire part added, p. 661, § 1, effective July 1.

31-25-909. Contracts with federal government. (1) In addition to the powers conferred upon the authority by section 31-25-907, the authority, with regard to its relations with the federal government, is empowered:

(a) To borrow money from the federal government to finance any project and to borrow from private sources when such borrowing is guaranteed by the federal government;

(b) To take over any land offered by the federal government for the construction of a project; and

(c) To take over, lease, or manage any project so constructed or owned by the federal government and, to that end, to enter into any such contracts, leases, or other agreements as the federal government may require in such connection; except that such takeover shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use.

(2) Such contract, lease, or other agreements may provide that the federal government has the right to supervise and approve the construction, maintenance, and operation of such project.

(3) It is the purpose and intent of this section to authorize such authority to accept the cooperation of the federal government in the construction, maintenance, and operation and in the financing of the construction of any project which the authority is empowered to undertake. Such authority has the full power to do all things necessary in order to secure such aid, assistance, and cooperation.

Source: L. 80: Entire part added, p. 661, § 1, effective July 1.

31-25-910. Colorado energy research institute - report. (Repealed)

Source: L. 80: Entire part added, p. 662, § 1, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1985. (See L. 80, p. 662.)

PART 10**FUNDING DEFICIENCIES****31-25-1001 to 31-25-1004. (Repealed)**

Source: L. 86: Entire part repealed, p. 1062, § 39, effective July 1.

Editor's note: This part 10 was added in 1981 and was not amended prior to its repeal in 1986. For the text of this part 10 prior to 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 11**FORECLOSURE PROCEEDINGS**

Editor's note: Prior to the enactment of this part 11 in 1981, the substantive provisions of this part were contained in part 5 of article 1 of title 32.

Cross references: For the authority of a county to sell property for nonpayment and purchase property on default, see § 30-20-617; for sale of tax liens, see article 11 of title 39.

31-25-1101. Legislative declaration. This part 11 is intended to provide a summary method for the collection of delinquent assessments and shall be liberally construed in favor of the taxing authority and the grantee in any deed issued pursuant to its provisions. No collateral attack whatsoever shall be permitted by any court or tribunal upon the title thus acquired, whether said title is acquired by the taxing authority itself or by any other purchaser. All taxing authorities within the state of Colorado authorized to levy any special tax or assessment are hereby specifically authorized to take advantage of the provisions of this part 11 and to take, hold, and convey title to the property sold. Conveyances shall be authorized by order of the governing body of the taxing authority, without any other further formality or proceeding.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1.

31-25-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Costs" means all costs associated with the foreclosure of any lien for special assessments levied upon any property. "Costs" includes, but is not limited to, publication costs; costs of sale; service of process fees; title insurance costs including costs for foreclosure certificates or litigation guarantee certificates; if such special assessment had been certified to the county treasurer, a fee for the county treasurer equal to the amount specified in section 30-1-102 (1) (c), C.R.S.; and any general taxes due or past due on such property, all interest and penalties thereon, and any fees and costs associated therewith.

(1.5) "Property" means any property which is, by the laws of the state of Colorado or the charter of any municipal corporation organized under the constitution of the state of Colorado, subject to the levy of assessments for local improvements within any city, town, or other taxing district in the state of Colorado.

(2) "Taxing authority" means the Colorado new energy improvement district created in section 32-20-104 (1), C.R.S., and any municipal corporation or taxing district organized under the constitution and laws of the state of Colorado with power to make local

improvements therein and pay for the same by means of special assessments based upon benefits accruing to property within the municipality or taxing district by reason of such local improvement.

Source: **L. 81:** Entire part added, p. 1618, § 21, effective July 1. **L. 83:** (1) and (2) amended, p. 1249, § 2, effective March 17. **L. 90:** (1) R&RE, p. 1475, § 13, effective July 1; (1.5) added, p. 1475, § 14, effective October 1. **L. 2010:** (2) amended, (HB 10-1328), ch. 426, p. 2223, § 4, effective June 11.

31-25-1103. Property in default. Whenever any property in this state is in default in the payment of any special assessment levied to pay the cost of any local improvement or any installment thereof or any interest thereon, the taxing authority which has levied said assessment may in its discretion foreclose the lien thereof by an administrative proceeding in the manner provided in this part 11.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1.

31-25-1104. Action in rem - lien against property. (1) In any case of default as provided in section 31-25-1103, the taxing authority may institute a proceeding in the nature of an action in rem, in the district court of the county in which the property is situate, denominated "in the matter of the foreclosure of special assessments for (here insert the nature of the assessment)". In such proceeding, it shall not be necessary to name any property owner or other person.

(2) The petition, when verified by any officer of the taxing authority, shall be deemed sufficient if it includes the following: The nature of the assessment, a list of the property in default, the amount of the delinquent assessment including accrued interest and penalties for nonpayment against each particular lot or tract, and a request that a date of hearing be fixed not less than twenty nor more than forty days after the filing of the complaint and that, unless good cause be shown to the contrary, the court will then enter an order fixing the amount of the delinquency and costs and authorizing the sale of the property for the payment of the amount so fixed.

(3) In such proceeding, the taxing authority may act against all or any part of the property so in default and may elect to proceed with respect to any installment or installments in default or with respect to the entire assessment if the same is in default. The sale for any installment shall not extinguish the lien of any installment subsequently becoming due.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1.

31-25-1105. Form of notice of hearing to authorize sale. In any proceeding authorized by section 31-25-1104, upon filing of the petition, the clerk of the district court in which such petition is filed shall issue under the seal of the court a notice which shall be in substantially the following form:

“STATE OF COLORADO)
) ss.
County of)
In the Matter of the Foreclosure of Special Assessments) IN THE
for (here insert the nature of the assessment)) DISTRICT COURT.
) NOTICE
)

To all Persons having any Interest
in the premises hereinafter described:

Take notice that (here insert name of taxing authority) has instituted a proceeding in this court for the purpose of foreclosing the lien of certain special assessments for (here insert

nature of assessment) upon the following properties, situate, lying, and being in the County of, State of Colorado, the amount of the assessment for each separate parcel being set opposite the description of the various lots or tracts, to wit:

Description of Property: (insert description) Amount Due: (insert amount)

You will further take notice that on the day of, A.D., 20....., at the hour of o'clock M., at the Court House in the County of, Colorado, any person having any right, title, interest, claim, or demand in or to any of the above described property or any part thereof may appear and show cause, if any, why the court should not enter an order fixing the amount of the delinquency against each such piece of property in default, together with costs, and authorizing the sale of said property for such delinquency.

WITNESS the signature of the clerk of said court with the seal thereof hereunto affixed at his office in the County of, State of Colorado, this day of, A.D., 20....

.....
Clerk.

By
Deputy Clerk.”

Source: L. 81: Entire part added, p. 1619, § 21, effective July 1.

31-25-1106. Publication of notice - copy mailed. The notice required by section 31-25-1105 shall be published twice in a newspaper of general circulation in the county in which the proceeding is instituted. The fact of such publication shall be conclusively established by the publisher’s affidavit of publication. The first publication of such notice shall be more than ten days and the last publication within five days before the date set for the hearing. In addition to such published notice, the clerk of the court shall mail a copy of such notice to each record owner of the property described in such notice and to every mortgagee, lien claimant, or other person having any right, title, or interest in or to said property as disclosed by the records on file in the office of the county clerk and recorder of the particular county. Copies of such notice shall be sent to such owners and persons at their last known addresses. If addresses of such owners and persons are unknown to the clerk, notices shall be directed to the post office nearest to the property described in said notice. Also, the clerk of the district court shall cause a copy of the notice to be served on some person occupying the property described in such notice, if there are any. The mailing and serving of notices shall be completed at least ten days before the date of the hearing specified in the notice. Affidavit thereof shall be filed in the clerk’s office, which affidavit shall be prima facie evidence of the fact of such mailing and service.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1107. Objections. Any interested person may file written objections to the foreclosure of such assessment lien, setting forth the grounds relied upon to prevent the sale of any specific property subject to the lien of such assessment.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1108. Procedure in court. At the time specified in the notice, the court shall proceed to hear and determine all issues raised. If there are no objections, the petitioner

shall only be required to establish that the assessment has been made, certified, and extended and that the payment of the same, or any portion thereof, is in default.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1109. Court to direct sale of property. With respect to property concerning which there is no appearance or concerning which all objections presented are overruled, the court shall forthwith enter a final order fixing the amount of the delinquency and costs and directing the treasurer of the taxing authority to sell such property at a date not more than ten days after the entry of such order for the purpose of satisfying the same. No proceeding to review any order of the district court entered under the provisions of this part 11 for the sale of any property shall be commenced after thirty days from the entry of the order sought to be reviewed. No proceeding to review such order shall be permitted to interrupt or delay the sale of any property with respect to which no such proceeding has been commenced. The provisions of this section shall not apply to any person in interest who has not been given actual notice. No sale shall be stayed unless the applicant for review files a bond in the supreme court in a penal sum not less than the amount of the delinquent assessment, with the condition that the amount of said tax, together with costs, shall be summarily forfeited to the taxing authority if the ruling of the trial court is sustained, in which event payment under the bond shall constitute a payment of the delinquent tax. If order of sale is denied by the district court, the taxing authorities shall have the right to a review of the proceedings in the supreme court and shall not be required to file a bond therefor.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1110. Notice of sale. Notice of sale shall be given by one publication in a newspaper of general circulation in such county, which notice shall be in substantially the following form:

“Notice of Sale of Property for Delinquent Special
Assessments (here insert nature of assessment).

The undersigned, Treasurer of the of, in the State of Colorado, pursuant to an order of the District Court of the Judicial District of the State of Colorado, within and for the County of, authorizing the sale of property for the nonpayment of special assessments levied for (here insert nature of assessment) in the amounts set opposite the description of the various lots and tracts, will on the day of, A.D., 20....., at the hour of M., sell at public auction at his office in County, Colorado, the following described property, to wit: (here insert description of property and amount of assessment)

Description	Amount

	Treasurer of
	County, Colorado.

Dated, 20.....”

Source: L. 81: Entire part added, p. 1621, § 21, effective July 1.

31-25-1111. Liens may be paid prior to sale. At any time prior to the day of sale, any person having any right, title, or interest in or lien upon any delinquent property may pay the amount of all unpaid past-due installments with interest at the rate of one percent per month, or fraction of a month, on the amount delinquent, together with all penalties and costs, whereupon the owner of such property shall be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered.

Source: L. 81: Entire part added, p. 1621, § 21, effective July 1.

31-25-1112. Sale - certificate of purchase - filing. (1) At the time and place fixed in such notice, the treasurer of the taxing authority shall proceed to sell the property described in the notice and shall sell the same to the person who pays the amount fixed by the court and who further offers to accept the lowest rate of interest upon the amount so paid, which rate shall not exceed one percent per month. The treasurer may adjourn any such sale or cause the same to be adjourned from time to time by announcement at the time and place appointed for such sale. Without further notice or publication, such sale may be made at the time and place to which the same is so adjourned.

(2) Upon the completion of any sale, the treasurer of the taxing authority shall execute and deliver to the purchaser a certificate of purchase in substantially the following form:

“Certificate of Purchase.

THIS IS TO CERTIFY that on the day of, A.D., 20....., the following described property, to wit:

(Description of Property)

was sold to for the nonpayment of a special assessment for (nature of assessment) in the sum of \$ If such property is not redeemed within three years from the above date, a deed to said property will issue to said, or his heirs, executors, administrators, or assigns.

If redemption is made, the holder hereof shall be entitled to interest on said amount at the rate of one percent per month from the date of said sale to the date of redemption.

IN WITNESS WHEREOF, I have hereunto set my hand at, Colorado, this day of, A.D., 20.... .

.....
Treasurer of”

(3) Certificates of purchase shall be filed in the office of the county clerk and recorder of the county where the property is situated.

Source: L. 81: Entire part added, p. 1621, § 21, effective July 1. **L. 91:** (3) amended, p. 709, § 7, effective July 1.

31-25-1113. Bonds applied to purchase price. At any such sale, the purchaser, for the purpose of making settlement or payments for property purchased, shall be entitled to turn in or apply toward the payment of the purchase price any of the bonds or other securities which are made payable out of the proceeds of the assessments for the collection of which such sale is made, together with any matured and unpaid coupons, and shall be entitled to be credited therefor to the extent of the par value of such bonds and coupons. Such bonds and coupons so applied in payment by the purchaser shall be deemed to be paid to the extent of the amount so turned in.

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1.

31-25-1114. Treasurer may reject bids. If at any such sale a sufficient bid is not made, the treasurer shall strike off the property to the taxing authority at the conclusion of the sale, issuing a single certificate of purchase therefor, describing therein all the property so stricken off.

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1.

31-25-1115. Property redeemable within three years - certificate. Any person having any right, title, or interest in or lien upon any property sold has the right to redeem the

property within three years after any such sale by paying the amount of the delinquent assessment with interest thereon at the rate of one percent per month or fraction thereof. Upon such redemption the treasurer shall issue a certificate therefor and shall call in and cancel the certificate of purchase theretofore issued. Certificates of redemption shall be filed in the office of the county clerk and recorder of the county where the property is situated.

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1. **L. 91:** Entire section amended, p. 710, § 8, effective July 1.

31-25-1116. Treasurer may issue deed - form. Upon the expiration of the period of redemption, the treasurer shall issue deeds to purchasers or to the taxing authority. Any one deed may convey one or more parcels of land, whether the same are contiguous or not. The deed shall be in form substantially as follows:

“KNOW ALL MEN BY THESE PRESENTS: That I,, Treasurer of in and for the County of, State of Colorado, did on the day of, A.D., 20...., sell at public auction unto, the following described property in the County of, State of Colorado, to wit:

(Description of Property)

WHEREFORE, in full conformity with law, I do bargain, sell, convey, and quitclaim unto said, the aforesaid property.

TO HAVE AND TO HOLD the same unto the said, his heirs and assigns forever.

IN WITNESS WHEREOF, I have subscribed these presents this day of, 20.... .

.....
Treasurer of”

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1.

31-25-1117. Effect of deed. All such deeds shall be duly acknowledged and when recorded shall be prima facie evidence in favor of the grantee named therein and of any person claiming by, through, or under him of the regularity of the assessment and the court proceedings, sale, and title of the grantee and after recording shall be prima facie evidence of the ownership by the grantee named therein of the property therein described, free and clear of all liens and encumbrances whatsoever, except the lien of general taxes or special assessments outstanding and unpaid at the time of issuing such deed and except the lien of any special assessment installment subsequently becoming due.

Source: L. 81: Entire part added, p. 1623, § 21, effective July 1.

31-25-1118. Procedure not mandatory. The proceeding authorized by this part 11 shall not be obligatory upon any taxing authority. Such taxing authority, at its election, may pursue any other remedy provided by law for the collection of delinquent assessments.

Source: L. 81: Entire part added, p. 1623, § 21, effective July 1.

31-25-1119. Fifteen-year limitation. No action shall be commenced to foreclose the lien created by any bonds or warrants issued pursuant to the making of any public improvement, including the establishment, widening, grading, paving, or other improvement of any alley, street, or road, special districts for internal improvement, local improvements by cities or towns, streets, sewers, district sanitary sewers, storm sewers, or subdistricts thereof, municipal special assessment, conservancy districts, or any other such

improvement for which taxing authority is authorized by law to make assessments and collect taxes for the purpose of retiring said bonds or warrants, unless the action is commenced within fifteen years from the date of maturity of the last issue of said bonds.

Source: L. 81: Entire part added, p. 1623, § 21, effective July 1.

PART 12

BUSINESS IMPROVEMENT DISTRICTS

Law reviews: For article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (January 2001).

31-25-1201. Short title. This part 12 shall be known and may be cited as the "Business Improvement District Act".

Source: L. 88: Entire part added, p. 1128, § 1, effective May 6.

31-25-1202. Legislative declaration. (1) The general assembly declares that the organization of business improvement districts within municipalities of the state, having the purposes and powers provided in this part 12, will serve a public purpose; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof, the property owners therein, and all the people of the state; will promote the continued vitality of commercial business areas within municipalities; and will be of special benefit to the property within the boundaries of any district created pursuant to this part 12.

(2) The general assembly further declares that the creation of business improvement districts pursuant to this part 12 implements section 18 (1) (d) of article XIV of the state constitution and is essential to the continued economic growth of the state.

Source: L. 88: Entire part added, p. 1128, § 1, effective May 6.

31-25-1203. Definitions. As used in this part 12, unless the context otherwise requires:

- (1) "Board" means the board of directors of a business improvement district.
- (2) "Commercial property" means any taxable real or personal property which is not classified for property tax purposes as either residential or agricultural.
- (3) "District" means a business improvement district formed by a municipality pursuant to this part 12.
- (4) (a) "Elector" means a natural person who is a citizen of the United States and a resident of the State of Colorado, who is eighteen years of age or older, and who:
 - (I) Makes his primary dwelling place in the district; or
 - (II) Owns taxable real or personal property within the boundaries of the district; or
 - (III) Is the holder of a leasehold interest in taxable real or personal property within the boundaries of the district; or
 - (IV) Is the natural person designated by an owner or lessee of taxable real or personal property in the district which is not a natural person to vote for such owner or lessee. Such designation must be in writing and filed with the secretary of the district. Only one such person may be designated by an owner or lessee.
- (b) Nothing in this subsection (4) shall permit an elector to cast more than one vote.
- (5) "Improvements" means public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, streetlights, drainage facilities, landscaping, decorative structures, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, rest rooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements. "Improvements" also includes the relocation and improvement of existing utility lines.

(6) "Net effective interest rate" means the net interest cost of securities divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, "net effective interest rate" shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(7) "Net interest cost" means the total amount of interest to accrue on securities from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said bonds are being or have been sold. In all cases, "net interest cost" shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(8) "Operating plan" means the operating plan approved by the municipality pursuant to section 31-25-1211.

(9) "Publication" has the same meaning as that set forth in section 32-1-103 (15), C.R.S.

(10) "Service area" means the area within the municipality which is described in the ordinance creating a district pursuant to this part 12, no less than fifty percent of which area shall have been developed and used as commercial property prior to the adoption of such ordinance and, at the time of the adoption of such ordinance, shall be used primarily as commercial property. Notwithstanding any provision in this subsection (10) to the contrary, the service area may include a location designated by the municipality, after public notice and hearing, as a location for new business or commercial development. Property which is not commercial property and which is within the "service area" of a district shall not be subject to the revenue-raising powers of the district until it becomes commercial property and is included within the district's boundaries, as provided in section 31-25-1208.

(11) "Services" means the services described in section 31-25-1212 (1) (f).

Source: **L. 88:** Entire part added, p. 1128, § 1, effective May 6. **L. 91:** (10) amended, p. 758, § 1, effective May 20.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 1 of the act amending subsection (10) does not apply to any business improvement district formed prior to May 20, 1991, pursuant to part 12 of article 25 of title 31, unless the board of directors of such district adopts a resolution directing that said section 1 applies to such district.

31-25-1204. Authority of governing body. The governing body of every municipality is hereby vested with jurisdiction to create and establish one or more districts within the boundaries of the municipality pursuant to the provisions of this part 12, and such districts shall have all the powers provided in this part 12 which are authorized by the ordinance creating the district, or any amendment to the ordinance, adopted by the governing body. When the approval of the municipality is required by this part 12, such approval shall be given by the governing body or such other board or official of the municipality as may be designated by the charter or ordinances of the municipality unless the approval of the municipality is expressly required by this part 12.

Source: **L. 88:** Entire part added, p. 1130, § 1, effective May 6.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-1205. Organizational procedure. (1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the governing body.

(2) The petition shall be signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the

valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district. The petition shall set forth:

- (a) The name of the proposed district, which shall include a descriptive name and the words "business improvement district";
 - (b) A general description of the boundaries and service area of the proposed district;
 - (c) A general description of the types of services or improvements or both to be provided by the proposed district;
 - (d) The names of three persons to represent the petitioners, who have the power to enter into agreements relating to the organization of the district; and
 - (e) A request for the organization of the district.
- (3) The petition shall be accompanied by a bond with security approved by the governing body or a cash deposit sufficient to cover all expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the organization proceedings the governing body determines that the bond first executed or the amount of the cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days thereafter, and, upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 88: Entire part added, p. 1130, § 1, effective May 6.

ANNOTATION

Validity of petitions not dependent upon existence of operating plan and budget so subsequent amendment of operating plan and

budget circulated with petitions had no effect. *Jensen v. City and County of Denver*, 806 P.2d 381 (Colo. 1991).

31-25-1206. Notice of hearing. The governing body, as soon as possible after the filing of the petition, shall fix by order the place and time, not less than twenty days nor more than forty days thereafter, for a hearing thereon. Thereupon, the clerk of the governing body shall cause notice by publication to be made of the pendency of the petition, of the service area, boundaries, improvements, and services of the proposed district, and of the time and place of hearing thereon. The clerk shall also cause a copy of said notice to be mailed by first-class mail to each property owner within the service area and boundaries of the proposed district at his last-known address, as disclosed by the tax records of the county or counties in which the municipality is located. No member of the governing body shall be disqualified to perform any duty imposed by this part 12 by reason of direct or indirect ownership of property within the service area or boundaries of any proposed district, by reason of relationship to any person who owns property within the proposed district or service area, or by reason of ownership of or employment by any entity which owns property within the proposed district or service area.

Source: L. 88: Entire part added, p. 1131, § 1, effective May 6. **L. 91:** Entire section amended, p. 758, § 2, effective May 20.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 2 of the act amending this section does not apply to the organization of any proposed district for which a petition for organization is filed prior to May 20, 1991, pursuant to § 31-25-1205.

31-25-1207. Hearing - findings - when action barred. (1) On the date fixed for such hearing or at any adjournment thereof, the governing body shall ascertain, from the tax rolls of the county or counties in which the district is located, the total valuation for assessment of the taxable real and personal property in the service area and the classification of taxable property. If it appears that said petition is not signed in conformity with this part 12, the governing body shall dismiss the petition and adjudge the cost against those executing the

bond or depositing the cash filed to pay such costs. Nothing in this section shall prevent the filing of a subsequent petition for a similar district.

(2) The findings of the governing body upon the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive.

(3) (Deleted by amendment, L. 91, p. 759, § 3, effective May 20, 1991.)

(4) Prior to the organization of the district, the governing body may exclude property from the service area or boundaries of the district if it deems such exclusion to be in the best interests of the district or required by section 31-25-1208.

(5) If it appears that an organization petition has been duly signed and presented in conformity with this part 12, that the allegations of the organization petition are true, and that the types of services or improvements to be provided by the proposed district are those services or improvements which best satisfy the purposes set forth in this part 12, the governing body, upon the completion of the hearing, shall, by ordinance, adjudicate all questions of jurisdiction and may, in its sole discretion, declare the district organized, describe the boundaries and service area of the district, and give it the corporate name specified in the petition by which, in all subsequent proceedings, it shall thereafter be known. The district shall be a quasi-municipal corporation and political subdivision of the state with all powers and responsibilities thereof.

(6) Such ordinance shall finally and conclusively establish the regular organization of the district against all persons unless an action, including an action for certiorari review, attacking the validity of the district is commenced in a court of competent jurisdiction within sixty days after the effective date of such ordinance. Thereafter, any such action shall be perpetually barred. The organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding, except as provided in this subsection (6).

Source: L. 88: Entire part added, p. 1131, § 1, effective May 6. L. 91: Entire section amended, p. 759, § 3, effective May 20.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 3 of the act amending this section does not apply to the organization of any proposed district for which a petition for organization is filed prior to May 20, 1991, pursuant to § 31-25-1205.

ANNOTATION

City council complied with procedures set forth in this section once percentage of representation based upon petition signatures was adjusted to reflect current property owners

within proposed business improvement district. Jensen v. City and County of Denver, 806 P.2d 381 (Colo. 1991).

31-25-1208. Boundaries - exclusion proviso. (1) The boundaries of a district may consist of contiguous or noncontiguous tracts or parcels of commercial property. No property shall be included within the boundaries of the district which is not commercial property. No district may be organized wholly or partly within an existing district.

(2) Notwithstanding any provision of this part 12 to the contrary, no tract of land which is classified for property tax purposes as residential or agricultural shall be included in the boundaries of any district organized pursuant to this part 12. No personal property which is situated upon real estate not included in the boundaries of a district shall be included within such district. If, contrary to the provisions of this section, any such tract, parcel, or personal property is included in the boundaries of any district, the owners thereof, on petition to the governing body, shall be entitled to have such property excluded from such district free and clear of any contract, obligation, lien, or charge to which it may be liable as a part of such district.

(3) If the property tax classification of any tract of land lying within the service area of any district organized under the provisions of this part 12 has been or is changed from residential or agricultural to any other classification, such lands and the personal property

thereon shall no longer be excluded from the boundaries of said district and shall be subject to all obligations, liens, or charges of such district on and after January 1 of the year following such change.

Source: L. 88: Entire part added, p. 1132, § 1, effective May 6.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-1209. Board of directors - duties. (1) (a) Except as otherwise provided in this subsection (1), the governing body of the municipality which creates the district shall constitute ex officio the board of directors of the district. In such event, the presiding officer of the governing body shall be ex officio the presiding officer of the board, the clerk of the governing body shall be ex officio the secretary of the board, and the treasurer of the municipality shall be ex officio the treasurer of the board. A quorum of the governing body shall constitute a quorum of the board.

(b) The governing body of the municipality may, at any time, provide by ordinance for the creation of a board of directors of the district consisting of not fewer than five members. Each member shall be an elector of the district appointed by the governing body or, if designated by the governing body, by the mayor of the municipality; except that, if possible, no more than one-half of the members of the board may be affiliated with one owner or lessee of taxable real or personal property in the district. Each member shall serve at the pleasure of the municipality. Within thirty days after a vacancy occurs, a successor shall be appointed in the same manner as the original appointment. Within thirty days after his appointment, except for good cause shown, each member shall appear before an officer authorized to administer oaths and take an oath that he will faithfully perform the duties of his office as required by law and will support the constitution of the United States, the state constitution, and laws made pursuant thereto. A majority of the members shall constitute a quorum of the board. The board shall elect one of its members as presiding officer, one of its members as secretary, and one of its members as treasurer. The office of both secretary and treasurer may be filled by one person.

(c) If more than one-half of the property located within the district is also located within an urban renewal area, a downtown development authority, or a general improvement district, the governing body of the municipality may, at any time, provide by ordinance that the governing body of the urban renewal authority, downtown development authority, or general improvement district created by the municipality shall constitute ex officio the board of directors of the district. In such event, the officers of such entity shall be ex officio the officers of the board. A quorum of the board of directors of such entity shall constitute a quorum of the board.

(d) If the petition initiating the organization of the district or any subsequent petition signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district so specifies, the members of the board of the district shall be elected by the electors of the district. If such a petition is approved, the terms of members of the board shall be specified by ordinance of the governing body and shall be the same as the terms of directors of special districts pursuant to article 1 of title 32, C.R.S. The initial election for members of the board shall be held within sixty days after approval of the ordinance organizing the district or the filing of any subsequent petition. All subsequent elections for members of the board shall be on the regular election date specified in article 1 of title 32, C.R.S., for special districts. The number of directors, the quorum requirements, and the oaths of office shall be the same as those provided for directors of

special districts pursuant to article 1 of title 32, C.R.S. Any vacancy on the board shall be filled in the same manner as provided in paragraph (b) of this subsection (1). Until the members of the board are elected and qualified, the governing body shall serve as the board of the district. Elections pursuant to this paragraph (d) shall be held in accordance with the provisions of part 8 of article 1 of title 32, C.R.S. The cost of any election held pursuant to this paragraph (d) shall be borne by the district.

(e) The governing body of the municipality may remove a member of the board of a district or the entire board thereof for inefficiency or neglect of duty or misconduct in office, but only after the member or the board has been given a copy of the charges made by the governing body against such member or such board and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of any member of the board or of the board pursuant to this paragraph (e), the governing body shall file in the office of the clerk thereof a record of the proceedings, together with the charges made against the member or the board and the findings thereon.

(f) Ten percent of the electors of a district may petition the governing body of the municipality for the removal of a member of the board of the district or of the entire board thereof for inefficiency or neglect of duty or misconduct in office, and the governing body may remove the member or the board, but only after the member or the board has been given a copy of the charges made against such member or such board and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of the member or of the board pursuant to this paragraph (f), the governing body shall file in the office of the clerk thereof a record of the proceedings, together with the charges made against the member or the board and the findings thereon.

(2) The board shall adopt a seal. The secretary shall keep in a visual text format that may be transmitted electronically a record of all proceedings, minutes of meetings, certificates, contracts, and corporate acts of the board, which shall be open to inspection by the electors of the district and other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the district and shall make such annual or other reports to the municipality as it may require. All budgets and financial records of the district, whether governed by a separate board or by the governing body of the municipality, shall be kept in compliance with parts 1 and 5 of article 1 of title 29, C.R.S.

(3) Each member of the board of a district or the governing body of the municipality or other entity acting ex officio as the board of a district is required to disclose any potential conflicting interest in any transaction of the district pursuant to section 18-8-308, C.R.S. A board member with a potential conflicting interest in a district transaction may not participate in the considerations of and vote on the transaction, may not attempt to influence any of the contracting parties, and may not act directly or indirectly for the board in the inspection, operation, administration, or performance of any contract related to the transaction. Ownership, in and of itself, by a board member of property within the district shall not be considered a potential conflicting interest.

(4) When the governing body of the municipality establishes a board of directors pursuant to paragraph (b), (c), or (d) of subsection (1) of this section, it may set such conditions, limitations, procedures, duties, and powers under which the board shall conduct its business. Such conditions and limitations may be in the form of a binding contract on both the governing body of the municipality and the board and may include provisions requiring the dissolution of the board after a specified length of time, at which time the governing body of the municipality shall assume all powers and duties of the district, including the payment of any outstanding indebtedness.

Source: **L. 88:** Entire part added, p. 1132, § 1, effective May 6. **L. 91:** (1)(b) amended, p. 760, § 4, effective May 20. **L. 2009:** (2) amended, (HB 09-1118), ch. 130, p. 562, § 8, effective August 5.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 4 of the act amending subsection (1)(b) does not apply to any business improvement district formed prior to May 20, 1991, pursuant to part 12 of article 25 of title 31, unless the board of directors of such district adopts a resolution directing that said section 4 applies to such district.

31-25-1210. Meetings. Upon notice to each member of the board, the board shall hold meetings, which shall be held in a place to be designated by the board as often as the needs of the district require. The meetings of the board shall be subject to the provisions of part 4 of article 6 of title 24, C.R.S. The board shall act by resolution or motion.

Source: L. 88: Entire part added, p. 1134, § 1, effective May 6. **L. 91:** Entire section amended, p. 821, § 7, effective June 1.

31-25-1211. Approval of actions by municipality. No district created under the provisions of this part 12 shall issue bonds, levy taxes, fees, or assessments or provide improvements or services unless the municipality has approved an operating plan and budget for the district. The operating plan or budget shall specifically identify the services or improvements to be provided by the district, the taxes, fees, or assessments to be imposed by the district, the estimated principal amount of bonds to be issued by the district, and such additional information as the municipality may require. The district shall file an operating plan and its proposed budget for the next fiscal year with the clerk of the municipality no later than September 30 of each year. All of the business records of the district shall be considered public records, as defined in section 24-72-202 (6), C.R.S., and shall promptly be made available to the municipality upon request. For the purposes of this section, the business records of the district shall not include the business records of the owners of property in the district. The municipality may require the district to supplement the district's operating plan or budget where necessary. The municipality shall approve or disapprove the operating plan and budget within thirty days after receipt of such operating plan and budget and all requested documentation relating thereto, but not later than December 5 of the year in which such documents are filed. Thereafter, the services, improvements, and financial arrangements of the district shall conform so far as practicable to the operating plan and the budget. The operating plan and the budget may, from time to time, be amended by the district with the approval of the municipality in substantially the same manner as the process for formulating the operating plan and budget for each year. Any material departure from the operating plan and the budget, as originally approved or amended from time to time, may be enjoined by an order of the municipality filed with the board.

Source: L. 88: Entire part added, p. 1135, § 1, effective May 6. **L. 91:** Entire section amended, p. 760, § 5, effective May 20.

31-25-1212. General powers of district. (1) The district has the following powers, except as limited by the operating plan:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued and be a party to suits, actions, and proceedings;
- (d) To enter into contracts and agreements, except as otherwise provided in this part 12, affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities;
- (e) To borrow money and incur indebtedness for the purposes of the district and evidence the same by certificates, warrants, notes, and debentures and to issue negotiable bonds in accordance with the provisions of this part 12;
- (f) To provide any of the following services within the district:
 - (I) Consulting with respect to planning or managing development activities;
 - (II) Maintenance of improvements, by contract, if it is determined to be the most cost-efficient;
 - (III) Promotion or marketing of district activity;
 - (IV) Organization, promotion, marketing, and management of public events;
 - (V) Activities in support of business recruitment, management, and development;
 - (VI) Security for businesses and public areas located within the district;
 - (VII) Snow removal or refuse collection, by contract, if it is determined to be the most cost-efficient;

(VIII) Providing design assistance;

(g) To acquire, construct, finance, install, and operate the improvements contemplated by this part 12 and all property, rights, or interests incidental or appurtenant thereto and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith;

(h) To refund any bonds of the district pursuant to article 56 of title 11, C.R.S.;

(i) To have the management, control, and supervision of all the business and affairs of the district and of the acquisition, construction, financing, installation, and operation of district improvements and the financing and operation of district services therein;

(j) To construct and install improvements across or along any public street, alley, or highway and to construct works across any stream of water or watercourse. The district shall promptly restore any such street or highway to its former state of usefulness as nearly as possible and shall not use the same in such manner as completely or unnecessarily to impair the usefulness thereof. The use and occupation of streets, alleys, and highways and the construction or installation of improvements by any district shall be in accordance with the provisions of all applicable municipal ordinances and state law and with such reasonable rules and regulations as may be prescribed by either the municipality affected or the department of transportation. Plans and specifications of proposed improvements shall be approved by the municipality before construction or installation of improvements is commenced. Plans and specifications of proposed district improvements across or along any street or highway which is part of the state highway system for which the department of transportation has jurisdiction shall be approved in writing by the department of transportation before such improvements may be constructed or installed. Such approval by the department of transportation, if granted, shall not relieve the district of any responsibility for such improvements.

(k) To fix, and from time to time increase or decrease, rates, tolls, or charges for any services or improvements furnished by the district. The board may pledge such revenue for the payment of any bonds of the district. Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the commercial property served within the boundaries of the district, and any such lien on personal property or any such lien on real property may be foreclosed in the same manner as provided in article 20 of title 38, C.R.S., or article 22 of title 38, C.R.S., respectively. The board may shut off or discontinue service for delinquencies in the payment of such rates, tolls, or charges or for delinquencies in the payment of taxes levied pursuant to this part 12 and shall prescribe and enforce rules and regulations for connecting with and disconnecting from such services and facilities.

(l) To appoint an advisory board of owners of property within the boundaries of the district and provide for the duties and functions thereof;

(m) To hire employees or retain agents, engineers, consultants, attorneys, and accountants;

(n) To adopt and amend bylaws not in conflict with the constitution and laws of the state or with the ordinances of the municipality affected for carrying on the business, objects, and affairs of the board and of the district; and

(o) To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 12. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 12.

Source: L. 88: Entire part added, p. 1135, § 1, effective May 6. L. 91: (1)(k) amended, p. 761, § 6, effective May 20; (1)(j) amended, p. 1070, § 43, effective July 1.

31-25-1212.5. Improvements - railroad quiet zones. A district has the power to construct, maintain, and operate safety measures that are necessary to allow the municipality to restrict the sounding of locomotive horns at highway-rail grade crossings in compliance with 49 U.S.C. sec. 20153, as amended, and the applicable rules of the federal railroad administration. The district shall construct, maintain, and operate the safety

measures in accordance with the provisions of section 40-4-106, C.R.S., and the standards of safety prescribed by the public utilities commission pursuant to section 40-29-110, C.R.S.

Source: L. 2006: Entire section added, p. 348, § 4, effective August 7.

31-25-1213. Power to levy taxes. In addition to any other means of providing revenue for a district, the board has the power to levy and collect ad valorem taxes on and against all taxable commercial property, as defined in section 31-25-1203 (2), within the boundaries of the district. Such taxes shall be specified in the petition organizing the district pursuant to section 31-25-1205. If such taxes are not so specified in the petition, then an election prior to the levying of such taxes must be held within the district. Elections held pursuant to this section shall be held in accordance with the provisions of part 8 of article 1 of title 32, C.R.S. The cost of any election held pursuant to this section shall be borne by the district. Such taxes shall be levied in accordance with the provisions of part 3 of article 1 of title 29, C.R.S.

Source: L. 88: Entire part added, p. 1137, § 1, effective May 6.

ANNOTATION

Exclusion of apartments and boarding houses from levy and collection of ad valorem taxes on taxable commercial property by business improvement district pursuant to this section does not violate uniformity requirement

of section 3 (1)(a) of article X of state constitution as legislature's classification of apartments and boarding houses as residential property is reasonable. *Jensen v. City and County of Denver*, 806 P.2d 381 (Colo. 1991).

31-25-1214. Determining and fixing rate of levy. The board shall determine the amount of money necessary to be raised by a levy on the taxable property in the district, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable property within the district together with other revenues, shall raise the amount required by the district during the ensuing fiscal year to supply funds for paying the expenses of organization and the costs of providing the services of the district and acquiring, constructing, installing, and operating the improvements or works of the district and promptly to pay in full when due all interest on and principal of bonds and other obligations of the district. In the event of accruing defaults or deficiencies, additional levies may be made as provided in section 31-25-1215. In accordance with the time schedule provided in section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county in which the district or a portion thereof lies the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district.

Source: L. 88: Entire part added, p. 1137, § 1, effective May 6.

31-25-1215. Levies to cover deficiencies. The board, in certifying annual levies, shall take into account the maturing indebtedness for the current and ensuing year as provided in its contracts, maturing bonds, and interest on bonds and the deficiencies and defaults of prior years and shall make ample provisions for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient to pay punctually the annual installments on its contracts or bonds and interest thereon and to pay defaults and deficiencies, the board, from year to year, shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitations, such taxes shall be levied and shall continue to be levied until the indebtedness of the district is fully paid.

Source: L. 88: Entire part added, p. 1137, § 1, effective May 6.

31-25-1216. County officers to levy and collect taxes - lien. It is the duty of the body having authority to levy taxes within such county to levy the taxes certified to it as provided in this part 12. It is the duty of all officials charged with the duty of collecting taxes to collect and enforce such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and, when collected, to pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this part 12, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute a lien, until paid, on and against the property taxed, and such lien shall be considered the same type of lien as that for all other general taxes.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6.

31-25-1217. Property sold for taxes. The taxes provided for in this part 12 shall be included as a part of general ad valorem taxes and shall be paid and collected accordingly. The sale of properties for delinquencies shall be conducted in the manner provided by the statutes of this state for selling property for nonpayment of other ad valorem taxes.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6.

31-25-1218. Reserve fund. When any indebtedness has been incurred by a district, it is lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district for operating charges and depreciation and to provide extensions of and betterments for the improvements of the district.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6.

31-25-1219. Special assessments. (1) In order to defray all or any portion of the costs of the improvements provided by the district, the board may establish special improvement districts within the boundaries of the district. Such special improvement districts may be established whenever in the opinion of the board property in the district will be especially benefited by such improvements. The method of creating special improvement districts, making the improvements, and assessing the costs thereof shall be as provided in part 5 of this article; except that the electors eligible to vote on the question shall be electors as defined in section 31-25-1203 (4) of the district or the special improvement district, as determined by the board, the board shall perform the duties of the governing body, the secretary of the district shall perform the duties of the clerk, and the improvements which may be constructed shall be the improvements which the district is permitted to provide pursuant to this part 12.

(2) (a) In order to defray all or any portion of the costs of providing services, the board may impose special assessments wholly or in part upon real property located within the boundaries of the district. Prior to imposing a special assessment, the board shall adopt a resolution setting a date, which shall be not less than twenty days nor more than forty days after the adoption of the resolution, a time, and a location for a hearing on the question of the imposition of such special assessment and the benefit to be derived by the property upon which such special assessment will be imposed. The resolution shall include a form of notice, which shall describe the property on which the assessment shall be levied, the purposes for which the assessment is to be levied, the proposed method of assessment and the manner of payment thereof, and the right of the owners of the property to be assessed to file a remonstrance petition. Thereupon, the board shall give the notice by publication and cause a copy of said notice to be mailed by first-class mail to each owner of the property to be assessed at his last-known address, as disclosed by the tax records of the county or counties in which the district is located.

(b) On the date and at the time and place specified in the notice, the board shall conduct a hearing for the purpose of considering the desirability of and the need for providing the service and imposing the assessment therefor and determining the special benefits to be received by the properties to be assessed. No assessment shall be imposed if a remonstrance petition objecting to the assessment and signed by the owners of the property which would bear more than one-half of the proposed assessment is filed with the board prior to or at the hearing. After the hearing, the board shall adopt a resolution either approving or disapproving the proposed assessment. The resolution shall apportion the relative benefits to the real properties benefited by the service. Thereafter, the board shall cause to be prepared a local assessment roll. All assessments shall be due and payable at the time and place specified in the assessing resolution and said assessments shall become delinquent if not paid with thirty days of such due date.

(c) The board shall cause to be mailed by first-class mail to each owner of property specified on the assessment roll a notice of the amount of the assessment, the due date, and a statement that the assessment shall constitute a perpetual lien from the date of mailing of the notice in the amount assessed against each lot or tract of land, and a statement that such lien shall have priority over all other liens except general tax liens. As to any subsequent subdivision of any lot or tract of land assessed, the assessment may be apportioned by the board in such manner, if any, as may be provided in the assessing resolution. If any court of competent jurisdiction sets aside any assessment for irregularity in the proceedings, the board may make a new assessment in accordance with the provisions of this subsection (2). If an assessment is not paid within thirty days after its due date, penalty interest on the amount of the assessment shall accrue at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the date of sale or payment.

(d) The assessments imposed by this section shall be collected by the officer of the district designated in the assessment resolution or, by agreement with the municipality, by the municipal treasurer. In the case of a default in the payment of any assessment, the collection officer shall certify to the county treasurer the whole amount of the unpaid assessments. The county treasurer shall advertise and sell all property concerning which such a default has occurred for the payment of the whole of the unpaid assessment, plus penalties and costs of collection. Such advertisement and sale shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate and default of payment of the general property tax.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6. L. 96: (1) amended, p. 1770, § 70, effective July 1.

31-25-1220. Inclusion or exclusion - petition - notice - hearing. (1) The boundaries of any district organized under the provisions of this part 12 may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made. The owners of property proposed to be included or excluded may file with the governing body a petition, in writing, requesting that such property be included in or excluded from the district. The petition shall describe the property owned by the petitioners and shall be verified. The petition shall be accompanied by a deposit of moneys sufficient to pay all costs of the inclusion or exclusion proceedings. The clerk of the governing body shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition, the names of the petitioners, descriptions of the property sought to be included or excluded, and the request of said petitioners.

(2) Such notice shall inform all persons having objections to appear at the time and place stated in said notice and show cause why the petition should not be granted. The governing body, at the time and place mentioned or at any time to which the hearing may be adjourned, shall proceed to hear the petition and all objections thereto which may be presented by any person showing cause why said petition should not be granted. The failure

of any interested person to show cause shall be deemed as an assent on his part to the inclusion or exclusion of such property as requested for in the petition. If the change of boundaries of the district does not adversely affect the district and if the petition is granted, the governing body shall adopt an ordinance to that effect and file a certified copy of the same with the county clerk and recorder of the county in which the property is located. Thereupon, said property shall be included or excluded from the district.

(3) All property included within or excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion.

Source: L. 88: Entire part added, p. 1139, § 1, effective May 6. L. 91: (2) amended, p. 761, § 7, effective May 20.

31-25-1221. Board can issue bonds - form. To carry out the purposes of this part 12, the board, with the approval of the municipality if the board is appointed pursuant to section 31-25-1209 (1) (b) or (1) (c), is hereby authorized to issue bonds of the district. Such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable at such times as determined by the board, and shall be due and payable in installments at such times as determined by the board extending not more than twenty years from the date of issuance. The form and terms of said bonds, including provisions for their sale, payment, and redemption, shall be determined by the board. If such bonds are payable from the general ad valorem taxes of the district, such bonds shall not be issued unless first approved at an election held pursuant to section 31-25-1222. Bonds payable solely from revenues derived from sources other than the district's general ad valorem tax may be issued without an election. If the board so determines, such bonds may be redeemable prior to maturity, with or without payment of a premium, but no premium shall exceed three percent of the principal thereof. The bonds shall be executed in the name of and on behalf of the district and signed by the presiding officer of the board with the seal of the district affixed thereto and attested by the secretary of the board. Such bonds shall be in such denominations as the board shall determine. Interest coupons, if any, shall bear the original or facsimile signature of the presiding officer of the board. Under no circumstances shall any of said bonds be held to be an indebtedness, an obligation, or a liability of the municipality in which the district is located, and bonds issued pursuant to the provisions of this part 12 shall contain a statement to that effect.

Source: L. 88: Entire part added, p. 1140, § 1, effective May 6.

31-25-1222. Submission of debt question. (1) When any board determines that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, or completion of any improvements or the provision of any service within the district or the making of any contract with the United States or with any person or corporation to carry out the objects or purposes of said district requiring the creation of an indebtedness, said board shall order the submission to the electors of the proposition of issuing such obligations or bonds or creating other indebtedness at an election held for that purpose. Such election shall be held and conducted and the results thereof declared in the manner provided in part 8 of article 1 of title 32, C.R.S. Any such election may be held, on any date selected by the board, separately or may be consolidated or held concurrently with any other regular or special election. The declaration of public interest or necessity required and the provisions for the holding of such election may be included within one and the same resolution, which, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of the principal of the indebtedness to be incurred therefor, and the maximum net effective interest rate to be paid on such indebtedness.

(2) Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the

proposed indebtedness or the making of the proposed contract. Such resolution shall appoint a designated election official and provide for the duties thereof.

(3) (Deleted by amendment, L. 96, p. 1771, § 71, effective July 1, 1996.)

Source: L. 88: Entire part added, p. 1141, § 1, effective May 6. L. 96: (2) and (3) amended, p. 1771, § 71, effective July 1.

31-25-1223. Effect - subsequent elections. If any such proposition is approved at such election in the manner required by part 8 of article 1 of title 32, C.R.S., the district is authorized to incur such indebtedness or obligation, enter into such contract, or issue and sell such bonds of the district, as the case may be, all for the purposes and objects specified in the proposition submitted, in the amount so provided, and at a rate of interest such that the maximum net effective interest rate specified in the proposal is not exceeded. The bonds may be sold at public or private sale, as determined by the board to be in the best interests of the district. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose.

Source: L. 88: Entire part added, p. 1141, § 1, effective May 6.

31-25-1224. Confirmation of contract proceedings. (1) In its discretion, the board may file a petition at any time in the district court in and for any county in which the district is located, praying for a judicial examination and determination of any power conferred, or of any securities issued or merely authorized to be issued, or of any taxes, assessments, or service charges levied or otherwise made or contracted to be levied or otherwise made, or of any other act, proceeding, or contract of the district, whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement, proposed securities of the district to defray wholly or in part the cost of the project, and the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto (or any combination thereof).

(2) Such petition shall:

(a) Set forth the facts whereon the validity of such power, securities, taxes, assessments, charges, act, proceeding, or contract is founded; and

(b) Be verified by the presiding officer of the district.

(3) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this part 12.

(4) Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any proceeding or contract therein mentioned may be examined.

(5) The notice shall be served:

(a) By publication at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the municipality in which the district is located;

(b) By posting in the office of the district at least thirty days prior to the date fixed in the notice for the hearing on the petition.

(6) Jurisdiction shall be complete after such publication and posting.

(7) Any owner of property within the boundaries of the district or any other person interested in the proceeding or contract or proposed proceeding or proposed contract or in the premises may appear and move to dismiss or answer the petition no less than five days prior to the date fixed for the hearing or within such further time as may be allowed by the court. The petition shall be taken as confessed by all persons who fail so to appear.

(8) The petition and notice shall be sufficient to give the court jurisdiction, and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(9) Costs may be divided or apportioned among any contesting parties in the discretion of the trial court.

(10) Review of the judgment of the court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days.

(11) The Colorado rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this part 12.

(12) The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

(13) All cases in which there may arise a question of the validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 88: Entire part added, p. 1141, § 1, effective May 6.

31-25-1225. Dissolution procedure. Any district organized pursuant to this part 12 may be dissolved after notice is given, publication is made, and a hearing is held in the manner prescribed by sections 31-25-1206 and 31-25-1207. The dissolution of the district may be initiated by filing in the office of the clerk of the governing body either a petition signed by the persons described in section 31-25-1205 (2) or, in the case of a district which has not filed an operating plan and budget as required by section 31-25-1211 for two years, a resolution of the governing body. After hearing any protests against or objections to dissolution and if the governing body determines that it is for the best interests of all concerned to dissolve the district, it shall so provide by an effective ordinance, a certified copy of which shall be filed in the office of the county clerk and recorder in each of the counties in which the district or any part thereof is located. Upon such filing, the dissolution shall be complete. However, no district shall be dissolved until it has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities or until funds are on deposit and available therefor. Notwithstanding any other provision of this section, upon petition of persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district, the district shall be prohibited from incurring any new or increased financial obligations, shall impose its existing taxes, fees, and assessments solely to meet any existing financial obligations, and shall be dissolved as soon as the district has no outstanding financial obligations.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6. L. 91: Entire section amended, p. 762, § 8, effective May 20.

31-25-1226. Correction of faulty notices. In any case that a notice is provided for in this part 12 in which the governing body finds for any reason that due notice was not given, the governing body shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated; but the governing body, in that case, shall order due notice given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6.

31-25-1227. Department of transportation and municipal jurisdiction unimpaired. Nothing in this part 12 shall affect or impair the control and jurisdiction which the department of transportation has over streets and highways which are part of the state highway system or which a municipality has over all property within its boundaries. All powers granted by this part 12 shall be subject to such control and jurisdiction.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6. **L. 91:** Entire section amended, p. 1070, § 44, effective July 1.

31-25-1228. Method not exclusive. Nothing in this part 12 shall repeal or affect any other law or any part thereof, it being intended that this part 12 shall provide a separate method of accomplishing its objects and not an exclusive one.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6.

PART 13

PUBLIC IMPROVEMENT - MUNICIPAL CONTRACTS

31-25-1301. Short title. This part 13 shall be known and may be cited as the "Integrated Delivery Method for Municipal Public Improvements Act".

Source: L. 2007: Entire part added, p. 1814, § 3, effective August 3.

31-25-1302. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.

(b) Competition exists not only in the costs of goods and services, but in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.

(c) Timely and effective completion of public projects can be achieved through a variety of methods when procuring goods and services for public projects.

(d) In enacting this part 13, the general assembly intends to establish for municipalities and agencies of municipalities an optional alternative public project delivery method.

Source: L. 2007: Entire part added, p. 1814, § 3, effective August 3.

31-25-1303. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Agency" means any home rule or statutory city, town, territorial charter city, city and county, or any other political subdivision that a municipality may create pursuant to state law that is a budgetary unit exercising construction contracting authority or discretion.

(2) "Contract" means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project.

(3) "Cost-reimbursement contract" means a contract under which a participating entity is reimbursed for costs that are allowable and allocable in accordance with the contract terms and provisions of this part 13.

(4) "Integrated project delivery" or "IPD" means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.

(5) "IPD contract" means a contract using an integrated project delivery method.

(6) "Participating entity" means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning, architectural, engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) "Public project" means any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare, or public education, to the extent the boundaries of an agency and a school district are coterminous, or for the conservation of natural resources, including the planning of any such lands, buildings, improvements, structures, works, machinery, equipment, or facilities.

“Public project” shall also include existing lands, buildings, improvements, structures, works, and facilities, as well as improvements, renovations, or additions to any such lands, buildings, improvements, structures, works, or facilities and any operation or maintenance programs for the operation and upkeep of such projects.

(8) “Public purposes” includes, but is not limited to, the supplying of public water services and facilities, public sewer services and facilities, and lands, buildings, improvements, equipment, and facilities for public education, to the extent the boundaries of the agency and the school district are coterminous.

Source: L. 2007: Entire part added, p. 1815, § 3, effective August 3.

31-25-1304. Integrated project delivery contracts - authorization - effect of other laws. (1) Notwithstanding any other provision of law, any agency may award an IPD contract for a public project under the provisions of this part 13 upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this part 13 shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, regulations, or ordinances governing labor relations, professional licensing, public contracting, or other related laws, except to the extent that an exemption is created under such legal authority or is granted by necessary implication from such legal authority.

Source: L. 2007: Entire part added, p. 1816, § 3, effective August 3.

31-25-1305. Integrated project delivery contracting process - prequalification of participating entities - apprentice training. (1) An agency may prequalify participating entities for an IPD contract by public notice of its request for qualifications prior to the date set forth in the notice. A request for qualifications may contain the following elements and such additional information as may be requested by the agency:

(a) A general description of the proposed public project;

(b) Relevant budget considerations;

(c) Requirements of the participating entity, including:

(I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of submission of qualifications;

(II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;

(III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and

(IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential.

(d) The criteria for prequalification.

(2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.

(3) Where an apprentice training program certified by the office of apprenticeship located in the employment and training administration in the United States department of labor exists in a county in which all or any portion of the municipality is located, or a comparable program for the training of apprentices is available in such county:

(a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and

Source: L. 2007: Entire part added, p. 1816, § 3, effective August 3.

- (a) The procedures to be followed for submitting proposals;
- (b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;
- (c) The procedures for making awards;
- (d) Required performance standards as defined by the participating entity;
- (e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(g) The proposed project scheduling; and

(2) After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals in accordance with the requirements of subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(4) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract is not required to be licensed or registered to provide professional services as defined in section 24-30-1402 (6), C.R.S., if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

Source: L. 2007: Entire part added, p. 1817, § 3, effective August 3.

31-25-1307. Supplemental provisions. The governing body of an agency may establish supplemental provisions that are designed to implement the provisions of this part 13.

Source: L. 2007: Entire part added, p. 1818, § 3, effective August 3.

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FIRE, POLICE, OR STREET DEPARTMENT
- PAID - CIVIL SERVICE

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31-30-701 and

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PART 8

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POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM COMMISSION

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31-30-1132. Retired firefighter - return to active service - benefits.

31-30-1133.	Qualification requirements - internal revenue code - definitions.	31-30-1202.	Definitions.
		31-30-1203.	Volunteer service award plan.
31-30-1134.	Statewide accidental death and disability insurance policy - department of local affairs.		PART 13
	PART 12		VOLUNTEER HEALTH INSURANCE ACT
	VOLUNTEER SERVICE AWARD ACT	31-30-1301.	Short title.
		31-30-1302.	Definitions.
		31-30-1303.	Group health insurance plan.
31-30-1201.	Short title.		

PART 1

FIRE, POLICE, OR STREET DEPARTMENT - PAID - CIVIL SERVICE

31-30-101. Authority to provide for classified departments. The governing body of any city or town may provide by ordinance for a paid fire department, a paid police department, or a paid street department or all of same and may fix, define, and classify the various grades of employment in such departments, which grades and classifications shall be based upon the nature of the services to be rendered and the duties to be performed and shall also fix uniform wages and salaries to be paid to all employees in each particular class, which wages may be lowered or increased uniformly for each class from time to time.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-101 as it existed prior to 1975.

31-30-102. Civil service commission - withdrawal. The governing body of any city or town in the state maintaining a paid police department, a paid fire department, or a paid street department may establish a commission which shall be known as "the city (town) of fire and police and street department civil service commission". Said governing body shall not have the authority to withdraw said departments from operation of such system unless and until the withdrawal thereof has been submitted to the registered electors of said city or town at a special or regular election held in said city or town pursuant to an ordinance properly passed submitting the same to said electors and has been approved by not less than a majority vote of said electors voting on such proposition.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-102 as it existed prior to 1975.

31-30-103. Purpose. It is the intent of this part 1 to enable the governing body of any city or town within this state to adopt by ordinance such civil service system for fire, police, or street departments as may be adaptable to the size and type of city or town involved and consist of a comprehensive civil service system as in the sound discretion of said governing body may be for the best interests of the public service in said city or town. The provisions of this part 1 shall not apply to or in any way annul, repeal, or set aside the civil service provisions in force on or before May 17, 1939, in any city or town.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-103 as it existed prior to 1975.

31-30-104. Contract for conducting examination. The governing body of any city or town may contract with the governing body of any municipality or county within this state or with any department of the state for the conducting of competitive examinations to

ascertain the fitness of applicants for positions and employment in the fire, police, or street department or all of same and for the performance of any other service in connection with personnel selection and administration.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-104 as it existed prior to 1975.

31-30-105. Ordinance - violation. (1) Any ordinance adopted by the governing body of any city or town under the provisions of this part 1 shall include the following provisions and penalty for violation thereof: No person holding an office or place in a fire, police, or street department placed by the governing body under a civil service system pursuant to the provisions of this part 1 shall seek or accept election, nomination, or appointment as an officer of a political club or organization; take an active part in a county or municipal political campaign; serve as a member of a committee of such club, organization, or circle; seek signatures to any petition provided for by any law; act as a worker at the polls; or distribute badges, pamphlets, dodgers, or handbills of any kind favoring or opposing any candidate for election or for nomination to a public office, whether county or municipal. Nothing in this part 1 shall prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, attending a political meeting, or enjoying entire freedom from all interference in casting his vote.

(2) Any willful violation of this section or violation through culpable negligence is sufficient grounds to authorize the discharge of any firefighter, police officer, or street department employee.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1. L. 97: (2) amended, p. 1027, § 58, effective August 6.

Editor's note: This section is similar to former § 31-30-105 as it existed prior to 1975.

PART 2

FIREFIGHTERS' CIVIL SERVICE

31-30-201. Authorization - petition - election. (1) All cities or towns organized under the general laws of this state which have paid fire departments are authorized to adopt civil service regulations pertaining to such departments in the following manner:

(a) The governing body may, and upon the petition of registered electors in number not less than fifteen percent of the last preceding vote for mayor shall, submit the question of accepting civil service provisions relative to such fire department to a vote of the registered electors at the next regular election. If a petition is submitted, the signatures to such petition shall be acknowledged before a notary public and need not be all on one paper. The ordinance or resolution calling for submission of the question shall provide for classification of all members of the fire department.

(b) The election notice shall state that the question is submitted for the purpose of ascertaining whether or not the city or town will adopt civil service regulations relative to said fire department. The election shall be conducted as nearly as may be in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The ballots or voting machine tabs shall contain the words "For the Merit System" and "Against the Merit System".

(c) If, upon the official determination of the result of such election, it appears that a majority of all the votes cast are for the adoption of the merit system under civil service regulations, this part 2 and all rules made under this part 2 shall immediately be in full force and effect in said city or town.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1. L. 87: (1)(a) amended, p. 333, § 99, effective July 1.

Editor's note: This section is similar to former § 31-30-201 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-30-202. Commissioners appointed - terms - vacancies - expenses allowed. Immediately upon the adoption of the merit system under civil service regulations, the governing body shall appoint three persons as civil service commissioners who shall be known and designated as the board of civil service commissioners or board of public safety to serve for six years, four years, and two years, respectively, from the date of their appointment and until their successors are appointed and qualified. Every alternate year the governing body shall appoint one person, as the successor of the commissioner whose term shall expire, to serve for the term of six years from the date of the appointment and until a successor is appointed and qualified. Any vacancy may be filled for the unexpired term by appointment by the governing body. At no time shall more than two commissioners be members of the same political party. Said commissioners shall serve without compensation but shall be paid their necessary expenses actually incurred in the discharge of their official duties.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-202 as it existed prior to 1975.

31-30-203. Merit. Appointments and employment in and promotion to said fire department and said classified civil service shall be made according to merit and fitness, to be ascertained by competitive tests of competency except as provided in section 31-30-206.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-203 as it existed prior to 1975.

31-30-204. Removal - public hearings. The classified civil service of the said city or town shall comprise all members of the fire department. Persons in the classified civil service shall hold their respective positions and be graded according to their competency, which shall be the same for all persons having like duty; except that the members of any paid fire department holding positions on the same at the time said city or town adopts the provisions of this part 2 shall retain their respective positions until removed after a public hearing for good cause shown, as provided in this section. They shall be removed or discharged only upon written charges which shall be filed by the head of the department or by any citizen of the city or town acting for the good of the service, to be promptly acted upon by the commission. All hearings before the commission shall be open to the public. No person shall be discharged for a political or religious reason. In case of emergency, the commission shall authorize the temporary appointment of members to the fire department without competitive tests for a period of not to exceed ninety days.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-204 as it existed prior to 1975.

31-30-205. Commission to make rules. The making or enforcement of rules to carry out the purpose of the classified civil service of such city or town, the alteration and discharge of such rules, the conducting of all competitive tests and determination of all removals or discharge cases, and the standardization in such classified civil service shall be vested in the commission. No person in the classified civil service shall be paid until a certificate is made by the commission that his appointment is made pursuant to law.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-205 as it existed prior to 1975.

31-30-206. Positions retained. All persons holding regular positions in the classified civil service, as defined by this part 2, at the time of the adoption of the civil service provision, as provided in this part 2, shall retain their respective positions without examination or further appointment. In all other respects said persons shall be subject to the provisions and rules of this part 2.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-206 as it existed prior to 1975.

31-30-207. Commission to make inquiries - record - report. (1) It is the duty of the commission to investigate alleged breaches of this part 2 and its rules, and in the course of such investigations they, or any of them, may subpoena witnesses, administer oaths, and compel the testimony of witnesses and production of books, papers, and records relative to such inquiry, and it is the duty of such persons so subpoenaed to appear and testify and to produce such books, papers, and records as are called for in such subpoena. Should the person subpoenaed fail to appear and testify or produce documentary evidence, the commission may apply to the district court for an order compelling compliance with the subpoena. Failure to obey the order of the court shall be punishable as a contempt of court. The commission shall keep records of its proceedings and of all examinations held by it or under its authority. All records and documents filed by the commission shall be filed as public records. The minutes of the commission shall be kept in a separate book and shall be open to the public at all reasonable times.

(2) The commission, on or before the December 1 preceding each regular session of the governing body, shall make a report to the governing body of its work during the preceding year and include therein all rules adopted and any suggestions for legislation to carry out the purposes of the civil service.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-207 as it existed prior to 1975.

31-30-208. Fee of applicants. Every applicant for examination shall pay the commission a fee of one dollar for the purpose of defraying the expenses of conducting such examination. All moneys received or collected by the commission shall be paid into the municipal treasury and shall be placed by the treasurer in a separate fund to the credit of the commission for the use of said commission. No person shall be examined unless such fee has been paid.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-208 as it existed prior to 1975.

31-30-209. Powers of commission. The commission has the power to make and enforce all rules and regulations, which rules and regulations shall be printed for distribution. No rule shall become effective until five days after publication of the same in some newspaper in said city or town.

Source: L. 75: Entire title R&RE, p. 1216, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-209 as it existed prior to 1975.

31-30-210. Qualifications - notice of examination. Applicants for appointment shall be citizens of the United States and reside in the city and county of such municipality for one year next preceding the date of their application. All examinations shall be impartial and

only relate to the fitness of such persons examined for the service they wish to enter. No question shall relate to political or religious affiliation, and no appointment shall be affected in any manner by such political or religious affiliation. Notice of time, place, and scope of such examination shall be given in said notice published in said paper. No person shall be certified to appointment whose standing shall be less than sixty-five percent of complete proficiency. Preference shall be given to persons honorably discharged from the naval or military service of the United States and whose qualifications are otherwise equal.

Source: L. 75: Entire title R&RE, p. 1216, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-210 as it existed prior to 1975.

PART 3

PENSION - POLICE - GENERAL

31-30-301 to 31-30-325. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 3 was similar to the former part 3 as it existed prior to 1975.

(2) This part 3 was numbered as article 49 of chapter 139, C.R.S. 1963. For amendments to this part 3 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police pension plans, see article 30.5 of this title.

PART 4

PENSION - FIREFIGHTERS' - GENERAL

31-30-401 to 31-30-418. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 4 was similar to the former part 4 as it existed prior to 1975.

(2) This part 4 was numbered as article 50 of chapter 139, C.R.S. 1963. For amendments to this part 4 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to firefighters' pension plans, see article 30.5 of this title.

PART 5

FIREFIGHTERS' PENSIONS - CITIES OF OVER 100,000

31-30-501 to 31-30-523. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 5 was similar to the former part 5 as it existed prior to 1975.

(2) This part 5 was numbered as article 80 of chapter 139, C.R.S. 1963. For amendments to this part 5 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to firefighters' pension plans, see article 30.5 of this title.

PART 6

POLICEMEN'S PENSIONS - CITIES OF OVER 100,000

31-30-601 to 31-30-621. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 6 was similar to the former part 6 as it existed prior to 1975.

(2) This part 6 was numbered as article 81 of chapter 139, C.R.S. 1963. For amendments to this part 6 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police pension plans, see article 30.5 of this title.

PART 7

PENSION FUNDS - INVESTMENT - PERSONNEL INSURANCE

31-30-701 and 31-30-702. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 7 was similar to the former part 7 as it existed prior to 1975.

(2) This part 7 was numbered as article 82 of chapter 139, C.R.S. 1963. For amendments to this part 7 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to firefighters and police pension funds, see article 30.5 of this title.

PART 8

POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM LAW

31-30-801 to 31-30-806. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: This part 8 was added in 1978. For amendments to this part 8 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police and firefighters' pension plans, see article 30.5 of this title.

PART 9

POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM COMMISSION

31-30-901. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: This part 9 was added in 1978. For amendments to this part 9 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police and firefighters' pension plans, see article 30.5 of this title.

PART 10

MEMBERS' BENEFITS

31-30-1001 to 31-30-1019. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: This part 10 was added in 1979. For amendments to this part 10 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police and firefighters' pension plans, see article 30.5 of this title.

PART 11

VOLUNTEER FIREFIGHTER PENSION ACT

Editor's note: Section 23 of the act enacting this part 11 (chapter 254, Session Laws of Colorado 1995) provides the following:

(1) This act shall not affect the terms of members of the boards of trustees created to administer volunteer firemen's pension funds under part 4 of article 30 of title 31, Colorado Revised Statutes, as in effect before June 5, 1995, in any municipality, fire protection district, or county improvement district in this state that maintains a regularly organized volunteer fire department. On and after June 5, 1995, these board members shall continue their terms and duties on the applicable boards of trustees of the volunteer firefighter pension funds under part 11 of article 30 of title 31, Colorado Revised Statutes, created in this act.

(2) This act shall not terminate or require transfers of moneys from volunteer firemen's pension funds governed by part 4 of article 30 of title 31, Colorado Revised Statutes, in effect before June 5, 1995. On and after June 5, 1995, these funds shall remain in effect and be governed by part 11 of article 30 of title 31, Colorado Revised Statutes, created in this act.

Cross references: For the legislative declaration contained in the 1995 act enacting this part 11, see section 1 of chapter 254, Session Laws of Colorado 1995.

31-30-1101. Short title. This part 11 shall be known and may be cited as the "Volunteer Firefighter Pension Act".

Source: L. 95: Entire part added, p. 1364, § 2, effective June 5.

31-30-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Board" means the board of trustees of the volunteer firefighter pension fund that is created in a municipality or district under this part 11.

(2) "District" means a fire protection district or county improvement district in this state having fire department members and offering fire protection services, and any county that provides funding, including volunteer pension funding, through intergovernmental cooperation for the provision of fire protection services.

(3) "Fire and police pension association" means the association created by section 31-31-201.

(4) "Fire department member" means a volunteer firefighter who is in a fire department that serves a municipality, county, or district and who accrues benefits in the volunteer firefighter pension fund.

(5) "Fund" means the volunteer firefighter pension fund provided in this part 11.

(6) "Municipality" means a municipality in this state that maintains a regularly organized volunteer fire department and that offers fire protection services.

(7) "Plan" means a program of benefits provided under this part 11.

(7.5) "Previous net valuation" means an amount equal to the total valuation for assessment certified by the county assessor pursuant to section 39-5-128, C.R.S., and amended pursuant to section 39-1-111 (5), C.R.S., less the valuation for assessment that has been divided for an urban renewal area pursuant to section 31-25-107 (9) or for a downtown development authority pursuant to section 31-25-807 (3) for the property tax year in which the municipality or district made a contribution to the fund. If the total valuation for assessment certified by the county assessor, as amended, does not include the valuation for assessment that has been divided for an urban renewal area, such urban renewal valuation for assessment shall not be subtracted from the total valuation for assessment.

(8) "Retired fire department member" means a volunteer firefighter who is not on active duty and who receives pension benefits from the volunteer firefighter pension fund.

(9) (a) "Volunteer firefighter" means a firefighter who renders service to a fire department in a municipality, county, or district, who does not receive compensation as a firefighter, and who is not classified as an employee for purposes of the federal "Fair Labor Standards Act of 1938", as amended, based on payments, fees, or benefits that the firefighter receives. "Volunteer firefighter" may include other designations or titles given to firefighters provided that the firefighter meets all of the requirements for being a volunteer firefighter in this part 11.

(b) For the purposes of this subsection (9), "compensation" does not include:

(I) Actual expenses incurred by and reimbursed to a volunteer firefighter;

(II) (Deleted by amendment, L. 2010, (SB 10-021), ch. 17, p. 79, § 1, effective August 11, 2010.)

(III) Participation in or receipt of benefits from the fund;

(IV) Participation in or receipt of benefits upon termination of volunteer services to any district or municipality provided as part of an internal revenue code qualified volunteer service award plan established for the benefit of volunteer firefighters;

(V) Payments from federal moneys, either through the district or municipality or to the volunteer firefighter directly, for participation in a temporary emergency incident;

(VI) Nominal fees or benefits paid on a per-call basis or as part of an annual merit or recognition award program or other incentive award program.

Source: L. 95: Entire part added, p. 1364, § 2, effective June 5. L. 96: (3) amended, p. 941, § 5, effective May 23. L. 2006: (7.5) added, p. 1422, § 1, effective June 1. L. 2007: (2), (4), and (9) amended, p. 315, § 1, effective April 2. L. 2010: (9) amended, (SB 10-021), ch. 17, p. 79, § 1, effective August 11.

Cross references: (1) For the internal revenue code referred to in subsection (9)(b)(IV), see the federal "Internal Revenue Code of 1986", as amended.

(2) For the federal "Fair Labor Standards Act of 1938", see 29 U.S.C. sec. 201 et seq.

31-30-1103. Board of trustees - fund. (1) In any municipality or district that maintains a regularly organized volunteer fire department, there is created a board of trustees of the volunteer firefighter pension fund. The board:

- (a) Shall manage, use, and disburse moneys in the fund according to its rules and bylaws and this part 11;
- (b) Shall supervise and control the fund;
- (c) May take all necessary steps and pursue all necessary remedies to preserve the fund.

Source: L. 95: Entire part added, p. 1365, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conform with statutory provisions, not whether the board abused its discretion in granting the pensions. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

The Public Employee Retirement Association (PERA) and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

31-30-1104. Board - municipality. (1) In a municipality, the board must consist of the following members:

- (a) The mayor for a term equal to the mayor's tenure as mayor;
- (b) The municipal treasurer or finance officer for a term equal to the treasurer's or finance officer's tenure with the municipality;
- (c) Two other persons appointed by and for terms determined by the governing body of the municipality; and
- (d) Three fire department members of the entire membership of all classes of fire departments serving the municipality who are elected by the fire department members of those fire departments for three-year terms; except that, at the initial election, one member shall be elected for three years, one member for two years, and one member for one year. In all subsequent elections, these members shall be elected for three years.

(2) The board shall elect a president and secretary from its members. The municipal treasurer or finance officer shall serve as the ex officio treasurer of the board.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the governing body of the municipality may continue with the board composition that was in effect on June 4, 1995.

Source: L. 95: Entire part added, p. 1365, § 2, effective June 5.

31-30-1105. Board - fire protection district. (1) In a fire protection district, the board must consist of the following members:

- (a) The board of directors of the fire protection district for terms equal to their tenure on the fire protection district board;
- (b) The treasurer of the board of the fire protection district who shall be treasurer of the fund for a term equal to the treasurer's tenure on the fire protection district board; and
- (c) (I) Prior to August 15, 2010, two fire department members elected by the fire department members for two-year terms; except that, at the initial election, one member shall be elected for two years and one member for one year. In all subsequent elections, these members shall be elected for two years.

(II) (A) On and after August 15, 2010, two individuals elected from one or more of the following groups to the extent such groups exist at the time of election: Fire department members, retired fire department members, or retired fire department members returned to

active service pursuant to section 31-30-1132. All members in each group existing at the time of election shall be given the opportunity to vote for the two individuals. The two individuals shall serve for two-year terms; except that, at the initial election, one individual shall be elected for two years and one individual for one year. In all subsequent elections, these individuals shall be elected for two years.

(B) Nothing in sub-subparagraph (A) of this subparagraph (II) shall be construed to limit the term of a board member elected pursuant to subparagraph (I) of this paragraph (c).

(2) The board shall elect a president and secretary from its members.

(3) The treasurer of the board shall obtain a bond paid from the fund in an amount determined by the board.

Source: L. 95: Entire part added, p. 1365, § 2, effective June 5. L. 2010: (1)(c) amended, (SB 10-021), ch. 17, p. 80, § 2, effective August 11.

31-30-1106. Board - county improvement district. (1) In a county improvement district, the board must consist of the following members:

(a) One county commissioner of the county in which the district is located for a term equal to the commissioner's tenure as county commissioner;

(b) The county treasurer for a term equal to the treasurer's tenure with the county;

(c) Three residents of the county obligated to pay real or personal property taxes who are appointed by the county commissioners for staggered terms determined by the county commissioners; and

(d) Two fire department members for two-year terms.

(2) The treasurer of the fund shall obtain a bond paid from the fund in an amount determined by the board.

Source: L. 95: Entire part added, p. 1366, § 2, effective June 5.

31-30-1107. Board - consolidation or merger. (1) If a municipality or district merges or consolidates with one or more municipalities or districts, the former trustees of the various volunteer firefighter pension funds of the consolidated or merged municipalities or districts shall:

(a) Elect seven persons from their members, not more than three of whom are fire department members, to serve as trustees of the volunteer firefighter pension fund of the consolidated or merged fund with due regard to equal representation;

(b) Cease to hold office if they are not elected under paragraph (a) of this subsection (1).

(2) The trustees of the consolidated or merged fund shall elect from its members a president, secretary, and treasurer. The treasurer of the consolidated or merged district's fund shall obtain a bond paid from the fund in an amount determined by the board.

Source: L. 95: Entire part added, p. 1366, § 2, effective June 5.

31-30-1108. Board powers and duties. (1) A board created by this part 11 to control a fund:

(a) Shall adopt necessary rules that are not inconsistent with this part 11 for the management and discharge of its duties, for its own government and procedure, and for the preservation and protection of the fund;

(b) Shall hear and decide each application for benefits under this part 11 in accordance with section 24-4-105, C.R.S. Action on an application is final and conclusive; except that, if in the opinion of a board, justice demands reconsideration of the action, the board may reverse the action.

(c) Shall keep and preserve a record of the action and all other matters properly before the board;

(d) May make agreements with the fire and police pension association to administer the plan and manage the funds of the plan for investment;

(e) May consolidate its fund with the fund of another municipality or district and shall administer the consolidated funds as a single fund if in the opinion of the board the total moneys allocated to a fund by a municipality or district are inadequate to sustain a proper fund for retirement or for the other purposes of the fund under this part 11. The boards of these single funds may consolidate the funds under conditions and terms provided in an agreement consistent with this part 11.

Source: L. 95: Entire part added, p. 1367, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under this section. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597, (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its

statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597, (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-30-1109. Attorney representation. (1) The attorney for a municipality or district shall:

(a) When required by the board, advise the board on all matters pertaining to the board's duties and management of the fund;

(b) Represent and defend the board in any suit or action at law or in equity brought against the board; and

(c) Bring all suits and actions on the board's behalf as the board requires or requests.

(2) If a conflict between a board and a municipality or district exists, the board may obtain an attorney to represent the board in any action described in this section at the board's expense.

Source: L. 95: Entire part added, p. 1367, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Provision in former law applied in *Traxler v. Bd. of Trustees of Firemen's Pension Fund*, 701 P.2d 607 (Colo. App. 1984).

31-30-1110. Property tax - other tax revenue. (1) The governing body of a municipality with a population of less than one hundred thousand, the board of directors of each

fire protection district, the board of county commissioners, or the board of a county improvement district may levy and set apart a tax for each year of not more than one mill on the taxable property in the municipality, county, or district. The governing body or board shall contribute the proceeds of this tax, if any, to the municipality's, county's, or district's fund. The total tax levied under this section and section 31-30.5-403 (1), if any, for a fire department that has both paid and volunteer firefighters must not exceed one mill on the taxable property in the municipality, county, or district. Any new tax or an increase in the mill levy under this section shall comply with the voter approval requirements under section 20 of article X of the state constitution.

(2) The governing body of a municipality with a population of less than one hundred thousand, the board of directors of a fire protection district, the board of county commissioners, or the board of a county improvement district may contribute the proceeds of any other tax that the municipality, county, or district is authorized to collect to the municipality's, county's, or district's fund.

Source: **L. 95:** Entire part added, p. 1367, § 2, effective June 5. **L. 96:** Entire section amended, p. 941, § 6, effective May 23. **L. 2006:** Entire section amended, p. 1422, § 2, effective June 1. **L. 2007:** Entire section amended, p. 316, § 2, effective April 2.

31-30-1111. Contribution to fund. (1) In addition to any tax revenues contributed under section 31-30-1110, the fund also consists of any:

(a) Moneys given to the board or fund by a person for the use and purpose for which the fund is created. The board may take any money, personal property, or real estate, or interest therein by gift, grant, devise, or bequest as trustees for the use and purpose for which the fund is created;

(b) Moneys, fees, rewards, or emoluments of any nature and description that are paid or given to the fund; and

(c) Moneys provided by the state under section 31-30-1112.

(2) Fund moneys are held in trust for the exclusive use and benefit of the fire department members and retired fire department members and their surviving spouses, dependent children, dependent parents, and other beneficiaries in accordance with this part 11.

Source: **L. 95:** Entire part added, p. 1368, § 2, effective June 5. **L. 2006:** (2) amended, p. 179, § 1, effective March 31; IP(1) amended, p. 1423, § 3, effective June 1.

31-30-1112. State contributions - intent - advisory committee - repeal. (1) (a) Prior to July 1, 2004, the state treasurer may transfer moneys annually to the fire and police pension association for distribution as provided in this section to assist in funding volunteer firefighter pension funds.

(b) On and after July 1, 2004, the state treasurer shall transfer moneys to the department of local affairs for distribution as provided in this section to assist in funding volunteer firefighter pension plans.

(2) (a) State contributions to any municipality or district must equal ninety percent of all amounts contributed by the municipality or district under section 31-30-1110 in the previous year, but, notwithstanding any other provision of this part 11, the state contribution shall not exceed one-half mill on the previous net valuation for assessment of the municipality or district assuming one hundred percent collection.

(b) A municipality or district that was contributing an amount necessary to pay volunteer firefighter pensions in excess of three hundred dollars per month shall receive state contributions under paragraph (a) of this subsection (2) in an amount not to exceed one-half mill on the previous net valuation for assessment of the municipality or district assuming one hundred percent collection but based upon the greater of:

(I) The contribution that was actuarially required to pay a pension of three hundred dollars per month in the previous year, as determined by the municipality or district; or

(II) The highest actual contribution received by the municipality or district during the calendar year 1998, 1999, 2000, or 2001, irrespective of whether the state contribution was authorized by law at the time it was made. In the event of a consolidation or merger of two or more municipalities or districts, the sum of the highest actual contribution received by each consolidating or merging municipality or district during the calendar year 1998, 1999, 2000, or 2001 shall be the state contribution of the surviving consolidated or merged entity for the purposes of this subparagraph (II).

(c) and (c.5) (Deleted by amendment, L. 2002, p. 504, § 1, effective July 1, 2002.)

(d) The board in any municipality or district shall not increase benefits above the following amounts unless the increase is approved by the governing body of the municipality or district and an actuarial review indicates a higher payment is actuarially sound:

(I) For volunteer firefighter pensions, three hundred dollars per month;

(II) For a short-term disability monthly annuity pursuant to section 31-30-1121, one hundred fifty dollars per month;

(III) For a retirement pension pursuant to section 31-30-1123, two hundred dollars per month;

(IV) For survivor benefits pursuant to section 31-30-1127, one hundred fifty dollars per month; or

(V) For funeral benefits pursuant to section 31-30-1129, one hundred dollars.

(e) In no event shall a municipality or district receive less than one thousand dollars if the municipality or district contribution to its fund is equal to or greater than one-half mill on the previous net valuation for assessment of the municipality or district.

(f) (Deleted by amendment, L. 2002, p. 504, § 1, effective July 1, 2002.)

(g) The moneys necessary to make the state's contribution under this section shall be derived from the proceeds of the tax imposed by section 10-3-209, C.R.S., as follows:

(I) (A) On September 30 of each year through September 30, 2003, the state treasurer shall transfer the amount necessary to provide contributions equal to the contributions made by the state to each municipality and district during the calendar year 1979 to the fire and police pension association for disbursement to the fund of each municipality or district.

(B) As of July 1, 2004, the department of local affairs shall be responsible for disbursing the state contribution to each municipality and district. On or before October 31, 2004, and on or before October 31 of each year thereafter, the state treasurer shall transfer the amount necessary to provide contributions equal to the contributions made by the state to each municipality and district during the calendar year 1979 to the department for disbursement to the fund of each municipality or district.

(II) (A) To the extent the state's contribution under this section exceeds the contributions made by the state during the calendar year 1979, the state treasurer shall transfer the excess amounts from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the fire and police pension association on September 30 of each year through September 30, 2003, for disbursement to the municipality's or district's funds.

(B) To the extent that the state's contribution under this section exceeds contributions made by the state during the calendar year 1979, the state treasurer shall transfer the excess amounts from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the department of local affairs on or before October 31, 2004, and on or before October 31 of each year thereafter, for disbursement to the municipality or district's funds.

(C) Moneys transferred under this subparagraph (II) shall be separate from and in addition to moneys transferred under section 31-30.5-307 (2) and do not revert to the general fund but are available for the purposes provided in this section.

(h) (I) In addition to any other transfers required by this section, on September 30 of each year through September 30, 2003, the state treasurer shall transfer from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the fire and police pension association, such moneys as may be necessary to pay for the accidental death and disability insurance policy for volunteer firefighters provided in section 31-31-202 (4).

(II) As of July 1, 2004, the executive director of the department of local affairs or the director's designee shall be responsible for providing the accidental death and disability insurance policy for volunteer firefighters as provided in sections 31-30-1134 and 31-31-202 (4) (d). In addition to any other transfers required by this section, on or before October

31, 2004, and on or before October 31 of each year thereafter, the state treasurer shall transfer from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the department such moneys as may be necessary to pay for the accidental death and disability insurance policy for volunteer firefighters and the administrative costs of providing such policy.

(i) Moneys transferred pursuant to this section shall be included for information purposes in the general appropriation bill or in supplemental appropriation bills to comply with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(j) It is the intent of the general assembly to continually fund volunteer firefighter pension plans.

(3) (a) The department of local affairs shall work with the municipalities, the districts, and the advisory committee established in subsection (6) of this section to develop a procedure by which municipalities and districts apply to receive state assistance moneys distributed pursuant to this section. Such application procedure shall ensure that the department can verify the amount of money to which each municipality and district is entitled before the department transfers funds to the municipalities and districts each year.

(b) The department of local affairs shall work with the joint budget committee to develop a procedure that allows any municipality or district to apply for a late disbursement of moneys in the event that such municipality or district made a good faith effort, but was unable to comply with the application procedure created pursuant to paragraph (a) of this subsection (3) due to a delay in preparing a financial statement or completing a required audit or actuarial study.

(4) (a) The department of local affairs, after consultation with the advisory committee established in subsection (6) of this section, may impose a nonrefundable application fee in an amount to be determined by the department on any municipality or district that applies to the department for state assistance moneys distributed pursuant to this section. The application fee may be on a sliding scale based on the amount of state assistance moneys distributed to each fund pursuant to this section in the previous year.

(b) All revenue collected by the department of local affairs from the fee imposed pursuant to paragraph (a) of this subsection (4) shall be transmitted to the state treasurer who shall credit the revenue to the volunteer fire department application fund, which fund is hereby created in the state treasury. The moneys in the fund shall be continuously appropriated to the department for the purpose of covering the direct costs of administering the distribution of the state contribution moneys pursuant to this section.

(5) The department of local affairs shall have the authority to contract with any entity for the purpose of complying with the requirements of this section.

(6) (a) There is hereby established a volunteer firefighter advisory committee. The department of local affairs shall consult with the committee in the performance of its duties in connection with the distribution of state contribution moneys to municipal and district volunteer firefighter pension funds pursuant to this section and to the accidental death and disability insurance policy for volunteer firefighters pursuant to section 31-30-1134. The members of the advisory committee shall not receive compensation or reimbursement from the state or the department for expenses incurred in the performance of their duties. The committee shall consist of five members that the executive director of the department shall appoint as follows: three members shall be members of a board, one member shall be an active volunteer firefighter, and one member shall be a representative of a municipality or district that has volunteer firefighters.

(b) This subsection (6) is repealed, effective July 1, 2014. Prior to the repeal of this subsection (6), the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: **L. 95:** Entire part added, p. 1368, § 2, effective June 5. **L. 96:** (2)(f), (2)(g)(II), and (2)(h) amended, p. 942, § 7, effective May 23. **L. 2002:** (2)(a), (2)(b), (2)(c), (2)(c.5), (2)(d), (2)(e), and (2)(f) amended, p. 504, § 1, effective July 1. **L. 2004:** (1), (2)(a),

(2)(b)(I), (2)(g), and (2)(h) amended and (3) to (6) added, p. 1133, § 2, effective July 1. **L. 2005:** (6)(a) amended, p. 775, § 61, effective June 1. **L. 2006:** (2)(a), (2)(b), and (2)(e) amended, p. 1423, § 4, effective June 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

As **"gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions** to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v.*

Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Ample and competent evidence supported the decision of fund's administrative board that city had elected to continue rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Applied in *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

31-30-1113. Fund investments. (1) The board may invest all or any part of fund moneys in the name of the board's treasurer or in the name of a custodian or custodians appointed by the board under this section in interest-bearing obligations of the United States, in interest-bearing bonds of this state, in general obligation bonds of municipalities, whether organized under general law or article XX of the state constitution, or in any depository stated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S. By written resolution, the board may appoint one or more persons to act as a custodian or custodians, in addition to the treasurer, to deposit or cause to be deposited all or part of the fund in any state or national bank or any state or federally chartered savings and loan association in this state. The appointed persons shall give surety bonds, and the board shall determine the bonds' amounts, form, and purposes. These securities and evidences of investment shall be deposited with the treasurer of the municipality or district.

(2) Upon the board's direction, the treasurer of a municipality or district may invest part of the fund available for investment, with or without one or more other volunteer firefighter pension funds, in a noninsured trust pension plan with a bank or trust company authorized to exercise trust powers in this state as a trustee. The trustee's investment of fund moneys is governed by article 1.1 of title 15, C.R.S.

(3) Notwithstanding subsection (1) of this section, the board may invest all or any part of fund moneys in the name of the board's treasurer or in the name of a custodian or custodians appointed by the board under this section in one or more of the following:

(a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.; or

(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

(4) The board may give preference to the investments described in subsection (3) of this section if such investments are consistent with sound investment policy.

Source: **L. 95:** Entire part added, p. 1370, § 2, effective June 5. **L. 98:** (3) and (4) added, p. 445, § 6, effective August 5. **L. 2000:** (2) amended, p. 256, § 1, effective March 30. **L. 2005:** (3)(c) repealed, p. 289, § 39, effective August 8. **L. 2010:** (2) amended, (SB 10-021), ch. 17, p. 80, § 3, effective August 11.

Cross references: For the legislative declaration contained in the 1998 act adding subsections (3) and (4), see section 1 of chapter 154, Session Laws of Colorado 1998.

31-30-1114. Fund investment in insurance. (1) Except as provided in subsection (2) of this section and with the concurrence of sixty-five percent of the fire department

members voting thereon and sixty-five percent of the retired fire department members voting thereon, the board may:

(a) Insure the fire department members under the following insurance policies issued by companies authorized to do business in this state:

(I) Individual, group, or blanket life, endowment, or annuity insurance;

(II) Variable annuity insurance; or

(III) Disability or liability insurance; and

(b) Spend any part of the fund to pay premiums on these policies.

(2) The board shall not spend fund moneys to purchase insurance if the expenditure would impair the pension fund's ability to:

(a) Pay annuities to a fire department member, surviving spouse, or dependent parent or child receiving annuities; or

(b) Meet the future requirements of pensions, benefits, and awards under the plan.

(3) The board must be the beneficiary of any insurance policies, and the proceeds of the insurance policies shall be paid to the board as an addition to the fund.

Source: L. 95: Entire part added, p. 1371, § 2, effective June 5.

31-30-1115. Warrants. (1) Officers of the municipality or district who are designated by law to draw warrants on the treasurer of the municipality or district shall draw warrants thereon upon orders by the board, payable to the board's treasurer for moneys belonging to the fund.

(2) Except as provided in subsection (3) of this section, the board's treasurer shall pay moneys ordered to be paid from the fund to any person only upon warrants signed by the board's president and countersigned by the board's secretary. A warrant shall not be drawn except by the board's order that is duly entered in the records of the board's proceedings.

(3) Fund moneys in noninsured trust pension plans with a bank or trust company shall be paid by the trustee only upon the board's written order that is signed by the board's president, countersigned by the board's secretary, and duly entered in the records of the board's proceedings.

Source: L. 95: Entire part added, p. 1372, § 2, effective June 5.

31-30-1116. Treasurer - custodian - segregation of moneys. (1) The board's treasurer and the custodian appointed by the board under section 31-30-1113 are the custodians of the fund and shall secure and safely keep books and accounts concerning the fund in the manner as the board may prescribe. The books and accounts are subject to inspection by the board, any board member, or any other interested person. Upon expiration of the treasurer's or custodian's term of office or appointment, the treasurer or custodian shall surrender and deliver to the successor all bonds, securities, and unexpended moneys or other property of the fund that the treasurer or custodian has possessed.

(2) A municipality or district that includes both paid and volunteer firefighters in their pension plans may consolidate the funds but must segregate the moneys for paid and volunteer firefighters on an equitable basis for accounting and actuarial purposes. The segregation shall be considered in actuarial reports on the funds. In computing the portion of the fund attributed to volunteer firefighters, volunteer firefighters' benefits shall not be changed.

Source: L. 95: Entire part added, p. 1372, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Legislative intent under former provision. Although this part does not specifically state that a city will be solely liable for making pension

funds actuarially sound, it is apparent that this was the legislative intent. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Fact that the general assembly increased the mandatory municipal contribution in this part does not mean that the general assembly intended in § 31-30-503 that cities should be totally financially responsible for pension funds. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Section prevails over section 31-30-503 under former law. This section has a later effective

date than § 31-30-503 and therefore prevails. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Governing body controls amount of employee contribution. The governing body of the municipality has control over the amount of the employee contribution up to the prescribed maximum. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

31-30-1117. Exemption from levy. (1) Except for an assignment for child support purposes as provided in sections 14-10-118 (1) and 14-14-107, as they existed prior to July 1, 1996, and except for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., and a writ of garnishment that is the result of a judgment taken for arrearages for child support or for child support debt, no part of the fund, either before or after any order for distribution of the fund to a fire department member, retired fire department member, or beneficiary of the fund or the surviving spouse or guardian of any child of a deceased or disabled fire department member or of a deceased, disabled, or retired fire department member shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, protest, or proceeding of any nature whatsoever issued out of or by any court in this or any other state for the payment or satisfaction of all or part of any debt, damages, claim, demand, judgment, fine, or amercement of the municipality or district or of a fire department member, retired fire department member, or their surviving spouses, dependent children, or designated beneficiaries.

(2) Except as provided in section 31-30-1118, the fund must be kept, secured, and distributed for the purpose of issuing pensions and protecting the persons named in this part 11 and for no other purpose whatsoever; except that the board may annually spend moneys as it deems proper and necessary from the fund for necessary expenses connected with the fund.

Source: **L. 95:** Entire part added, p. 1372, § 2, effective June 5. **L. 96:** (1) amended, p. 626, § 44, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Intent of section. Section 31-30-313 and this section are obviously intended to protect the pension funds from attachment and levy by creditors. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Reason for restriction on use of pension funds. Section 31-30-313 and this section place a restriction on the use of pension funds in order to secure the funds for the use and benefit of the firemen and policemen who contributed to the fund. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

31-30-1118. Fund use - other purposes. (1) If the governing body of a municipality or district finds by resolution that no person is eligible or can become eligible for payment of a fund benefit, it may authorize contributions of all fund moneys for any fire-related purpose and, if no fire-related purpose exists, for any purpose as determined by the governing body of the municipality or district.

(2) At least sixty days before adoption of this resolution, the governing body of the municipality or district shall publish one notice in a newspaper with general circulation within the municipality or district and shall provide a copy of the published notice to the board of directors of the fire and police pension association. The notice must state that the intent of the governing body is to use the money in the fund for the purposes permitted in subsection (1) of this section and that persons who believe they are or may be entitled to

benefit payments from the fund have fifty days from the date of the notice in which to file a written objection with the governing body regarding its proposed use of the fund. If a written objection is received, the governing body shall hold a public hearing before adoption of the resolution. Before the hearing, the governing body shall publish notice of the time and place of the hearing and send written notice of the hearing by certified mail to each person who files a written objection.

(3) If a person establishes a claim to a benefit from the fund within one year after adoption of this resolution, the municipality or district shall repay to the fund any money paid from the fund under this section, and no such additional payments shall be made from the fund.

Source: L. 95: Entire part added, p. 1373, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

The general assembly has neither expressly authorized nor forbidden a refund of individual pension fund contributions on termination of employment. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Home-rule city can contract to make such refunds. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Permitting the refund of individual pension fund contributions upon termination of employment is simply an extension of the general principle of protecting the welfare of contributors to the fund. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

And denial of refunds would then be unjust. Where the city has contracted to make refunds of employee's contributions to pension funds on termination of employment, and policemen and firemen have relied upon such representations, to deny the refunds sought would be an unjust and unreasonable result. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

31-30-1119. Board report - municipality. The board shall make a report to the governing body of the municipality on the condition of the fund. The board shall submit the report to the governing body before the last meeting in February and the last meeting in August of each year.

Source: L. 95: Entire part added, p. 1373, § 2, effective June 5. L. 2010: Entire section amended, (SB 10-021), ch. 17, p. 80, § 4, effective August 11.

31-30-1120. Maximum benefit amount. (Repealed)

Source: L. 95: Entire part added p. 1374, § 2, effective June 5. L. 98: Entire section amended, p. 64, § 1, effective March 23; entire section repealed, p. 807, § 1, effective May 26.

31-30-1121. Disability pension - rules - hearing. (1) If a volunteer firefighter is injured while in the line of duty as a volunteer firefighter, the board shall pay to the volunteer firefighter:

(a) A short-term disability monthly annuity for not more than one year in an amount it determines is proper and equitable, considering the financial condition of the fund, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater; or

(b) A long-term disability monthly annuity for a disability that deprives the volunteer firefighter of an earning capacity and that extends beyond one year in an amount it determines is proper and necessary but not more than the amount paid by the board pursuant to section 31-30-1122 (1) or four hundred fifty dollars, whichever is greater. Any increase

in the benefits in a municipality under this paragraph (b) shall be approved by the municipality's governing body.

(2) Disability-pension applicants shall be examined by one or more physicians selected by the board and may be examined by one or more physicians selected by the applicant. The board shall pay from the fund the expenses of the physician chosen by the board.

(3) The board shall adopt rules it deems proper concerning the examination of persons who are receiving disability benefits under this section to determine periodically the fitness of these persons. A person who is receiving benefits under this section and who is either fifty years of age or has completed twenty years of active duty in the fire department before the date disability benefits under this section are first provided shall not be reexamined. A person receiving benefits under this section shall not be examined before one year after the date disability benefits under this section are first provided and not more often than annually after this date.

(4) The board shall terminate the disability benefits under this section of a person who the board finds has recovered sufficiently from the disability that resulted in the receipt of these benefits, is under the age of fifty years, and has served less than twenty years of active duty. A person whose benefits are terminated under this subsection (4) may file a written protest within thirty days after the termination date stating the objection to the termination and requesting a hearing. The decision of the board is suspended pending a hearing on the protest. At the hearing, the member may appear and be represented by counsel.

Source: L. 95: Entire part added, p. 1374, § 2, effective June 5. L. 98: (1) amended, p. 807, § 2, effective May 26.

31-30-1122. Retirement pension. (1) The board of a municipality, with the prior consent of the municipality's governing body, or the board of a fire protection district or county improvement district may pay a retirement pension to a volunteer firefighter who has twenty years of active service and who is over the age of fifty years. The retirement pension shall be an amount determined by the board of not more than one hundred dollars per month, unless an actuarial review indicates a higher payment is actuarially sound; except that any such amount determined by the board of a municipality shall be made with the prior consent of the municipality's governing body. Pensions that make payments in excess of three hundred dollars per month are subject to the state contribution limitation specified in section 31-30-1112 (2) (b). Except as provided in section 31-30-1132, a volunteer firefighter shall not receive a retirement pension for service in a fire department while the firefighter is an active member of that department. A volunteer firefighter shall maintain a minimum training participation in the fire department of thirty-six hours each year to qualify for retirement benefits. A volunteer firefighter who has served twenty years and who has not reached the age of fifty years may be granted a leave of absence and retain all rights to a retirement pension and is entitled to the retirement pension when the firefighter is fifty years of age.

(2) Notwithstanding subsection (1) of this section, the board may pay a retirement pension to a volunteer firefighter who has less than twenty years of active service if the municipality's or district's fund is actuarially sound. The board shall determine the period of active service necessary to qualify for this retirement pension, but in no event shall such period be less than ten years of active service. The board shall not pay this retirement pension until the volunteer firefighter is fifty years of age. The amount of this retirement pension shall be determined by prorating the amount of the retirement pension under subsection (1) of this section based on the volunteer firefighter's years of service.

(3) Whenever the board increases the retirement pension benefit payable pursuant to subsection (1) of this section, such increase may also be applied to the pension benefit of any retired volunteer firefighter receiving the pension benefit specified in subsection (1) of this section at the time of such increase. The applicable pro rata share of any such increase, based upon the number of years of service, may also be applied to the pension benefit of any retired volunteer firefighter receiving the pension benefit specified in subsection (2) of this section at the time of such increase. Whenever the board elects to apply any retirement pension increase permitted under this subsection (3), the board shall apply such increase to

the retirement pension of all retired volunteer firefighters in a fire department who are eligible for such increase under this subsection (3). Any actuarial review required under subsection (1) of this section shall include the cost of any retirement pension increase permitted under this subsection (3).

Source: **L. 95:** Entire part added, p. 1374, § 2, effective June 5. **L. 97:** (1) amended, p. 169, § 2, effective March 28; (3) added, p. 968, § 1, effective May 22. **L. 98:** (1) and (2) amended, p. 64, § 2, effective March 23; (1) amended, p. 808, § 3, effective May 26.

Editor's note: Amendments to subsection (1) by House Bill 98-1035 and House Bill 98-1380 were harmonized.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conform with statutory provisions, not

whether the board abused its discretion in granting the pensions. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

"Active service" requirement not fulfilled. Membership on the board of directors of a fire protection district, when not coupled with regular participation in firefighting activities on the same basis as nonboard members, cannot fulfill the "active service" requirement of subsection (8) of this section. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

31-30-1123. Retirement pension - sources of payment. The retirement pension of a volunteer firefighter who has earned twenty years of active service as a volunteer firefighter for any one municipality or district shall be paid from the fund of that municipality or district, and no other fund shall pay a pension to that volunteer firefighter. The retirement pension of a volunteer firefighter who earns twenty years of active service as a volunteer firefighter after June 2, 1977, by serving more than one municipality or district shall be paid from the fund of each municipality or district for which the volunteer firefighter served at least five years. The amount paid by each fund for each year of service with the particular municipality or district shall equal one-twentieth of the retirement pension being paid by that fund on the day the volunteer firefighter left the service of the particular municipality or district. The retirement pension of a volunteer firefighter who earns twenty years of active service as a volunteer firefighter by serving more than one municipality or district shall be paid only by the municipality or district last served by that volunteer firefighter if any part of the twenty years of service was earned on or before June 2, 1977. In no event shall a volunteer firefighter receive a total retirement benefit from all volunteer firefighter pension funds exceeding the maximum amount paid by the board from such funds pursuant to section 31-30-1122 (1) or four hundred fifty dollars, whichever is greater.

Source: **L. 95:** Entire part added, p. 1375, § 2, effective June 5. **L. 98:** Entire section amended, p. 808, § 4, effective May 26.

31-30-1124. Compliance - insufficient moneys. (1) The board may require information, including proof of years of service, and establish procedures as it deems necessary to ensure compliance with the requirements and limitations of sections 31-30-1122 and 31-30-1123.

(2) If at any time money or other property in the fund is insufficient to pay the full amount per month to which each volunteer firefighter receiving a pension under this part 11 and other beneficiary of the fund is entitled, an equal percentage of the monthly payment shall be made to those volunteer firefighters and other beneficiaries until the fund is replenished in an amount that permits payment in full to those volunteer firefighters and other beneficiaries.

Source: **L. 95:** Entire part added, p. 1375, § 2, effective June 5.

31-30-1125. Supplemental retirement pension. (1) In addition to the monthly retirement pension provided by section 31-30-1122, the board of a municipality, with the prior consent of the municipality's governing body, or the board of a fire protection district or county improvement district may pay a supplemental monthly retirement pension to a volunteer firefighter who is fifty years of age and who has been in active service more than twenty years if:

(a) An actuarial review indicates a supplemental monthly pension payment is actuarially sound; and

(b) Sixty-five percent of the total number of fire department members and retired fire department members give prior approval.

(2) The supplemental monthly pension payment shall not exceed five percent of the monthly pension payment provided by section 31-30-1122 multiplied by the number of years of active service in excess of twenty years, up to a maximum of ten years; except that the total of the monthly retirement pension payment provided by section 31-30-1122 and the supplemental monthly pension payment shall not exceed an amount that is actuarially sound.

Source: L. 95: Entire part added, p. 1376, § 2, effective June 5. L. 98: (2) amended, p. 65, § 3, effective March 23.

31-30-1126. Survivor benefit. (1) Except as otherwise provided in subsection (3) of this section, upon the death of a retired fire department member or a volunteer firefighter who, regardless of age, has served the requisite number of years for retirement under section 31-30-1122 and who leaves a surviving spouse, the board may pay an annuity of not more than fifty percent of the current pension payment for a retired fire department member if the fund is actuarially sound. If the volunteer firefighter had less than twenty years of active service, the annuity to the surviving spouse shall be prorated based upon the number of years of service.

(2) This annuity to the surviving spouse shall cease if the surviving spouse remarries. Dissolution of a subsequent marriage does not reinstate the annuity. A surviving spouse shall not receive both an annuity under section 31-30-1127 and an annuity under this section.

(3) The benefits under this section do not apply if the optional survivor benefits under section 31-30-1128 are provided.

(4) The benefits under this section may be increased in the same manner as postretirement benefit increases as provided in section 31-30-1122 (3), subject to the state contribution limit set forth in section 31-30-1112 (2).

Source: L. 95: Entire part added, p. 1376, § 2, effective June 5. L. 98: (4) added, p. 809, § 5, effective May 26. L. 2002: (4) amended, p. 506, § 2, effective July 1.

31-30-1127. Survivor benefit - death from injuries in the line of duty. (1) Except as otherwise provided in subsection (4) of this section, if a fire department member dies from injuries received while in the line of duty as a volunteer firefighter and leaves a surviving spouse, the board shall pay the surviving spouse a monthly annuity either in an amount the board deems proper and necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The annuity shall cease if the surviving spouse remarries. Dissolution of a subsequent marriage does not reinstate the annuity.

(2) Except as otherwise provided in subsection (4) of this section, if there is no surviving spouse as provided in subsection (1) of this section but there is a surviving child of the deceased volunteer firefighter under eighteen years of age, the board shall pay a monthly annuity either in an amount the board deems proper or necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance

or by rules of the board of the affected municipality or district. The board shall pay this annuity to the guardian of the child on behalf of the child. The annuity shall cease when the child is eighteen years of age.

(3) Except as otherwise provided in subsection (4) of this section, if there is no surviving spouse or child as provided in subsections (1) and (2) of this section but there is a surviving dependent parent of the deceased volunteer firefighter, the board shall pay the dependent parent a monthly annuity either in an amount the board deems proper and necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The annuity shall cease if the dependent parent remarries. Dissolution of a subsequent marriage does not reinstate the annuity.

(4) The benefits under this section:

(a) Are in addition to the educational benefits under section 23-3.3-205, C.R.S.;

(b) Do not apply if the optional survivor benefits under section 31-30-1128 are provided; and

(c) May be increased in the same manner as postretirement benefit increases as provided in section 31-30-1122 (3), subject to the state contribution limit set forth in section 31-30-1112 (2).

Source: **L. 95:** Entire part added, p. 1377, § 2, effective June 5. **L. 98:** Entire section amended, p. 809, § 6, effective May 26. **L. 2002:** (4)(c) amended, p. 506, § 3, effective July 1.

31-30-1128. Optional survivor benefits. (1) Notwithstanding the provisions of sections 31-30-1126 and 31-30-1127 relating to payment of annuities in the event of the death of a volunteer firefighter in active service, the board in any municipality, with the prior consent of the governing body of such municipality, fire protection district, or county improvement district having a volunteer fire department may provide to the active members of the volunteer fire department the option of having the survivor benefits offered by this section in lieu of the purchase of individual, group, or blanket life, endowment, or annuity or variable annuity insurance pursuant to section 31-30-1114 (1) (a) (I) and (1) (a) (II) and in lieu of the survivor benefits provided to active volunteer firefighters pursuant to sections 31-30-1126 and 31-30-1127 if the following conditions are met:

(a) Sixty-five percent of the active and retired volunteer firefighters of the affected volunteer fire department consent in writing to the option provided by this section;

(b) An actuarial review by an independent actuary indicates the option provided by this section is actuarially sound and will not impair the ability of pension funds to pay the annuities to a beneficiary or to pay pensions; and

(c) If a municipality intends to provide the option provided by this section, the governing body of the municipality consents to the option.

(2) The governing body of a municipality or the board of a fire protection district or county improvement district having a volunteer fire department that intends to provide the option provided by this section shall determine whether the survivor benefits are allowed only if the volunteer firefighter dies while on duty and shall determine the benefit amount equal to up to one hundred percent of the amount of the pension the volunteer firefighter would have been entitled to under this part 11 if the volunteer firefighter had retired immediately before the volunteer firefighter's death. If survivor benefits are provided pursuant to subsection (1) of this section to the members of a volunteer fire department and if a volunteer firefighter who is a member of such fire department dies on duty or, if authorized by the governing body or board, off duty, a spouse, dependent child, or dependent parent of the volunteer firefighter or, lacking such dependents, any other beneficiary who is a natural person and who has been designated by the volunteer firefighter shall receive a monthly annuity in the amount determined pursuant to this subsection (2).

(3) If survivor benefits are provided pursuant to subsection (1) of this section, the board shall pay the annuity authorized by this section to the designated beneficiary or to the legal guardian of the designated beneficiary who is a child under the age of eighteen as follows:

- (a) Until the death of the beneficiary;
- (b) If the beneficiary is a child under the age of eighteen, until the death of the child or until the child is eighteen years of age;
- (c) If the beneficiary is a full-time student in an educational or vocational institution, until the beneficiary is twenty-three years of age;
- (d) If the beneficiary is the surviving spouse, until the surviving spouse remarries; or
- (e) Until the proceeds of the insurance policies provided in subsection (4) of this section and the accrued interest on such insurance proceeds are exhausted.

(4) To pay the costs of the option provided pursuant to this section, the board shall insure members of the volunteer fire department by insurance policies of individual, group, or blanket life, endowment, or annuity insurance or variable annuity insurance. The pension fund must be the beneficiary of these insurance policies, and the proceeds of these insurance policies shall be paid to the board as an addition to the fund. Payment of the premiums on these policies shall be paid from the existing pension fund assets, from additional local contributions made to the existing pension fund for payment of the premiums, or both; except that, notwithstanding the provisions of section 31-30-1112 concerning the amount of state contributions to the pension fund, additional state contributions shall not be made to the existing pension fund assets for payment of the premiums on these policies or as a result of additional local contributions made to the existing pension fund for payment of the premiums.

(5) If survivor benefits are provided pursuant to subsection (1) of this section and if a volunteer firefighter terminates active duty before retirement, the board may allow the firefighter to purchase any insurance policy that was purchased pursuant to subsection (4) of this section at a price equal to the cash value of the policy. If the firefighter does not purchase the policy, the board shall surrender the policy for its cash value. Moneys obtained by the board pursuant to this subsection (5), shall be deposited in the pension fund and used to pay the costs of the survivor benefits provided pursuant to this section.

(6) The survivor benefits provided pursuant to subsection (1) of this section may be terminated at any time by either:

- (a) A vote to terminate by the governing body of the municipality or the board of the fire protection district or county improvement district having a volunteer fire department;
- (b) A vote to terminate approved by sixty-five percent of the members of the volunteer fire department.

Source: L. 95: Entire part added, p. 1377, § 2, effective June 5.

31-30-1129. Funeral benefit. When an active volunteer firefighter or retired fire department member dies, the board shall pay a funeral benefit to assist in the proper burial of the deceased firefighter in an amount determined by the board of not more than twice the amount determined by the board under section 31-30-1122, but not less than one hundred dollars. The board shall pay this funeral benefit to any person who pays the necessary funeral expenses.

Source: L. 95: Entire part added, p. 1379, § 2, effective June 5. **L. 98:** Entire section amended, p. 810, § 7, effective May 26.

31-30-1130. Fire department dissolution. (1) If a fire department dissolves and the services of volunteer firefighters or the fire department are discontinued:

- (a) The benefits paid under this part 11 to volunteer firefighters or their surviving spouses, dependent parents, children, and other beneficiaries at the time of the dissolution shall continue;
- (b) Assets of the fund shall be transferred with other assets of the fire department and shall be administered by the board of trustees of the successor pension fund;
- (c) In no event shall the rate of compensation be altered either after commencement of proceedings for dissolution has occurred or after its completion;

(d) A volunteer firefighter who has accrued ten or more years of active service at the time of the dissolution shall be granted an annuity after the firefighter is fifty years of age. The annuity shall be prorated in accordance with the number of years of service and the amount of annuity being paid for age and service pensions by the board at the time of the dissolution.

Source: L. 95: Entire part added, p. 1380, § 2, effective June 5.

31-30-1131. Volunteer firefighter - employment termination restricted. (1) An employer shall not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the employee's absence was due to the response.

(1.5) An employer shall not terminate an employee who is a volunteer firefighter and who leaves work to respond to an emergency summons, if:

(a) The employer does not deem the employee to be essential to the operation of the employer's daily enterprise;

(b) The employer has previously received written documentation from the fire chief of the employee's fire department notifying the employer of the employee's status as a volunteer firefighter;

(c) The emergency is within the response area of the employee's fire department and is of such magnitude that the emergency summons issued by the fire chief requires all firefighters to respond; and

(d) The chief of the employee's fire department provides the employer with a written statement verifying the time, date, and duration of the employee's response.

(2) An employer may deduct time lost from employment caused by a response to an emergency summons from the wages of an employee who is a volunteer firefighter.

(3) Notwithstanding the provisions of this section, if a volunteer firefighter is called to an emergency pursuant to part 22 of article 32 of title 24, C.R.S., the provisions of section 24-32-2225 or 24-32-2226, C.R.S., shall control regarding the volunteer firefighters absence or leave from work. Under no circumstances shall a volunteer firefighter's leave exceed the amount allowed pursuant to section 24-32-2225 or 24-32-2226, C.R.S.

Source: L. 95: Entire part added, p. 1380, § 2, effective June 5. L. 2008: Entire section amended, p. 339, § 2, effective April 8.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 109, Session Laws of Colorado 2008.

31-30-1132. Retired firefighter - return to active service - benefits. If the governing body of any municipality, fire protection district, or county improvement district, by resolution, determines that a fire department is in need of additional volunteer firefighters, a retired fire department member shall be eligible to serve as an active volunteer firefighter of such fire department. Any retired fire department member who, subsequent to retirement, serves as an active volunteer firefighter for a fire department pursuant to this section shall continue to receive pension benefits from the volunteer firefighter pension fund under this article during the period in which the person is an active volunteer firefighter of the fire department. During the period such person is receiving a pension and acting as an active volunteer firefighter pursuant to this section, such person shall not receive service credit for the purpose of increasing such pension.

Source: L. 97: Entire section added, p. 169, § 1, effective March 28. L. 2005: Entire section amended, p. 776, § 62, effective June 1.

31-30-1133. Qualification requirements - internal revenue code - definitions. (1) As used in this section, "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(2) Any volunteer firefighter pension plan established by this part 11 to provide retirement benefits for volunteer firefighters shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. In order to meet those requirements, such plans are subject to the following provisions, notwithstanding any other provision of this part 11:

(a) The board shall distribute the corpus and income of the pension plan to members and their beneficiaries in accordance with this part 11 and the rules adopted by the board.

(b) No part of the corpus or income of the pension plan may be used for or diverted to any purpose other than that of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the pension plan, except for an assignment for child support debt pursuant to section 14-14-104, C.R.S., child support arrearages as requested as part of an enforcement action under article 5 of title 14, C.R.S., or child support arrearages that are the subject of enforcement services provided under section 26-13-106, C.R.S., and except for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., and a writ of garnishment that is the result of a judgment taken for arrearages for child support or for child support debt.

(3) A board may adopt any provision for a plan that is necessary to comply with the internal revenue code.

Source: L. 98: Entire section added, p. 22, § 1, effective March 16. L. 2006: (2)(b) amended, p. 179, § 2, effective March 31. L. 2009: Entire section amended, (HB 09-1030), ch. 16, p. 87, § 1, effective August 5.

31-30-1134. Statewide accidental death and disability insurance policy - department of local affairs. (1) Beginning on July 1, 2004, the department of local affairs shall provide for and determine the cost of a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments, the insurance to be applicable only when serving as a volunteer firefighter. The policy shall be paid for as provided in section 31-30-1112 (2) (h) (II) from the proceeds of the tax imposed by section 10-3-209, C.R.S.

(2) The department of local affairs shall set the amount of coverage to be provided for each volunteer firefighter, take competitive bids for the policy from insurers, and make such rules as may be necessary to provide for the policy.

(3) The department of local affairs shall secure an accidental death and disability insurance policy that offers the best benefits available for the amount of moneys transferred to the department pursuant to section 31-30-1112 (2) (h) (II).

(4) The insurer shall have sole power to determine disability for volunteer firefighters under the policy provided by this section.

(5) The department of local affairs shall have the authority to contract with any entity for the purpose of complying with the requirements of this section.

Source: L. 2004: Entire section added, p. 1136, § 3, effective July 1.

PART 12

VOLUNTEER SERVICE AWARD ACT

31-30-1201. Short title. This part 12 shall be known and may be cited as the "Volunteer Service Award Act".

Source: L. 2007: Entire part added, p. 193, § 1, effective March 26.

31-30-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Bona fide volunteer" means a person who renders qualified services for an emergency service provider if the only compensation received by the person for performing the qualified services is in the form of:

(a) Reimbursement, or a reasonable allowance, for reasonable expenses incurred in the performance of such services; or

(b) Reasonable benefits, including length of service awards, and nominal fees for qualified services customarily paid by an eligible emergency service provider in connection with the performance of such services.

(2) "Emergency service provider" means a local government or an authority formed by two or more local governments that provides any of the following services:

(a) Fire fighting and prevention services;

(b) Emergency medical services; or

(c) Ambulance services through the use of volunteers.

(3) "Qualified services" means fire fighting and prevention services, emergency medical services, and ambulance services.

(4) "Volunteer service award" means a benefit based on length of service that a volunteer may legally accrue pursuant to current rulings of the internal revenue service and that, while invested under a volunteer service award plan adopted pursuant to this part 12, is exempt from federal income taxes on both the emergency service provider's contribution and all interest, dividends, and capital gains until the ultimate distribution to the volunteer.

Source: L. 2007: Entire part added, p. 193, § 1, effective March 26.

31-30-1203. Volunteer service award plan. (1) The governing body of any emergency service provider may adopt and amend or provide for the administration and amendment of a volunteer service award plan for bona fide volunteers.

(2) If the governing body of the emergency service provider chooses to adopt and amend or provide for the administration and amendment of a volunteer service award plan, the body shall adopt a plan document providing for the administration of the volunteer service award that is intended to comply with the provisions of section 457 (e) (11) of the federal "Internal Revenue Code of 1986", as amended. The emergency service provider shall be responsible for ensuring that such plan document is in compliance with applicable law. Participation by volunteers shall be subject to the requirements and limitations of said section 457 (e) (11) and the applicable regulations promulgated under said section 457.

(3) The governing body of the emergency service provider that adopts a volunteer service award program shall invest public moneys held to pay such awards as may be allowed pursuant to parts 6 and 7 of article 75 of title 24, C.R.S.

(4) The existence or enactment of any qualified length of service plan to recognize volunteer service that is in effect prior to March 26, 2007, is hereby authorized.

(5) Notwithstanding any provision in this part 12 to the contrary, nothing shall preclude an emergency service provider from adopting any other incentive programs to assist bona fide volunteers.

Source: L. 2007: Entire part added, p. 194, § 1, effective March 26.

PART 13

VOLUNTEER HEALTH INSURANCE ACT

31-30-1301. Short title. This part 13 shall be known and may be cited as the "Volunteer Health Insurance Act".

Source: L. 2008: Entire part added, p. 579, § 3, effective August 5.

31-30-1302. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Bona fide volunteer":

(a) Has the meaning set forth in section 31-30-1202; and

(b) Means any volunteer member of a rescue unit as defined in section 25-3.5-103, C.R.S.

- (2) “Carrier” means an entity that provides health coverage in this state, including a franchise insurance plan, a fraternal benefit society, a health maintenance organization, a nonprofit hospital and health service corporation, a sickness and accident insurance company, and any other entity providing a health insurance or health benefits plan or policy subject to the insurance laws and regulations of Colorado.
- (3) “Emergency service provider” has the meaning set forth in section 29-11-101, C.R.S.
- (4) “Group health insurance plan” means a group sickness and accident insurance plan as described in section 10-16-214, C.R.S.
- (5) “Qualified services” means firefighting and fire prevention services, emergency medical services, ambulance services, and search and rescue services.

Source: L. 2008: Entire part added, p. 579, § 3, effective August 5.

31-30-1303. Group health insurance plan. (1) The governing body of an emergency service provider may enter into insurance contracts with carriers to provide group health insurance plans for its bona fide volunteers. The cost of the plans, sources of funding, amount of contributions required from bona fide volunteers, coverage parameters, and eligibility requirements shall be negotiated by the governing body and the carrier. Nothing in this section shall be construed to preclude a governing body from participating in an insurance pool or from allowing its bona fide volunteers to participate in the group health insurance plan offered to the paid employees of the governing body.

(2) The administration and management of a group health insurance plan shall be the exclusive responsibility of the carriers of the plan.

(3) This section shall apply only to bona fide volunteers deemed to be active and in good standing by the emergency service provider.

Source: L. 2008: Entire part added, p. 580, § 3, effective August 5.

ARTICLE 30.5

Fire - Police - Old Hire Pension Plans

Editor’s note: This article was added with relocations in 1996 containing provisions of some sections formerly located in parts 3 to 10 of article 30 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

PART 1		31-30.5-209.	Idle funds.
GENERAL PROVISIONS		31-30.5-210.	Plan amendment.
		31-30.5-211.	Affiliation with the fire and police pension association.
31-30.5-101.	Legislative declaration.	31-30.5-212.	Qualification requirements - internal revenue code - definitions.
31-30.5-102.	Definitions.	31-30.5-213.	Dissolution of fire departments.
31-30.5-103.	Applicability.		
PART 2		PART 3	
ADMINISTRATION		FUNDING - STATE-ASSISTED PLANS	
31-30.5-201.	Funds created.	31-30.5-301.	Legislative declaration.
31-30.5-202.	Board of trustees - firefighters' old hire pension fund.		31-30.5-302.
31-30.5-203.	Board of trustees - police officers' old hire pension fund.	31-30.5-303.	State assistance - limitation.
31-30.5-204.	Powers and duties of the board.	31-30.5-304.	Limitation on existing funds - procedures.
31-30.5-205.	Attorneys to advise.	31-30.5-305.	No change in employer obligation.
31-30.5-206.	Warrants drawn.	31-30.5-306.	Actuarial studies.
31-30.5-207.	Method of payment.		
31-30.5-208.	Fund not subject to levy.	31-30.5-307.	State contribution.

PART 4

FUNDING - NONSTATE
ASSISTED PLANS

- 31-30.5-401. Sources of revenue for fund.
- 31-30.5-402. Municipalities under fifty thousand - limit of contributions to old hire police officers' pension plans.
- 31-30.5-403. Employers under one hundred thousand - limit of contributions to old hire firefighter pension plans.
- 31-30.5-404. Plans affiliated with the fire and police pension association.

PART 5

INVESTMENTS - INSURANCE

- 31-30.5-501. Old hire pension fund - investments.
- 31-30.5-502. Insurance - investment by banks and trust companies.
- 31-30.5-503. Alternative investment authority.

PART 6

RETIREMENT BENEFITS

- 31-30.5-601. Police officers' old hire pension plans - municipalities under one hundred thousand in population.
- 31-30.5-602. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.
- 31-30.5-603. Police officers' old hire pension

31-30.5-604.

plans - municipalities of at least one hundred thousand in population.
Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.

PART 7

DISABILITY AND
SURVIVOR BENEFITS

31-30.5-701.

Coverage.

31-30.5-702.

Police officers' old hire pension plans - municipalities under one hundred thousand in population.

31-30.5-703.

Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.

31-30.5-704.

Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.

31-30.5-705.

Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.

PART 8

EXEMPT PLANS

31-30.5-801.

Exempt alternative programs authorized.

31-30.5-802.

Exempt money purchase plan option.

31-30.5-803.

Investment authority.

PART 1

GENERAL PROVISIONS

31-30.5-101. Legislative declaration. (1) The general assembly finds and determines that police officers, in saving and protecting the lives and property of the citizens and residents of the state of Colorado, are performing state duties and are rendering services of special benefit to this state and that it is the province, right, and obligation of the state of Colorado to care for members of the police force who are entitled to retirement because of length of service or old age or because they have been injured or disabled in service and also to care for the spouses, dependent parents, and dependent children of such police officers.

(2) The general assembly further finds and determines that the establishment of firefighters' pension plans in this state is a matter of statewide concern that affects the public safety and general welfare.

Source: L. 96: Entire article added with relocations, p. 856, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-301.

31-30.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affiliated board" means any board affiliated, as specified in section 31-31-701, with the fire and police pension association created in section 31-31-201.

(1.5) "Board" means the board of trustees established as the governing body of the firefighters' or police officers' old hire pension fund as provided in sections 31-30.5-202 and 31-30.5-203.

(2) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district or county improvement district in this state offering fire protection service employing one or more members.

(3) "Fund" means the applicable firefighters or police officers' pension fund created in section 31-30.5-201.

(4) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the employee's employer. The term does not include clerical or other personnel whose services are auxiliary to police or fire protection.

Source: L. 96: Entire article added with relocations, p. 857, § 1, effective May 23.

L. 2009: (1) amended and (1.5) added, (HB 09-1030), ch. 16, p. 89, § 2, effective August 5.

31-30.5-103. Applicability. (1) (a) Except as provided in subsection (2) of this section, every employer in this state shall provide the applicable pension benefits of the old hire police or fire pension plan established by this article for members hired on or before April 7, 1978.

(b) In addition to paragraph (a) of this subsection (1), every employer in this state shall provide the applicable pension benefits of the old hire police or fire pension plan established by this article for members hired on or after April 8, 1978, but before January 1, 1980, if:

(I) The member has prior service as a firefighter or police officer in the state of Colorado;

(II) The current employer approved coverage under its old hire pension plan or any other local plan;

(III) The member contributed to the old hire pension fund of the current employer the amount of money that the member would have paid if all the member's prior service had been as an employee of the current employer, such makeup contribution to have been paid over a three-year period; and

(IV) The member requested such coverage, in writing, on or before December 31, 1981.

(2) The following members, otherwise eligible to participate in an old hire pension plan pursuant to subsection (1) of this section shall be exempt from participation:

(a) Members covered under an exempt pension plan established by part 8 of this article;

(b) Members who, pursuant to the affiliation of their old hire pension plan with the fire and police pension association as provided by section 31-31-701 (2), elect to become covered under the provisions of the statewide defined benefit plan, established by article 31 of this title; and

(c) Members covered under the federal "Social Security Act", unless their employer also provides supplemental retirement benefits under an old hire pension plan.

(3) All members meeting the requirements of subsection (1) of this section, who are not otherwise excluded from an old hire pension plan coverage under subsection (2) of this section, shall be referred to in this article and article 31 of this title as "old hire members".

Source: L. 96: Entire article added with relocations, p. 857, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1003.

ANNOTATION

Annotator's note. Since § 31-30.5-103 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Non-vesting provisions constitutional. Notwithstanding the holding in *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1981), that the 1978 version of the Policeman's and Fireman's Pension Reform Act constituted unconstitutional retrospective legislation, the non-vesting provisions of said act are severable and therefore constitutional. *Steins v. Fire and Police Pension Ass'n*, 684 P.2d 180 (Colo. 1984).

Plaintiffs not entitled to greater benefits under Denver plan. *Peterson v. Fire and Police*

Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part and rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. *Littleton v. Fire and Police Pension Ass'n*, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. *City of Lamar v. Lamar Police Dept.*, 857 P.2d 457 (Colo. App. 1992).

PART 2

ADMINISTRATION

31-30.5-201. Funds created. (1) There is created and established in each employer having fire department old hire members, a pension fund to be known as the "firefighters' old hire pension fund".

(2) There is created and established in each employer having police department old hire members, a pension fund to be known as the "police officers' old hire pension fund".

Source: L. 96: Entire article added with relocations, p. 858, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-501 and 31-30-601.

ANNOTATION

Annotator's note. Since § 31-30.5-201 is similar to §§ 31-30-401 and 31-30-501 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of those sections has been included in the annotations to this section.

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. *Agee v. Trustees of Pensions Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conforms with statutory provisions, not whether the board abused its discretion in granting the pensions. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

Firemen's pension act does not impair obligation of contracts of employment in violation of § 11 of art. II, Colo. Const. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

Pension plans matter of statewide concern. Pension plans for firemen have a direct bearing

on the matter of fire protection and are for that reason matters of statewide concern. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

City ordinances inconsistent with firemen's pension act fail. Because the subject of firemen's pensions has statewide dimensions, inconsistent provisions of a city ordinance must fail insofar as they are inconsistent with the firemen's pension act. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

Those sections of the Colorado Springs municipal code which bear on the question of firemen's pensions, insofar as they conflict with the firemen's pension act, are invalid, and the provisions of the firemen's pension act apply to the city of Colorado Springs. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

Firemen's pension act requires only two things of cities over 100,000 population: (1) These cities are required to activate a board of trustees which is to administer the retirement system; and (2) these cities are required to levy a one mill tax on the taxable property of the city

for benefit of the fund. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conform with statutory provisions, not whether the board abused its discretion in granting the pensions. *Agee v. Trustees of Pension Bd.*, 33 Colo. App. 268, 518 P.2d 301 (1974).

The Public Employee Retirement Association (PERA) and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit

contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

The city of Colorado Springs is subject to the state statutory scheme which requires that cities which have a paid fire department and a population in excess of 100,000 establish a fire fighters pension fund. These provisions require that the fund be administered by a board of trustees who must follow certain guidelines. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

31-30.5-202. Board of trustees - firefighters' old hire pension fund. (1) The general supervision, management, and control of the firefighters' old hire pension fund shall be vested in a board of trustees.

(2) In any municipality having a population of less than one hundred thousand, the board shall consist, except as provided in subsection (6) of this section, of the mayor, the municipal treasurer or finance officer, one other person appointed by the governing body of such municipality, and three active or retired old hire members of the fire department serving the municipality who shall be elected by the active and retired old hire members of the fire department. The terms of office on the board shall be: The mayor of the municipality, during tenure in office; the treasurer or finance officer, during tenure in office; the appointed citizen, to be designated by the governing body of the municipality at time of appointment; the three active or retired old hire members of the fire department, to be elected for terms of three years, but at the initial election to be conducted to elect old hire members of the fire department, one old hire member shall be elected for a three-year term, one old hire member for a two-year term, and one old hire member for a one-year term. Thereafter, such old hire members shall be elected for three-year terms. Said board shall elect from its number a president and secretary. The municipal treasurer or finance officer shall be ex officio treasurer of the board.

(3) (a) In any municipality having a population of at least one hundred thousand, the board shall be composed of the mayor, the manager of safety, the manager of revenue, the chief of the fire department, and the city auditor or such persons performing the duties of the above-named officers, and also two active or retired old hire members of the fire department to be selected as provided in paragraph (b) of this subsection (3).

(b) During the month of July in each year, the chief officer of the fire department shall conduct an election by secret ballot, at which election all active and retired old hire members of the fire department shall be eligible to vote, for the purpose of determining membership on the board. In the first election so held, two old hire members shall be elected, the member receiving the highest number of votes being elected for a term of two years and the member receiving the next highest number of votes being elected for a term of one year. Upon election, such members shall be certified as members of the board and shall take office on the August 1 following their election. In subsequent elections, only one old hire member shall be elected for a term of two years, and the member receiving the highest number of votes in each subsequent election shall be certified as a member of the board and shall take office on the August 1 following the member's election. In case any old hire member so elected to the board becomes unable or ineligible to serve on the board by reason of death, disability, or for any other cause, a special board election shall be held to fill the vacancy so created for the remainder of the unexpired term.

(c) The board shall select from their number a president and a secretary, and the manager of revenue, or the person performing the duties thereof, shall be ex officio treasurer of said board and custodian of all funds coming into its hands.

(4) In fire protection districts, except as provided in subsection (6) of this section, the board shall consist of the board of directors of the fire protection district, the treasurer of the board of the fire protection district to be treasurer of the fund, and two active or retired old hire members of the fire department. The trustees shall serve terms of office on the board as follows: The president for the term of office, the treasurer for tenure in office, and two active or retired old hire members for two-year terms of office. Initial election of the old hire members of the fire department shall be conducted to elect one old hire member for two years and one old hire member for one year.

(5) In county improvement districts, the board shall consist of one member of the governing board of the county in which the district is located, the county treasurer or finance officer, three residents of the county obligated to pay real or personal property taxes, and two active or retired old hire members of the fire department. The trustees shall serve terms of office on the board as follows: Members of the governing board, during their tenure in office; the county treasurer, during the treasurer's tenure in office; and the two active or retired old hire members of the fire department for two-year terms of office.

(6) Notwithstanding the provisions of subsections (2), (3), and (4) of this section, any municipality or fire protection district, with the concurrence of a majority of the active and retired old hire members voting thereon, may by ordinance or resolution create the board to administer the fund if the number of employer representatives on such board equals the number of member representatives on such board; except that, if fewer than two old hire members are available or willing to serve on such board, the number of employer representatives may exceed the number of member representatives.

(7) In case of any consolidation or merger of any municipality, fire protection district, or county improvement district with one or more municipalities, fire protection districts, or county improvement districts, the former trustees of the various firefighters' pension funds of such consolidated or merged political subdivisions shall, with due regard to equal representation, elect seven persons from their number to serve as trustees of the old hire firefighters' pension fund of said merged or consolidated fund, not more than three of whom shall be old hire members, and the former trustees not so elected to serve shall cease to hold office. The trustees of said consolidated fund shall elect from their number a president, secretary, and treasurer.

(8) The treasurer of the board, in addition to any custodian appointed by the board pursuant to section 31-30.5-204 (4), shall be the custodian of the fund and shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board or any member thereof or any other interested person. The treasurer, upon expiration of the treasurer's term of office, shall surrender and deliver to the treasurer's successor all bonds, securities, and unexpended moneys or other property that came into the treasurer's hands as treasurer of said fund. The treasurer shall be required to supply bond in an amount designated by the board and paid for by the fund.

Source: L. 96: Entire article added with relocation, p. 858, § 1, effective May 23. L. 2003: (2) and (3)(a) amended, p. 826, § 1, effective April 1. L. 2005: (2), (3)(b), (4), and (5) amended, p. 134, § 1, effective August 8.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-402 (1)(a), (1)(b), (2)(a), (2.5), and (3), 31-30-411, and 31-30-502.

31-30.5-203. Board of trustees - police officers' old hire pension fund. (1) The general supervision, management, and control of the police officers' old hire pension fund shall be vested in a board of trustees.

(2) In any municipality having a population of less than one hundred thousand, unless it is a home rule city or town that provides for the composition of the board by charter or ordinance, the board shall consist of the mayor, the municipal treasurer, the clerk, and one active old hire member of the police department who shall be elected by the active old hire members of the department; except that, if there are no active old hire members available

or willing to serve on such board, such board shall consist of the mayor, the municipal treasurer, and the clerk. Said board shall select from their number a president and a secretary. The municipal treasurer shall be ex officio treasurer of said board and custodian of all funds coming into the treasurer's hands.

(3) In any municipality having a population of at least one hundred thousand, the board shall consist of such persons or officials as may be designated by the charter and ordinances thereof.

(4) The treasurer of the board, in addition to any custodian appointed by the board pursuant to section 31-30.5-204 (4), shall be the custodian of the fund, shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board, any member thereof, or any other interested person. Said treasurer, upon expiration of the treasurer's term of office, shall surrender and deliver to the treasurer's successor all bonds, securities, and unexpended moneys or other property that came into the treasurer's hands as treasurer of the fund. The treasurer shall be required to supply bond in an amount designated by the board and paid for by the fund.

Source: L. 96: Entire article added with relocations, p. 861, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-304, 31-30-305 (1), and 31-30-612.

31-30.5-204. Powers and duties of the board. (1) The board shall:

(a) Promulgate all necessary rules, not inconsistent with the provisions of this article, for managing and discharging its duties and for its own government and procedure in so doing and for the preservation and protection of the fund.

(b) Hear and decide all applications for relief, pensions, annuities, retirement, or other benefits under the provisions of this article. Action on such applications shall be final and conclusive; except that, when, in the opinion of the board, justice demands that said action should be reconsidered, the same may be reversed by said board.

(c) Keep and preserve a record of actions taken by the board and of all other matters properly before said board.

(d) Make an annual report to the governing body of the employer of the condition of the fund in August of each year.

(2) The board has power to compel witnesses to attend and testify before it upon all matters connected with the provisions of this article in the same manner as is or may be provided by law. The president of said board or any member thereof may administer oaths to such witnesses.

(3) The board has the power to draw on the fund for the payment of expenses attributable to the administration of the fund, the payment of benefits, and for the purpose of investing all or any part of the fund as permitted by part 5 of this article.

(4) The board may designate one or more financial institutions as custodian of the fund. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund and the custodian shall maintain a current inventory of all investments of the fund.

(5) In municipalities that prescribe the composition of the board for the police officers' old hire pension fund by ordinance or charter, the board shall have such additional powers and duties as may be provided by the charter and ordinances of such municipalities.

Source: L. 96: Entire article added with relocations, p. 862, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-305 (4), 31-30-312 (1) and (2), 31-30-403 (3)(a), 31-30-502 (1)(b), and 31-30-615.

ANNOTATION

Annotator's note. Since § 31-30.5-204 is similar to §§ 31-30-505 and 31-30-605 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

The words "final and conclusive" merely determine the point of administrative finality, leaving to the courts the ultimate decision on the validity of the "final" administrative orders. *City of Aurora v. Hood*, 194 Colo. 80, 570 P.2d 246 (1977).

And indicate legislative intent as to review. The words "final and conclusive" are an indi-

cation by the general assembly of its intent to provide the same type of review on the record customarily available under other statutes dealing with review of administrative orders. *City of Aurora v. Hood*, 194 Colo. 80, 570 P.2d 246 (1977).

Constitutionality of no review by courts of board decision not decided. In this case the court expressly reserved the question of the constitutionality of the provision of this section making the action of the firemen's pension board not subject to review by the courts. *Shearer v. Bd. of Trustees of Firemen's Pension Fund*, 121 Colo. 592, 218 P.2d 753 (1950).

31-30.5-205. Attorneys to advise. It is the duty of the attorneys for the employer to advise the boards on all matters pertaining to their duties and management of the fund when required to do so. Such attorneys shall represent and defend the boards as their attorneys in all suits or actions at law or in equity that may be brought against them and bring all suits and actions in their behalf that may be required or determined upon by said boards. In the event of a conflict between a board and an employer, the board may obtain legal counsel to represent the board in any such action at the expense of the board.

Source: L. 96: Entire article added with relocations, p. 863, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-414.

31-30.5-206. Warrants drawn. It is the duty of such officers of the municipality, fire protection district, or county improvement district as are designated by law to draw warrants on the treasurer of said municipality, fire protection district, or county improvement district on orders by the board, to draw warrants thereon, payable to the treasurer of said board for all funds belonging to the fund.

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-410 (1).

31-30.5-207. Method of payment. All moneys ordered to be paid from the fund to any person shall be paid by the treasurer only upon the warrant signed by the president of said board and countersigned by the secretary thereof. No warrant shall be drawn except by order of the board after having been duly entered on the records of the proceedings of the board.

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-410 (2).

31-30.5-208. Fund not subject to levy. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event

of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, no portion of the fund, before or after its order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the employer or the beneficiary of the fund. Said fund shall be held and distributed for the purposes of this article and for no other purpose whatsoever.

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23; entire section amended, p. 627, § 45, effective July 1; entire section amended, p. 1464, § 13, effective January 1, 1997. **L. 2005:** Entire section amended, p. 75, § 12, effective August 8.

ANNOTATION

Annotator's note. Since § 31-30.5-208 is similar to §§ 31-30-313 and 31-30-412 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

Intent of section. This section and section 31-30-412 are obviously intended to protect the pension funds from attachment and levy by

creditors. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Reason for restriction on use of pension funds. This section and section 31-30-412 place a restriction on the use of pension funds in order to secure the funds for the use and benefit of the firemen and policemen who contributed to the fund. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

31-30.5-209. Idle funds. (1) If the governing body of a municipality, by resolution, finds that no person named in this article is, and no such person can become, eligible for payment of a benefit from the municipality's police officers' old hire pension fund established pursuant to section 31-30.5-201 (2), it may authorize use of the money in the fund to make contributions to the defined benefit system trust fund pursuant to section 31-31-402 (2), to make contributions to a police benefit fund established pursuant to section 31-31-601 (1) (b), or to make contributions under the federal social security laws if the municipality's police officers are covered by the social security laws. To the extent that money in the fund exceeds three times the present yearly employer contribution to any of the preceding benefit funds on behalf of the municipality's current police officers, such excess may be used for any law-enforcement-related purpose. If the municipality does not employ any police officer, the governing body may authorize use of the money in the fund for any law-enforcement-related purpose. In addition, any money in the fund that is attributable to contributions by the municipality and to interest on such contributions may be used for any police-related purpose and, if no such police-related need exists, then for any purpose as decided by the governing body of the municipality. For the purposes of this subsection (1), contracting with the county or county sheriff for law enforcement service shall not be considered employment of a police officer.

(2) If the governing body of a municipality, fire protection district, or county improvement district, by resolution, finds that no person named in this article is, and no such person can become, eligible for payment of a benefit from the employer's firefighters' old hire pension fund, it may authorize use of the money in the fund to make contributions to the defined benefit system trust fund pursuant to section 31-31-402 (2) or to make contributions under the federal social security laws if the employer's firefighters are covered by the social security laws. In addition, any money in the fund that is attributable to contributions by the municipality or district and to interest on such contributions may be used for any fire-related purpose and, if no such fire-related need exists, for any purpose as decided by the governing body of the municipality or district.

(3) (a) At least sixty days before adoption of a resolution permitted by subsection (1) or (2) of this section, the governing body of the municipality or district shall publish one

notice in a newspaper having general circulation within the municipality or district and shall provide a copy of such published notice to the board of directors of the state fire and police pension association established pursuant to section 31-31-201 (1). The notice shall state the intent of the governing body to use the money in the fund for the purposes permitted in this section. The notice shall state that persons who believe they are or may be entitled to benefit payments from the fund shall have fifty days from the date of the notice in which to file an objection, in writing, with the governing body regarding its proposed use of the fund. If any such written objection is received, the governing body shall hold a public hearing before adoption of any resolution under this section with prior published notice of the time and place of the hearing as well as written notice of such hearing mailed, by certified mail, to each person filing a written objection.

(b) If, within one year after adoption of a resolution pursuant to this section, any person establishes a claim to a benefit from the fund, the municipality or district shall repay to the fund any money expended from such fund pursuant to this section, and no such additional expenditures shall be made from the fund.

(4) (a) (I) Notwithstanding the provisions of subsections (1) and (2) of this section and subject to the provisions of paragraph (c) of this subsection (4), if no members are participating in an employer's old hire pension plan established under this article, the governing body of the employer, by resolution, may authorize the use of the excess balance in the plan fund for the purposes permitted in subsections (1) and (2) of this section. If a governing body authorizes the use of the excess balance under this subsection (4), the employer shall maintain the plan fund at a level equal to at least two times the amount necessary to fund the benefit liabilities of any persons continuing to receive benefits from the plan fund.

(II) For purposes of this paragraph (a), "excess balance" means the amount in an old hire plan fund in excess of two times the amount necessary to fund the benefit liabilities of persons continuing to receive benefits from the plan fund, as determined by the plan's actuary. In determining the excess balance in an old hire plan fund, the actuary shall utilize the assumptions approved by the board of directors of the fire and police pension association pursuant to section 31-30.5-306 (2) (b).

(b) Notwithstanding the provisions of subsections (1) and (2) of this section and paragraph (a) of this subsection (4) and subject to the provisions of paragraph (c) of this subsection (4), if no members are participating in an employer's old hire pension plan established under this article and the plan provides no rank escalation benefit or other type of cost-of-living benefit to persons receiving benefits from the plan fund other than cost-of-living benefits provided through the annual adjustment required pursuant to paragraph (c) of this subsection (4), the board, after disclosure to the affected retirees, is authorized to use the assets in the plan fund for the purpose of purchasing annuities in amounts sufficient to pay any required benefits to those persons who continue to receive benefits from the plan fund. If the board purchases annuities for such persons, the governing body of the employer, by resolution, may authorize the use of any additional funds that remain in the plan fund after purchasing such annuities for the purposes permitted in subsections (1) and (2) of this section. Annuities may be purchased pursuant to this paragraph (b) only from insurance companies rated at least A+ by the A.M. Best company or rated at least AA by Standard & Poors Corporation. If there is a default on the payment of benefits resulting from an annuity purchased under this paragraph (b), the employer shall remain liable to make any required benefit payments to persons for whom the annuities were purchased.

(c) If a plan fund does not provide any type of cost-of-living benefit to persons receiving benefits from the plan fund, the assets in the plan fund shall be used to provide an annual adjustment to the pension benefits for such persons prior to using the excess balance in the plan fund as provided in paragraph (a) of this subsection (4) and prior to purchasing annuities as provided in paragraph (b) of this subsection (4). The minimum annual adjustment shall be calculated in the same manner as the annual adjustment to total disability benefits provided for members of the statewide death and disability plan pursuant to section 31-31-803 (6) (b) (II); except that the effective date of the benefit for purposes of the amount set forth in said section shall be the date on which the board provides the annual adjustment required under this paragraph (c).

Source: **L. 96:** Entire article added with relocations, p. 864, § 1, effective May 23. **L. 97:** (4) added, p. 21, § 1, effective July 1. **L. 2002:** (4)(c) amended, p. 173, § 1, effective October 1. **L. 2006:** (1) and (2) amended, p. 180, § 3, effective March 31. **L. 2008:** (4)(c) amended, p. 14, § 2, effective August 5.

Editor's note: Provisions of this section were formerly numbered as § 31-30-313 (2)(a) and § 31-30-412 (2)(a) to (2)(c).

ANNOTATION

Annotator's note. Since § 31-30.5-209 is similar to §§ 31-30-313 and 31-30-412 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

The general assembly has neither expressly authorized nor forbidden a refund of individual pension fund contributions on termination of employment. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Home-rule city can contract to make such refunds. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension ben-

efits. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Permitting the refund of individual pension fund contributions upon termination of employment is simply an extension of the general principle of protecting the welfare of contributors to the fund. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

And denial of refunds would then be unjust. Where the city has contracted to make refunds of employee's contributions to pension funds on termination of employment, and policemen and firemen have relied upon such representations, to deny the refunds sought would be an unjust and unreasonable result. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

31-30.5-210. Plan amendment. (1) No modification of any provision of an old hire pension plan established pursuant to this article may be made after December 1, 1978, except as may be authorized by subsection (2) of this section.

(2) Upon the request of an employer and with the approval of sixty-five percent of the active and retired old hire members, the board of directors of the fire and police pension association established pursuant to section 31-31-201 (1), shall permit the modification of any provision of an old hire pension plan established pursuant to this article, if the board determines that such modification will maintain or enhance the actuarial soundness, as defined in section 31-31-102 (1), of such fund. In addition, upon the request of an employer, the board shall permit the modification of any provision of an old hire pension plan necessary to comply with state or federal law. Such modification may be made without the approval of the active and retired old hire members. This subsection (2) shall not be construed to authorize the board to allow a modification of any such old hire plan so as to change the nature of the plan from a defined benefit plan to a money purchase plan or to adversely affect the pension benefits of active or retired old hire members.

Source: **L. 96:** Entire article added with relocations, p. 865, § 1, effective May 23. **L. 2003:** (2) amended, p. 827, § 2, effective April 1. **L. 2005:** (2) amended, p. 135, § 2, effective August 8.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-805 (10)(a) and 31-30-1005 (6).

ANNOTATION

Annotator's note. Since § 31-30.5-210 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the

provisions of those sections have been included in the annotations to this section.

Legislative intent under former provision. Although this part does not specifically state that

a city will be solely liable for making pension funds actuarially sound, it is apparent that this was the legislative intent. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Fact that the general assembly increased the mandatory municipal contribution in this part does not mean that the general assembly intended in § 31-30-503 that cities should be totally financially responsible for pension funds. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Section prevails over § 31-30-503 under former law. This section has a later effective date than § 31-30-503 and therefore prevails. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Governing body controls amount of employee contribution. The governing body of the municipality has control over the amount of the employee contribution up to the prescribed maximum. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an

employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-30.5-211. Affiliation with the fire and police pension association. Any employer may elect affiliation with the fire and police pension association established by section 31-31-201 (1), relating to an old hire pension plan established pursuant to this article. The procedures for affiliation and other provisions governing the administration of an affiliated plan are set forth in section 31-31-701.

Source: L. 96: Entire article added with relocations, p. 866, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1003 (3)(a).

ANNOTATION

Annotator's note. Since § 31-30.5-211 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of those sections have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. *Peterson v. Fire and Police Pension Ass'n*, 725 P.2d 81 (Colo. App. 1986), aff'd in part and rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The pro-

visions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. *Littleton v. Fire and Police Pension Ass'n*, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. *City of Lamar v. Lamar Police Dept.*, 857 P.2d 457 (Colo. App. 1992).

31-30.5-212. Qualification requirements - internal revenue code - definitions.

(1) As used in this section, “internal revenue code” means the federal “Internal Revenue Code of 1986”, as amended.

(2) Old hire pension plans shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans.

(3) A board, as defined in section 31-30.5-102 (1.5), may adopt any provision for an old hire pension plan that is necessary to comply with the internal revenue code.

(4) (a) The board of directors of the fire and police pension association established by section 31-31-201 may create a master plan document for old hire pension plans and may submit the master plan document to the internal revenue service for a determination of its status as a qualified plan under the internal revenue code. The master plan document shall include provisions necessary to comply with the internal revenue code.

(b) The board of directors of the fire and police pension association established by section 31-31-201 may:

(I) Amend the master plan document as may be necessary to comply with the internal revenue code; and

(II) Require an affiliated board to adopt the master plan document or to obtain internal revenue service approval for its old hire pension plan.

(c) Nothing in this subsection (4) shall preclude an affiliated board from submitting its plan document to the internal revenue service for a determination of its plan document’s status as a qualified plan under the internal revenue code.

(5) The old hire pension funds established by this article shall be held in trust for the benefit of old hire members and other persons entitled to benefits. No part of the corpus or income of a pension fund shall be used for or diverted to purposes other than for the exclusive benefit of old hire members or other persons entitled to benefits from the pension fund and for expenses incident to operation of the pension fund. No person shall have any interest in or right to any part of the corpus or earnings of the pension trust except as expressly provided, including assignments for child support purposes as provided for in section 14-14-104, C.R.S., child support arrearages as requested as part of an enforcement action under article 5 of title 14, C.R.S., or child support arrearages that are the subject of enforcement services provided under section 26-13-106, C.R.S., income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S.

Source: L. 96: Entire article added with relocations, p. 866, § 1, effective May 23. L. 98: (8) amended and (9) and (10) added, p. 24, § 2, effective March 16. L. 2006: (2) amended, p. 180, § 4, effective March 31. L. 2009: Entire section R&RE, (HB 09-1030), ch. 16, p. 89, § 3, effective August 5.

Editor’s note: This section was formerly numbered as § 31-30-324.5.

31-30.5-213. Dissolution of fire departments. In the event of dissolution, for any reason, of fire departments whereby the services of firefighters or fire departments are discontinued, the firefighters or their surviving spouses, dependent parents, and children receiving benefits at the time of such dissolution shall continue to receive such benefits in accordance with the provisions of this article. Assets of the pension funds shall be transferred with other assets of the department and shall be administered by the board of trustees of the successor pension fund. In no event shall the rate of compensation be altered either after commencement of proceedings for dissolution has occurred or after its completion. After attaining fifty years of age, any firefighter having accrued ten or more years of active service at the time of such dissolution shall be granted an annuity, prorated in accordance with the number of years of service and the amount of annuity being paid for age and service pensions by the board of trustees of such pension fund at the time of such dissolution.

Source: L. 96: Entire article added with relocations, p. 867, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-415 (9).

PART 3

FUNDING - STATE-ASSISTED PLANS

31-30.5-301. Legislative declaration. The general assembly finds and declares that the establishment of statewide actuarial standards regarding funded and unfunded liabilities of state-assisted old hire police officers' and firefighters' pension funds established pursuant to this article is a matter of statewide concern affected with a public interest, and the provisions of this part 3 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further declares that state moneys provided to municipalities, fire protection districts, and county improvement districts do not constitute an obligation of the state to participate in the costs of pension plan benefits but are provided in recognition that said local governments are currently burdened with financial obligations relating to pensions in excess of their present financial capacities. It is the intent of the general assembly in providing state moneys to assist said local governments that state participation decrease annually, terminating at the earliest possible date.

Source: L. 96: Entire article added with relocations, p. 867, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-802.

31-30.5-302. Definitions. As used in this part 3, unless the context otherwise requires: (1) "Commission" means the police officers' and firefighters' pension reform commission established pursuant to section 31-31-1001.

(2) "Employee" means any old hire firefighter, except any volunteer firefighter, or old hire police officer employed by an employer who is eligible for the benefits provided pursuant to this article.

(3) "Employer" means any municipality, fire protection district, or county improvement district employing one or more employees.

(4) "Governing body" means the governing body of a municipality, fire protection district, or county improvement district.

(5) "State-assisted" means receiving state moneys relating to accrued unfunded liability pursuant to section 31-30.5-307.

(6) "Volunteer firefighter" has the same meaning as provided in section 31-30-1102 (9).

Source: L. 96: Entire article added with relocations, p. 868, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-803.

31-30.5-303. State assistance - limitation. (1) On and after July 1, 1981, state assistance relating to accrued unfunded liabilities to each police officers' and firefighters' pension plan in this state shall be expressly contingent upon the maintenance by the governing body providing such plan of the level of annual contributions required pursuant to this part 3.

(2) If the board of directors of the fire and police pension association determines that a governing body is failing to maintain the level of contributions to a pension plan required pursuant to this part 3, the board shall suspend the distribution of state moneys to such pension plan.

Source: L. 96: Entire article added with relocations, p. 868, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-804.

31-30.5-304. Limitation on existing funds - procedures. (1) On and after January 1, 1982, every state-assisted old hire police officers' or firefighters' pension plan created pursuant to this article shall be financed in accordance with minimum funding standards prescribed in this part 3. Contributions made pursuant to this section shall include municipal, special district, and county improvement district contributions, the established employee contribution, and any state contribution.

(2) (a) Except as provided in subsections (4) and (5) of this section, annual contributions to state-assisted old hire police officers' and firefighters' pension funds shall be made, beginning January 1, 1982, at an annual rate that is equal to or greater than the sum of the actuarially determined amount required to amortize, over a period of not more than thirty-seven years from January 1, 1982, the unfunded accrued liabilities of such plan and the current service cost attributable to active members.

(b) In each year until any state-assisted pension plan created pursuant to this article is funded on an actuarial reserve basis as required by this part 3 and has no accrued unfunded liability attributable to active or retired members, the total of such annual contributions shall not be less than the rate of contribution as a percentage of payroll made in the year 1977.

(3) The general assembly finds and determines that it has contributed substantial sums to the program established by this part 3 and that the state has a responsibility to evaluate the advisability of its contribution in light of its own fiscal situation.

(3.5) No later than September 1, 1995, the board of directors of the fire and police pension association shall certify to the state auditor, the legislative audit committee and the joint budget committee of the general assembly, and the state treasurer the amount of state contribution necessary to fund the supplemental unfunded liability in each state-assisted policemen's or firefighters' pension plan attributable to the reduction of the state's contribution for the year 1987. On September 30, 1995, the state treasurer shall transfer the amount certified from the general fund to the old hire plan members' benefit trust fund created by section 31-31-701 (6), and from such amount the board shall distribute to each state-assisted policemen's or firefighters' pension plan the amount necessary to eliminate the supplemental unfunded liability in each plan; except that the amount transferred by the state treasurer pursuant to this subsection (3.5) shall not exceed twenty-five million five hundred thousand dollars.

(4) A governing body providing a state-assisted old hire pension plan that determines that the minimum annual rate of municipal, fire protection district, or county improvement district contributions provided in subsection (2) of this section would place an undue initial hardship on the taxpayers of such municipality, fire protection district, or county improvement district may adopt a resolution to that effect. Any municipality, fire protection district, or county improvement district that has adopted such resolution may make annual contributions in accordance with the following schedules:

(a) For municipalities, fire protection districts, and county improvement districts having a population of less than five hundred thousand, as determined by the 1970 federal census, contributions for each calendar year, commencing in 1982, shall be at a rate equal to or greater than the percentage of the sum of the current service cost attributable to active members plus the actuarially determined amount required to amortize the unfunded accrued liabilities of such state-assisted fund over a period of not more than thirty-seven years, established as follows:

Calendar year	Percentage	Thirty-seven-year amortization period beginning January 1
1982	65	1982
1983	70	1983
1984	75	1984
1985	80	1985
1986	85	1986

1987	90	1987
1988	95	1988
1989		
and thereafter	100	1989

(b) For municipalities, fire protection districts, and county improvement districts having a population of five hundred thousand or more, as determined by the 1970 federal census, contributions for each calendar year beginning 1982 shall be at a rate equal to or greater than the percentage of the sum of the current service cost attributable to active members and the actuarially determined amount required to amortize the unfunded accrued liabilities of such state-assisted fund over a period of not more than thirty-seven years, established as follows:

Calendar year	Percentage	Thirty-seven-year amortization period beginning January 1
1982	50	1982
1983	60	1983
1984	70	1984
1985	80	1985
1986	90	1986
1987		
and thereafter	100	1987

(c) Any provision of this subsection (4) to the contrary notwithstanding, in each year until any state-assisted old hire pension plan established pursuant to this article is funded on an actuarial reserve basis as required by this part 3 and has no accrued unfunded liability attributable to active or retired members, the total of such annual contributions shall be not less than the greater of the pension benefits paid in such year or the rate of contribution as a percentage of payroll made in the year 1977.

(5) (a) Except as provided in paragraph (c) of this subsection (5), beginning July 1, 1995, annual employer contributions to state-assisted old hire police officers' and firefighters' pension funds shall be made at least at an annual rate that is the lesser of the following:

(I) The 1993 minimum annual required total dollar amount of contributions established by the January 1, 1992, actuarial studies performed on such funds under section 31-30.5-306, less the dollar amount of member contributions paid in calendar year 1993 and less the dollar amount of state contributions received in calendar year 1994; or

(II) The amount that is certified by the actuary who is designated by the fire and police pension association under section 31-30.5-306 to be necessary as of July 1, 1995, to pay current service costs and eliminate all unfunded liabilities in any such fund no later than June 30, 2019, if annual member contributions are made as required by subsection (7) of this section and if annual state contributions equal to the amount received in calendar year 1994 are made.

(b) Annual employer contributions to state-assisted police officers' and firefighters' pension funds shall continue at the rate established by this subsection (5) after the 2018-19 state fiscal year, if necessary, until all unfunded accrued liability in the employers' state-assisted old hire police officers' and firefighters' pension plans is eliminated and if annual state contributions are made through April 30, 2019, pursuant to section 31-30.5-307 (2).

(c) If in any year the annual state contribution to state-assisted old hire police officers' and firefighters' pension funds is less than the amount contributed under section 31-30.5-307 (2) on September 30, 1995, employer contributions to such funds shall be determined under paragraph (a) of subsection (2) of this section.

(d) In addition to the contributions required by paragraph (a) of this subsection (5), the employer must annually pay any required dollar amount of contributions necessary to fund

additional plan benefits adopted under section 31-30.5-210 (2), as established by supplemental actuarial studies on such funds.

(6) All municipalities, fire protection districts, and county improvement districts, including both paid firefighters and volunteer firefighters in their pension plans, shall segregate the pension funds for paid firefighters and volunteer firefighters on an equitable basis for accounting and actuarial purposes, and said segregation shall be considered in all actuarial reports applicable to such funds. In computing the portion of the fund attributable to volunteer firefighters, the benefits of such volunteer firefighters shall not be reduced or otherwise changed.

(7) (a) (I) (A) Notwithstanding any other provision of this article, no modification of any provision of an old hire pension benefit plan of a fund established pursuant to this article may be made after December 1, 1978, except as may be authorized pursuant to section 31-30.5-210 (2); but the contribution rate of the members of any state-assisted old hire pension plan may be increased to a maximum of ten percent of salary and shall be increased to the following minimums, with the rate of contribution of the employer at least equal to the employee rate:

Calendar year	Percentage
1982	6.5
1983	7.0
1984	7.5
1985	
and thereafter	8.0

(B) The provisions of this subparagraph (I) shall not apply to an exempt plan described in part 8 of this article.

(II) A rate of contribution lower than the minimums set forth in subparagraph (I) of this paragraph (a) may be established by the governing body if, excluding any state contribution, the lower rate would meet the minimum funding provisions of subsections (2) and (5) of this section and if the rate of contribution of the employer at least equals the employee rate.

(III) The restriction provided in subparagraph (I) of this paragraph (a) on modification of any provision of a pension benefit plan established pursuant to this article shall apply to any modification which otherwise would be permitted by a change in population.

(b) Except as provided in paragraph (a) of this subsection (7), in no event shall employee contributions to a state-assisted fund be reduced if greater than the rate established by said paragraph (a).

(c) Nothing in this subsection (7) shall prevent the implementation of article 31 of this title with regard to employees hired after April 7, 1978, and those employees hired on or prior to said date who are to be covered under the provisions of said article 31 in accordance with said article 31.

(8) Every employee employed as a firefighter or police officer for the first time after April 7, 1978, shall be covered by the benefit provisions set forth in or authorized by article 31 of this title.

(9) Volunteer firefighters and volunteer firefighter pension funds shall be exempt from all provisions of this section except subsection (6) of this section.

(10) Notwithstanding any other provision of this section except subsection (5) of this section, the maximum annual increase in contributions to a state-assisted old hire police officers' or firefighters' pension fund required of any employer by this section shall not exceed one-half of the employer's contribution rate as a percentage of salary to the fund during the immediately preceding year; but this maximum limitation shall not apply where its application would result in an annual employer contribution of less than five percent of salary.

(11) Notwithstanding any other provision of law to the contrary, an assessment against any employee of any fire or police department to which this article applies may be in an amount not to exceed ten percent of the employee's monthly salary. Said amount shall be deducted and withheld from the monthly pay of each such employee so assessed and placed

to the credit of said employee's pension fund in the same manner as provided by this article; except that in no case shall employer contributions be less than employee contributions.

(12) Every employer providing a state-assisted old hire pension plan shall contribute in 1982 at least at the same rate of contribution as the percentage of salary that was contributed in 1981. In no event shall any employee contribution decrease below the employee's rate of contribution for the calendar year 1981.

(13) The board of any state-assisted old hire pension plan may take, by gift, grant, devise or bequest, any money, personal property, or real estate, or interest therein, as trustees for the uses and purposes for which the fund is created.

Source: L. 96: Entire article added with relocations, p. 868, § 1, effective May 23. L. 2003: (5)(a)(II) and (5)(b) amended, p. 1472, § 1, effective May 1. L. 2006: (3.5) amended, p. 181, § 5, effective March 31. L. 2009: (5)(a)(II) and (5)(b) amended, (SB 09-227), ch. 125, p. 540, § 1, effective April 16. L. 2011: (5)(a)(II) and (5)(b) amended, (SB 11-221), ch. 152, p. 528, § 1, effective May 5.

Editor's note: This section was formerly numbered as § 31-30-805.

31-30.5-305. No change in employer obligation. It is the intention of the general assembly that the minimum funding standards established by this part 3 shall not enlarge nor diminish the obligation of municipalities and fire protection districts to their employees for pension benefits provided pursuant to this article.

Source: L. 96: Entire article added with relocations, p. 873, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-806.

31-30.5-306. Actuarial studies. (1) (a) Any employer desiring to receive state assistance contributions, pursuant to section 31-30.5-307 (1) shall file an actuarial study of its old hire police officers' and firefighters' pension funds with the association not later than July 1, 1982.

(b) (I) An updated actuarial study shall be filed with the association not later than July 1, 1984, and every two years thereafter, until July 1, 2000.

(II) By September 30, 2001, and by September 30 of each year thereafter, until September 30, 2002, and by April 30, 2006, and by April 30 of each year thereafter, until April 30, 2019, or until all state-assisted old hire pension plans are fully funded, whichever comes first, an updated actuarial study shall be filed with the fire and police pension association. For the 2003-04 fiscal year and each fiscal year thereafter for which an actuarial study is filed, the actuarial study shall include a determination of the amount of the unfunded liability that may accrue as a result of the suspension of the state contribution of the old hire plan members' benefit trust fund pursuant to section 31-30.5-307 (5) (a) or the reduction of the state contribution in 2012 and 2013 pursuant to section 31-30.5-307 (2).

(2) (a) The association shall designate actuaries or firms of actuaries to supervise, conduct, or review actuarial studies required by this section.

(b) The fire and police pension association's board of directors shall specify the actuarial assumptions to be used in each such actuarial study.

(3) Costs of all such actuarial studies shall be an expense of the association and paid for as provided in section 31-31-302 (3).

(4) In the event any such actuarial study is not timely filed with the association, the board may extend the filing deadline and make the appropriate distribution to the defaulting employer, pursuant to section 31-30.5-307 (1), upon compliance with the requirements of subsection (1) of this section, or the board may retain the moneys for the purposes specified in section 31-31-302 (3).

Source: L. 96: Entire article added with relocations, p. 873, § 1, effective May 23. L. 2001: (1)(b) amended, p. 302, § 1, effective August 8. L. 2003: (1)(b)(II) amended, p.

1473, § 2, effective May 1. **L. 2006:** (1)(b)(II) amended, p. 181, § 6, effective March 31. **L. 2009:** (1)(b)(II) amended, (SB 09-227), ch. 125, p. 541, § 2, effective April 16. **L. 2011:** (1)(b)(II) amended, (SB 11-221), ch. 152, p. 529, § 2, effective May 5.

Editor's note: This section was formerly numbered as § 31-30-1014.5.

31-30.5-307. State contribution. (1) (a) Any moneys allocated for distribution pursuant to subsection (2) of this section shall be distributed by the fire and police pension association board of directors annually to any fund of an old hire pension plan established pursuant to this article having an unfunded accrued liability to assist in amortizing such unfunded accrued liability as determined in the January 1, 1994, actuarial studies performed under section 31-30.5-306. Beginning in 1995 and in each state fiscal year through the 2018-19 state fiscal year, with the exception of the 2003-04 and 2004-05 state fiscal years pursuant to paragraph (a) of subsection (5) of this section and the 2008-09, 2009-10, and 2010-11 state fiscal years pursuant to subparagraph (II) of paragraph (a) of subsection (5) of this section, each such fund having an unfunded accrued liability shall be credited with that amount of state contributions that it received in 1994 to assist in retiring its unfunded liability. In addition, if the annual employer contribution amount established by section 31-30.5-304 (5) will result in total employer contributions to any such fund that, on a present value basis as determined by the association, are more than five percent higher than what the estimated total employer contributions to such fund would have been but for section 31-30.5-304 (5), then each such fund shall receive that amount of supplemental state contributions sufficient to eliminate, on a present value basis, the estimated aggregate increase in employer contributions attributable to the enactment of section 31-30.5-304 (5). Any remaining state contributions shall be distributed to each such fund based upon the amount, as determined by an independent actuarial review and certified by the board to the joint budget committee each December 1, that is consistent with the general assembly's intent that the unfunded liabilities in all such funds will be eliminated no later than June 30, 2019. If in any year the annual state contribution for unfunded liabilities is less than the amount contributed under subsection (2) of this section on September 30, 1995, each such fund having an unfunded accrued liability shall be credited with state contributions in proportion to the percentage of aggregate unfunded accrued liabilities each such fund represents, excluding any unfunded liabilities attributable to additional plan benefits adopted under section 31-30.5-210 (2). No money shall be distributed pursuant to this subsection (1) to an employer having rank escalation for old hire members, which is not in the association. For the purposes of this subsection (1), "rank escalation" means the addition to the amount of the retirement pension or disability benefit being received of a fixed percentage of any increase in salary, as well as longevity or additional pay based on length of service, granted the rank a member occupied before retiring or being disabled.

(b) (I) Each employer having rank escalation and having old hire members, who have made the irrevocable election to remain covered under the local plan, as provided in section 31-31-701 (2), shall determine for each such employee the percentage that such employee's years served as of January 1, 1980, bear to the total number of years required for retirement. At retirement, the retirement pension shall be divided into that percentage and the remainder. The portion of the retirement pension equal to that percentage earned as of January 1, 1980, shall be subject to rank escalation as provided under the old hire pension plan, and the remainder of the retirement pension shall be subject to the same adjustment as that determined by the fire and police pension association board of directors pursuant to section 31-31-407.

(II) An employer may elect to continue full rank escalation benefits for that portion of the retirement pension subject to the adjustment as provided in subparagraph (I) of this paragraph (b), but no state contribution shall be used to fund such continuation of rank escalation or any unfunded liabilities incurred as a result of such continuation of rank escalation.

(c) State contributions pursuant to this subsection (1) shall cease when the unfunded liabilities in all funds receiving such contributions are eliminated, but no later than June 30, 2019.

(d) Repealed.

(2) On September 30, 1995, and on September 30 of each year thereafter through 2002 and on April 30, 2006, and on April 30 of each year thereafter through 2019, the state treasurer shall transfer from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the old hire plan members' benefit trust fund created by section 31-31-701 (6), an amount equal to twenty-six million six hundred thousand dollars minus the amount transferred under section 31-30-1112 (2) (g) (I); except that, on April 30, 2012, the total amount transferred pursuant to this subsection (2) shall be five million three hundred twenty-one thousand seventy-nine dollars and on April 30, 2013, the total amount of such transfer shall be ten million dollars. Such annual transfer to the fund under this subsection (2) shall cease when the requirements of paragraph (c) of subsection (1) of this section have been met, and the final annual transfer may be in an amount less than the amount prescribed by this subsection (2) as determined from the total amount of unfunded accrued liability of employers. Moneys in said fund shall not revert to the general fund but shall be continuously available for the purposes provided in this part 3 and part 11 of article 30 of this title.

(2.5) Repealed.

(3) Moneys transferred pursuant to this section shall be included for informational purposes in the general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(4) By October 1, 2001, and by October 1 of each year thereafter, until October 1, 2002, and by March 1, 2006, and by March 1 of each year thereafter, until March 1, 2019, or until all state-assisted old hire pension plans are fully funded, whichever comes first, the board shall determine for every state-assisted old hire pension plan whether the sum of the required state and employer contributions for the current year is greater than the amount necessary to eliminate the remaining unfunded liability of the plan. The board's determination shall be based on the previous year's actuarial studies performed pursuant to section 31-30.5-306 and the sum of the previous year's state and employer contributions. If the board determines that the sum of the required contributions for the current year is greater than the amount of remaining unfunded liability of the plan, then both the required state and employer contributions to that plan shall be in an amount proportionate to the amount respectively contributed in the previous year so that the sum of the two contributions is equal to an amount that eliminates any remaining unfunded liability.

(5) (a) (I) Notwithstanding any other provision of law, the state treasurer shall not transfer moneys to the old hire plan members' benefit trust fund pursuant to subsection (2) of this section on September 30, 2003, September 30, 2004, or September 30, 2005. The state treasurer shall resume such transfers beginning on April 30, 2006, and shall make a transfer every April 30 thereafter until 2008 pursuant to subsection (2) of this section. The transfers shall resume on April 30, 2012, pursuant to subparagraph (II) of this paragraph (a).

(II) Notwithstanding any other provision of law, the state treasurer shall not transfer moneys to the old hire plan members' benefit trust fund pursuant to subsection (2) of this section on April 30, 2009, April 30, 2010, or April 30, 2011. The state treasurer shall resume such transfers beginning on April 30, 2012, and shall make a transfer every April 30 thereafter until 2019 pursuant to subsection (2) of this section or until all state-assisted old hire pension plans are fully funded, whichever comes first.

(b) Notwithstanding any other provision of law, the state shall transfer to the old hire plan members' benefit trust fund any amount of unfunded liability accrued as a result of the suspension of the state contribution to the fund pursuant to paragraph (a) of this subsection (5) or the reduction of the state contribution made in 2012 and 2013 pursuant to subsection (2) of this section as determined in the actuarial study filed with the fire and police pension association pursuant to section 31-30.5-306 (1) (b) (II). Such transfers may occur at any time until April 30, 2019.

(c) Nothing in this subsection (5) shall be construed to limit the authority of the general assembly to evaluate the advisability of the statutory contribution to the old hire pension plans in light of its own fiscal situation.

(6) If voters statewide approve a ballot issue submitted by a joint resolution of the general assembly as specified in section 24-115-110 (1) (a), C.R.S., that authorizes the state

to issue notes, as defined in section 24-115-103 (8), C.R.S., and to credit note proceeds to the fire and police members' benefit investment fund created by section 31-31-301, the state obligation specified by this section shall be satisfied to the extent of the actuarial equivalency of the proceeds from the notes.

Source: **L. 96:** Entire article added with relocations, p. 874, § 1, effective May 23. **L. 98:** (1)(b)(I) amended, p. 826, § 43, effective August 5. **L. 99:** (2.5) added, p. 1269, § 2, effective August 4. **L. 2000:** (2.5) repealed, p. 271, § 2, effective March 31. **L. 2001:** (1)(d) amended and (4) added, p. 302, § 2, effective August 8; (1)(d) repealed, p. 1180, § 18, effective August 8. **L. 2003:** (1)(a), (1)(c), (2), and (4) amended and (5) added, p. 1473, § 3, effective May 1. **L. 2004:** (2) amended, p. 1203, § 72, effective August 4. **L. 2005:** (6) added, p. 756, § 2, effective June 1. **L. 2006:** (2), (5)(a), (5)(b), and (6) amended, p. 181, § 7, effective March 31. **L. 2009:** (1)(a), (1)(c), (2), (4), (5)(a), and (5)(b) amended, (SB 09-227), ch. 125, p. 541, § 3, effective April 16. **L. 2011:** (1)(a), (1)(c), (2), (4), (5)(a)(II), and (5)(b) amended, (SB 11-221), ch. 152, p. 529, § 3, effective May 5.

Editor's note: (1) This section was formerly numbered as § 31-30-1014 (4), (5), and (7).

(2) Subsection (1)(d) was amended in House Bill 01-1008. Those amendments were superseded by the repeal of subsection (1)(d) in Senate Bill 01-208.

(3) The joint resolution referenced in subsection (6) was submitted to the voters as referendum D on November 1, 2005. Referendum D was not approved by the voters. The vote count for the measure was as follows:

FOR: 567,540

AGAINST: 581,751

For additional information see House Joint Resolution 05-1057. (L. 2005, p. 2415.)

ANNOTATION

A similar provision of law applied in City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

PART 4

FUNDING - NONSTATE ASSISTED PLANS

31-30.5-401. Sources of revenue for fund. (1) Except for state-assisted old hire police officers' and firefighters' pension plans and those affiliated with the fire and police pension association pursuant to section 31-31-701, each old hire pension fund may consist of:

(a) All moneys that may be given to such board or fund by any person for the use and purpose for which such fund is created. Such board may take, by gift, grant, devise, or bequest, any money, personal property, or real estate, or interest therein, as trustees for the uses and purposes for which the fund is created;

(b) All moneys, fees, rewards, or emoluments of every nature and description that may be paid or given to said fund;

(c) All moneys derived from employer and member contributions, as provided for in sections 31-30.5-402 and 31-30.5-403.

Source: **L. 96:** Entire article added with relocations, p. 876, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-406.

ANNOTATION

Annotator's note. Since § 31-30.5-401 is similar to § 31-30-407 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing that

section have been included in the annotations to this section.

This section is clear and free from ambiguity and is capable of only one interpretation, if interpretation be required. *Pueblo Fireman's Pension Bd. v. Hubersberger*, 132 Colo. 344, 288 P.2d 352 (1955).

Mandatory duty of board. Under this section once a petitioner's disability is established, it is the mandatory duty of the board to retire him and grant his pension. *Pueblo Fireman's Pension Fund v. Hubersberger*, 132 Colo. 344, 288 P.2d 352 (1955).

The general assembly did not intend to permit a city to reduce an employee in rank, level, and dignity and change his class of employment by forcing him to accept a position which would accomplish that result; and then supplement such lower salary by an amount

sufficient to pay the employee his former salary, and thereby deprive him of his pension. If we should establish such rule in the instant case, the rule could be applied to compel an employee of the city to accept any position of a different class and lower level and rank, provided the employee received his original pay; and by this method defeat his pension. The general assembly never intended for transfers to the manipulated so as to accomplish that result. *Pueblo Fireman's Pension Bd. v. Hubersberger*, 132 Colo. 344, 288 P.2d 352 (1955).

A petitioner is entitled to know what facts the board relies on and an opportunity, after notice, to present evidence to controvert the factual situation used as a basis for the conclusion of the board. *Pueblo Fireman's Pension Bd. v. Hubersberger*, 132 Colo. 344, 288 P.2d 352 (1955).

31-30.5-402. Municipalities under fifty thousand - limit of contributions to old hire police officers' pension plans. (1) There is granted to municipalities in this state having less than fifty thousand population the power to pay from the general funds of their respective municipalities into the old hire police officers' pension fund of their respective municipalities such sum monthly as shall not exceed five percent of the monthly salaries of the total active old hire members in the police department of their respective municipalities.

(2) In such municipalities as make contributions from general funds into the old hire police officers' pension fund of their respective municipalities pursuant to subsection (1) of this section, the active old hire members of such police department shall contribute monthly, from their respective monthly salaries, into the municipality's old hire police officers' pension fund identical percentages of their respective monthly salaries so that the contribution of the active old hire members of the police department as a whole matches the contribution of the municipality.

Source: L. 96: Entire article added with relocations, p. 876, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-319 and 31-30-320.

ANNOTATION

Annotator's note. Since § 31-30.5-402 is similar to §§ 31-30-319 and 31-30-320 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing that section have been included in the annotations to this section.

Police officers are not entitled to a refund. In absence of statutory provision or contractual agreement, rights of police officers under police

pension system do not include right to refund. *Benson v. City of Sheridan*, 31 Colo. App. 540, 506 P.2d 401 (1972).

Applied in *Benson v. City of Sheridan*, 31 Colo. App. 540, 506 P.2d 401 (1972); *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976); *Lepore v. Bd. of Trustees*, 628 P.2d 625 (Colo. App. 1981).

31-30.5-403. Employers under one hundred thousand - limit of contributions to old hire firefighter pension plans. (1) There may be levied and set apart by the governing body of each municipality having a population of less than one hundred thousand, by the board of directors of each fire protection district, or by the board of a county improvement district, a tax for the year 1969 and each year thereafter of not more than one mill on the taxable property in such municipality, fire protection district, or county improvement district, the proceeds thereof to be credited to the old hire firefighters' pension fund of each such municipality, fire protection district, or county improvement district.

(2) Any municipality, fire protection district, or county improvement district having

less than one hundred thousand population and having a paid fire department shall levy an assessment on the active old hire members in an amount not to exceed six percent of their monthly salaries and, as a minimum amount, shall match the moneys derived therefrom by an equal contribution from the municipality, fire protection district, or county improvement district by use of the levy provided for in subsection (1) of this section, or the proper governing body shall appropriate said sum out of the general revenues of the municipality, fire protection district, or county improvement district.

(3) Any municipality having less than one hundred thousand population and having a paid and volunteer fire department or any fire protection district or county improvement district having a paid and volunteer fire department shall assess the paid old hire members of such department in an amount not to exceed six percent of their monthly salaries and, as a minimum amount, shall match the moneys derived therefrom by an equal contribution from the municipality, fire protection district, or county improvement district by use of the levy provided for in subsection (1) of this section. Said sum shall be segregated by the municipal treasurer, the treasurer of the district board of directors, or the treasurer of the county improvement district, as the case may be, and shall be used for the payment of pensions to the paid old hire members of said departments and their surviving spouses and orphans, as otherwise provided for in this article, but, so long as there are volunteer members in said department, the present old hire pension fund, if derived from state allocations, shall continue to be maintained for the benefit of all members of said department, paid old hire members and volunteers alike, under such rules as the board determines to be equitable.

(4) A paid firefighter is any firefighter whose main source of income is derived from service on a fire department. All other firefighters who render service to a fire department are volunteer firefighters.

(5) If the total moneys allocated to an old hire firefighters' pension fund by a municipality, fire protection district, or county improvement district are, in the opinion of the board of such municipality, fire protection district, or county improvement district, inadequate to sustain a proper fund for retirement or for the other purposes of the fund under this article, such board may consolidate its old hire fund with the old hire fund of another municipality, fire protection district, or county improvement district, and such consolidated funds shall thereafter be administered as a single fund. Such consolidation of funds may be made under such conditions and in conformity with such terms as are mutually agreed to by the boards of the consolidating single funds, consistent with the provisions of this article.

Source: L. 96: Entire article added with relocations, p. 877, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-405.

ANNOTATION

A similar provision of law applied in *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

31-30.5-404. Plans affiliated with the fire and police pension association. Notwithstanding any provision of this part 4 to the contrary, an employer that affiliates its old hire police officers' or firefighters' pension fund with the fire and police pension association pursuant to section 31-31-701 and that is not receiving state contributions under part 3 of this article shall annually contribute an amount approved by the board of directors of the association, upon the advice of its actuary, sufficient to pay the normal cost plus amortize the unfunded past service liability attributed to old hire members, over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members.

Source: L. 96: Entire article added with relocations, p. 878, § 1, effective May 23.
L. 2009: Entire section amended, (SB 09-227), ch. 125, § 543, § 4, effective April 16.

PART 5

INVESTMENTS - INSURANCE

31-30.5-501. Old hire pension fund - investments. It is lawful for the board of trustees of the old hire firefighters' pension fund and the board of trustees of the old hire police officers' pension fund in any municipality or district in this state to invest such respective pension funds, or any part thereof, in the name of the treasurer of such municipality or in the name of a custodian or custodians appointed by the board, as provided for in this section, in interest-bearing obligations of the United States, in interest-bearing bonds of the state of Colorado, or in general obligation bonds of cities, whether organized under general law or article XX of the state constitution, or in any depository enumerated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S. The board of trustees, by written resolution, may appoint one or more persons to act as custodians, in addition to the treasurer, to deposit or cause to be deposited all or part of such funds in any state or national bank or any state or federally chartered savings and loan association in Colorado. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires. All such securities and evidences of investment shall be deposited with the treasurer of such municipality.

Source: L. 96: Entire article added with relocations, p. 878, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-701.

31-30.5-502. Insurance - investment by banks and trust companies. (1) Notwithstanding any restrictions on investments of old hire police officers' or firefighters' pension funds contained in any laws of this state, it is lawful for the board of trustees of any such pension fund, with the consent in writing of a majority of the active old hire members of the police department or fire department for the benefit of which the pension fund is maintained, to:

(a) Insure the old hire members of any such police department or fire department by the purchase of policies of individual, group, or blanket life, endowment, disability, or annuity insurance, or variable annuity insurance in and from companies authorized to do business in Colorado and to expend any portion of such pension fund for the purpose of paying the premiums on any such insurance policies; or

(b) Establish a noninsured trust pension plan with a bank or trust company authorized to exercise trust powers in this state as trustee, invested by the trustee pursuant to the provisions of part 3 of article 1 of title 15, C.R.S.; but the trustee shall at all times hold fixed income obligations having a book value or cost of not less than sixty percent of the total contributions made to the trust less the amounts paid out.

(2) If any old hire member of such police department, fire department, or association is receiving any pension, benefit, or award made prior to April 9, 1965, by such board of trustees, no such part of said fund shall be expended for purchasing said insurance as will impair the ability of said fund to meet the requirements of such pensions, benefits, and awards. The board of trustees of the old hire pension fund shall be the beneficiary of any such insurance policies, and the proceeds thereof shall be paid to the board of trustees as an addition to the old hire pension fund.

Source: L. 96 Entire article added with relocations, p. 878, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-702.

31-30.5-503. Alternative investment authority. Notwithstanding any other provision of this part 5, moneys of old hire pension plans that are not affiliated with the fire and police pension association under section 31-31-701 may be managed and invested by the trustees

of such plans pursuant to the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S. Such investments shall be audited at least biennially.

Source: L. 96: Entire article added with relocations, p. 879, § 1, effective May 23. **L. 97:** Entire section amended, p. 10, § 1, effective March 13. **L. 2004:** Entire section amended, p. 1203, § 73, effective August 4.

Editor's note: This section was formerly numbered as § 31-30-1012 (8)(a).

ANNOTATION

Annotator's note. Since § 31-30.5-503 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provision of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must,

as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

PART 6

RETIREMENT BENEFITS

31-30.5-601. Police officers' old hire pension plans - municipalities under one hundred thousand in population. (1) In municipalities having a population of less than one hundred thousand and making contributions from general funds into the police officers' old hire pension fund of their respective municipalities, any old hire member of such police department who has reached the age of fifty-five years and who has served for a period of twenty years in any such department in the state of Colorado or who in the alternative has completed twenty-five years in any such department in the state of Colorado, regardless of age, is entitled to a monthly pension equal to one-half the amount of the average salary the member received as a member of said department for one year before the time of granting the member's application. Such payment shall be made regardless of income or earnings that the said retired old hire member receives from any source.

(2) In municipalities having a population of less than one hundred thousand and not making contributions into their respective police officers' old hire pension fund, any old hire member of the police department who has reached the age of sixty years and who has served for a period of twenty years in any such department in the state of Colorado is entitled to a monthly pension equal to one-half of the amount of the average salary the member received as a member of said department for one year before the time of granting the member's application. If, thereafter, such member accepts a salaried position paying a salary of sixty dollars or more per month, the payment of the member's pension shall be suspended during the period the member holds such position.

Source: L. 96: Entire article added with relocations, p. 879, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-314 and 31-30-322.

ANNOTATION

Annotator's note. Since § 31-30.5-601 is similar to §§ 31-30-314 and 31-30-322 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant

cases construing those section have been included in this annotations to this section.

Service for 20 years "in any such department". The requirement of service for a period

of 20 years "in any such department" in this section means service in a police department in a municipality making contributions to the pension fund under § 31-30-319. *Lepore v. Bd. of Trustees*, 628 P.2d 625 (Colo. App. 1981).

Denial of pension has no effect on vested right in pension fund. The denial of an application for a pension under this section does not deprive the applicant of any vested right in the pension fund as he is still eligible to apply for a pension under § 31-30-314. *Lepore v. Bd. of Trustees*, 628 P.2d 625 (Colo. App. 1981).

Refund of contributions to fund. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Applied in *Benson v. City of Sheridan*, 31 Colo. App. 540, 506 P.2d 401 (1972).

31-30.5-602. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population. In municipalities, fire protection districts, and county improvement districts having a population of less than one hundred thousand, any old hire member who has reached the age of fifty years and who has served for a period of twenty years of active service in any such department in this state is entitled to a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus, if the governing body of the municipality, the board of directors of the fire protection district, or the board of the county improvement district authorizes such additional benefits, one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in said department. Any old hire member of a paid fire department of a municipality, fire protection district, or county improvement district, who has served prior time in a volunteer fire department in any municipality, fire protection district, or county improvement district in this state, in the event the member becomes a paid member, may be credited service time at their discretion, at the rate of one year of paid service for each four complete years of volunteer time; except that they shall not receive both a pension under part 11 of article 30 of this title and a service credit under this section.

Source: L. 96: Entire article added with relocations, p. 880, § 1, effective May 23.
L. 2005: Entire section amended, p. 776, § 63, effective June 1.

Editor's note: This section was formerly numbered as § 31-30-408.

ANNOTATION

Annotator's note. Since § 31-30.5-602 is similar to § 31-30-408 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Authority to contract to refund employee's contributions to fund. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

No authority to alter eligibility requirements. An administrative body does not have discretionary powers to alter eligibility requirements for retirement pension benefits which have been mandated by the general assembly. *Bonacci v. City of Aurora*, 642 P.2d 4 (Colo. 1982).

Municipality cannot make adverse change in pension plan without offsetting increase in benefits. *City of Aurora v. Ackman*, 738 P.2d 796 (Colo. App. 1987).

31-30.5-603. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population. In municipalities having a population of at least one hundred thousand, any old hire member of the police department who has attained the age of sixty years is entitled to a monthly pension equal to one-half the amount of the average salary said member received as a member of said department for one year before retirement. Any old hire member of the police department of such municipality having served

twenty-five years or more in such police department, other than an old hire member who has arrived at the age of sixty years and retired, is entitled to a monthly pension equal to one-half the amount of the average salary said member received as a member of said department for one year before the time of retirement.

Source: L. 96: Entire article added with relocations, p. 880, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-610.

31-30.5-604. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population. (1) In municipalities having a population of at least one hundred thousand, any old hire member of the fire department who has served at least twenty-five years of active duty and has attained the age of fifty years shall be retired within thirty days after making application for retirement, except during periods of national emergency, and such person shall be paid a monthly pension equal to one-half the amount of the monthly salary said person received as a member of said department as of the date of application for retirement. For so long as the old hire member is in retirement, there shall be added to the amount of the member's pension one-half of any increase in salary and longevity or additional pay based on length of service granted to the rank formerly occupied by the member in the department.

(2) (a) When, for any reason, the rank or grade within a fire department is abolished or ceases to exist and a retired old hire member of such department, on or after April 30, 1963, is in receipt of a pension or annuity from the fund by reason of retirement in such classification, grade, or rank, such member shall receive the member's regular pension payment for the grade or rank occupied at the time of the member's retirement. In addition, such member of a fire department shall receive additional benefits as follows: The fraction which such member's regular pension payment for the grade or rank occupied at the time of the member's retirement bears to the regular pension payment for the next higher rank at such time shall be computed; and such member shall receive one-half of any increase in salary and longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department multiplied by the fraction as above computed; but if the next higher and next lower ranks or grades of the department receive equal money increases, such member shall receive one-half of any increase without multiplication of the fraction above computed. An old hire member of such department who, on July 1, 1969, is in receipt of a pension or annuity from the fund, by reason of retirement in a rank or grade which has been abolished or has ceased to exist, shall have the member's benefits as above described recomputed, and any additional moneys to which the member is entitled shall be paid to the member as if this provision were in effect at the date of the member's application for retirement.

(b) The provisions of this subsection (2) shall apply alike to all those who retired under this section and to those who retire under the provisions of section 31-30.5-705.

Source: L. 96: Entire article added with relocations, p. 881, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-511.

ANNOTATION

Annotator's note. Since § 31-30.5-604 is similar to § 31-30-511 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing that section has been included in the annotations to this section.

Despite age and length of service requirements being satisfied, board still has discretion. Although the conditions of this section

with respect to age and length of service have been fulfilled, the board of trustees has the discretionary power exercised to deny a petition for retirement. *Bedwell v. Bd. of Trustees*, 114 Colo. 475, 166 P.2d 994 (1946).

Escalator clause adjusts pension to keep pace with cost of living. Provision in subsection (3)(a) that "such officer or member shall receive one-half of any increase in salary and

longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department multiplied by the fraction as above computed" is known as an escalator clause and is intended to automatically adjust pension payments to keep pace with cost of living and wage increases. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

No authority to alter eligibility requirements. An administrative body does not have discretionary powers to alter eligibility requirements for retirement pension benefits which have been mandated by the general assembly. *Bonacci v. City of Aurora*, 642 P.2d 4 (Colo. 1982).

PART 7

DISABILITY AND SURVIVOR BENEFITS

31-30.5-701. Coverage. The provisions of this part 7 governing the benefits payable in the event of the death or disability of an active old hire member shall apply with respect to any such member who dies or becomes disabled prior to January 1, 1980. The provisions of this part 7 governing the benefits payable in the event of the death of a retired old hire member shall apply regardless of the date of death.

Source: L. 96: Entire article added with relocations, p. 882, § 1, effective May 23.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Policemen must have been in good standing at the time of death or injury. The language of this section grants and limits pension benefits and fixes the point of time at which the individual or class is determined a beneficiary, and it is quite clear that it is intended to cover "policemen who have been members in good standing of the police departments", and the real, significant point of time is, "the time of death or injury". *Bd. of Trustees of Policemen's Pension Fund v. Starasinich*, 128 Colo. 556, 264 P.2d 1033 (1954).

And rights to benefit from the fund attach the moment a policeman's disabilities occur while he is a member in good standing. *Bd. of Trustees of Policemen's Pension Fund v. Starasinich*, 128 Colo. 556, 264 P.2d 1033 (1954).

Thus, a policemen's discharge from the police department for alleged misconduct does not, in any manner, invalidate his claim for a disability pension. *Bd. of Trustees of Policemen's Pension Fund v. Starasinich*, 128 Colo. 556, 264 P.2d 1033 (1954).

31-30.5-702. Police officers' old hire pension plans - municipalities under one hundred thousand in population. (1) If any old hire member of any police department in a municipality having a population of less than one hundred thousand, while in the performance of the member's duty or by reason of service in such department, becomes physically or mentally disabled and such disability is deemed to be of a temporary nature, said board of trustees shall retire such disabled person and shall authorize the payment to such person, monthly, of an amount from the pension fund equal to the monthly compensation paid any such member as salary at the date of such disability, not to exceed a period of one year. For the purpose of determining the physical or mental disability of any such member, the board of trustees may personally examine the member or may appoint one or more physicians or surgeons to make an examination of the member and report their findings to the board, which report may be taken into consideration in determining whether said member is physically or mentally disabled.

(2) After any old hire member of any police department in a municipality having a population of less than one hundred thousand has been retired temporarily by reason of any disability, the board of trustees has the right at any time to cause such retired member to be brought before it and again examined by competent physicians or surgeons and has the right to examine other witnesses for the purpose of discovering whether such disability yet continues and whether such retired member should be continued on the pension roll, not to

exceed a period of one year, or reinstated in the service of the police department, except in case of dismissal or resignation. Such retired member is entitled to notice and to be present at the hearing of any such evidence and may be represented by counsel. The retired member shall be permitted to propound any question pertinent or relevant to such matter and shall also have the right to introduce evidence on the member's own behalf. All witnesses so produced shall be examined under oath, and any member of such board of trustees is authorized to administer such oath to such witnesses. The decision of such board shall be final.

(3) If any old hire member or officer of any police department in a municipality having a population of less than one hundred thousand becomes mentally or physically disabled so as to render necessary the member's retirement from service in such department, said board of trustees shall retire such member from service in such department, and the member shall receive from the pension fund an amount equal to one-half of the monthly salary received by the member at the time the member becomes so disabled. Except as provided in subsection (4) of this section, when any old hire member of such police department or retired old hire member dies and leaves a surviving spouse or dependent parent or children under the age of sixteen years, surviving, the board of trustees shall authorize the payment monthly from the pension fund of the sum of thirty dollars to such surviving spouse or dependent parent and six dollars to each such minor child until the child reaches the age of sixteen years. No pension shall be paid to the dependent parent of the deceased member who leaves a surviving spouse, and, if the surviving spouse of any deceased member remarries, such pension shall cease.

(4) In those municipalities making contributions from general funds into the old hire police officers' pension plan pursuant to section 31-30.5-402, the benefits payable in the event an old hire member of such police department or retired member dies and leaves a dependent surviving spouse or dependent parent or children under the age of sixteen years shall be an amount equal to one-fourth the monthly salary received by the member of the department at the time the member died to such surviving spouse or dependent parent and an amount equal to one-eighth of the monthly salary received by the member of the department at the time the member died to each minor child until such child reaches the age of sixteen years. No pension shall be paid to the dependent parent of the deceased member who leaves a surviving spouse, and, if the surviving spouse of any deceased member remarries, such pension shall cease.

(5) If at any time there is not sufficient money or other property in said pension fund to pay to each beneficiary the full amount per month to which such beneficiary is entitled, an equal percentage of such monthly payment shall be made to each, until such fund is so replenished as to warrant payment in full to each of such beneficiaries.

Source: L. 96: Entire article added with relocations, p. 882, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-308 (1) to (3), 31-30-309, and 31-30-321 (1)(c).

ANNOTATION

Annotator's note. Since § 31-30.5-702 is similar to §§ 31-30-308 and 31-30-321 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

A claim accrues at the time of the disabling injury. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

There is no time limit in this article for applying for benefits. This article providing for the creation of the police pension fund and

payment therefrom fixes no limit of time within which application for a pension must be made or action to enforce the claimed right commenced. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Thus, the general three-year statute of limitations applies. The general assembly has not enacted a special limitation on the time for filing pension claims, hence, the three-year statute of § 13-80-108 (1)(b) governs. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

So resignation coupled with inaction for a

period of more than six years must be taken as an abandonment of any right to claim a pension. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

But once right to receive pension has been determined the right to receive payment is continuous. The right to receive a pension is a very different right from the right to receive payment once the basic right to receive the pension itself has been determined. Once the right to receive a pension has been determined, then the receipt of the pension is a continuing one. The basic or primary right (to receive the pension) is not a continuing one and may be barred by laches or by a statute of limitations. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Effect of voluntary resignation and subsequent reappointment. The voluntary resignation of a public employee from his position operates as a complete severance therefrom, and

the loss of right to the position and of all rights, benefits, or emoluments thereof, including all pension rights, and his subsequent reappointment after he has passed the age limit for admission in the pension fund does not entitle him to reinstatement as a beneficiary of such fund. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Pensions are granted for the benefit of the state and not primarily for the benefit of the recipients. They are awarded to reward efficiency and to encourage officers to remain in the service as well as to give assurance of decent living upon retirement, whether by reason of old age or because of disability. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Permanent disability is not required to be service-connected. Blank v. Police Pension Bd., 44 Colo. App. 323, 612 P.2d 1156 (1980).

Applied in Lepore v. Bd. of Trustees, 628 P.2d 625 (Colo. App. 1981).

31-30.5-703. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population. (1) (a) Any old hire member of a paid fire department in a municipality, fire protection district, or county improvement district, having less than one hundred thousand in population who becomes mentally or physically disabled while on active duty during regular assigned hours of duty from any cause not self-inflicted nor due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's duties shall be retired by the board. Any old hire member of said fire department who has completed five or more years as a member of said department but who is unable to perform the member's duties by reason of heart disease or any disease of the lungs or respiratory tract shall submit competent evidence substantiating the member's claim that the member has contracted said disease while on duty as a result of strain or the inhalation of noxious fumes, poison, or gases and shall be retired by the board.

(b) In cases where a special position or assignment can or may be assigned to such old hire member, the member may be assigned to such special position or assignment. Any such retirement shall be for the period of the disability and no longer and shall be governed by the provisions of paragraphs (c) to (e) of this subsection (1).

(c) Effective July 1, 1969, said old hire member shall be paid a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus, if the governing body of the municipality, the board of directors of the fire protection district, or the board of the county improvement district authorizes such additional benefits, one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in said department. Said pension shall continue to be paid as long as the member is in retirement.

(d) All applicants for disability pensions shall be examined by one or more physicians selected by the board and may be examined by one or more physicians selected by the applicant. All expenses of examination by the physician chosen by the board shall be paid by the board out of the old hire pension fund.

(e) The board shall establish such rules as it deems proper for the purpose of reexamination of all old hire members who are retired for disability to determine from time to time the fitness of such members to return to active duty in said department. No such member who has reached the age of fifty years, either before or after the member's retirement, shall be reexamined. No such member who has completed twenty years of active duty before the date of such retirement shall be reexamined. No member on the retired list shall be examined sooner than one year after date of retirement and not more often than

once a year thereafter. In the event it is found by said board that any member on the retired list has recovered from the disability that caused the member's retirement, such member, if the member is under fifty years of age and has served less than twenty years of active duty, shall be removed from the retired list and ordered to report to the chief officer of said fire department within thirty days for assignment to active duty. During said period of thirty days, such member may file a written protest in which the member shall state any objection to the member's removal from the retired list. The decision of said board shall be suspended pending a hearing on said protest, at which hearing such member shall have the right to appear and to be represented by counsel. During the period that any member is retired for disability by said board, such member, if under the age of fifty years and having served less than twenty years of active duty, shall be carried on a special roll of the fire department and listed as inactive.

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), if an old hire member of the fire department becomes mentally or physically disabled while not on active duty during regularly assigned hours of duty and from any cause not self-inflicted or due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's regular fire department duties, the member shall be paid by the board, starting twelve months from such disability and for the remaining period of such disability, a monthly benefit equal to five percent of the amount set forth in paragraph (c) of this subsection (1), multiplied by the number of years the member has been in active service with said fire department; but any such benefit under this subsection (1) shall not exceed one-half of the member's monthly salary as of the date of the member's disability. The provisions covering examinations, and reexamination as set forth in paragraph (e) of this subsection (1), shall be applicable to all cases arising under this paragraph (f).

(II) Any person who became an old hire member of a fire department prior to July 1, 1971, shall be entitled to the benefits set forth in subparagraph (I) of this paragraph (f) as of the date of the onset of such disability and shall not be subject to the twelve-month delay provision.

(2) If any old hire member of a fire department in a municipality, fire protection district, or county improvement district having a population of less than one hundred thousand dies from any cause, whether on duty or not or while on the retired list, leaving a surviving spouse or dependent parent, such surviving spouse or dependent parent shall be awarded a monthly annuity equal to one-third of the monthly salary of a first-grade firefighter at the time of the member's death or retirement so long as the surviving spouse or dependent parent remains unmarried. No dissolution of a subsequent marriage shall have the effect of reinstating said surviving spouse on the pension roll or authorizing the granting of a pension. No pension shall be paid to the dependent parent of a deceased old hire member who leaves a surviving spouse or dependent children.

(3) In addition to the annuity set forth in subsection (2) of this section, the board shall also order the payment to such surviving spouse or the legally appointed guardian of each dependent child of such deceased old hire member of said fire department of a monthly annuity of thirty dollars for each child, to continue until such child reaches the age of eighteen years. If such surviving spouse dies or there is no surviving spouse, as limited and described in subsection (2) of this section, but there are surviving children under eighteen years of age, the board shall order a monthly payment equal to the full payment to which a firefighter's surviving spouse is entitled under subsection (2) of this section to be divided equally among the children or a monthly payment of thirty dollars for each child, whichever total amount is greater, to the guardian for said children. In no event shall such surviving children of a deceased or retired firefighter receive an amount in excess of one-half of the current salary paid to a firefighter, first grade, of said department. No annuity shall be paid to the dependent parent of a deceased member who leaves a child or children under eighteen years of age.

(4) When any active or retired old hire member dies, the board shall appropriate from the old hire pension fund the sum of one hundred dollars, as a death benefit, to be paid to the surviving spouse or family of the deceased, but, if there is no surviving spouse or family, said sum shall be paid to such other person as the board of said fund designates.

Source: L. 96: Entire article added with relocations, p. 884, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-407 (1) to (3) and 31-30-409.

31-30.5-704. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population. (1) If any old hire member of the police department in a municipality having a population of at least one hundred thousand, while in the performance of the member's duty, becomes temporarily totally disabled, physically or mentally, for service by reason of service in such department, the board shall order the payment to such disabled member, monthly during such disability but not to exceed one year, from the old hire pension fund, a sum equal to the monthly compensation allowed such member as salary at the date of the member's disability if such member is paid no salary as such member. If any old hire member of the police department, while in the performance of the member's duty, becomes mentally or physically permanently disabled by reason of service in such department so as to render necessary the member's retirement from service in such department, the board shall retire such disabled member from service in such department. No such retirement on account of disability shall occur unless said member has contracted said disability while in the service of said police department.

(2) Upon retirement the board shall order the payment to such disabled member from the old hire pension fund a sum equal to one-half the monthly compensation allowed to such the member as salary at the date of the member's retirement. If any old hire member of the police department in a municipality having a population of at least one hundred thousand, while in the performance of the member's duty, is killed, dies as a result of an injury received in the line of duty or of any disease contracted by reason of the member's occupation, dies from any cause whatever as the result of the member's services in said department, or dies while in the service or on the retired list from any cause and leaves a surviving spouse or a dependent child under sixteen years surviving or, if unmarried, leaves a dependent parent surviving, the board shall direct the payment from the fund, monthly, to such surviving spouse, while unmarried, of thirty dollars, and for each child, while unmarried, until the child reaches the age of sixteen years, six dollars, and to the dependent parent, if such member was unmarried, thirty dollars. The pension to the dependent parent or both shall be paid as follows: If the father is dead, the mother shall receive the entire thirty dollars, and if the mother is dead, the father shall receive the entire thirty dollars, and if both are living, each shall receive fifteen dollars.

Source: L. 96: Entire article added with relocations, p. 886, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-608.

31-30.5-705. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population. (1) Any old hire member of a fire department in a municipality having a population of at least one hundred thousand, who becomes mentally or physically disabled while on active duty during regularly assigned hours of duty from any cause not self-inflicted nor due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's duties shall be retired by the board. Any old hire member of said fire department who has completed five years or more as a member of the department but who is unable to perform the member's duties by reason of heart disease or any disease of the lungs or respiratory tract shall be presumed, unless said presumption is overcome by competent evidence, to have contracted said disease while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases and shall be retired by the board.

(2) In cases where a special position or assignment can or may be assigned to such member, the member may be assigned to such special position or assignment. Any such retirement shall be for the period of the disability, and no longer, and shall be governed by the provisions of subsections (3), (4), and (5) of this section.

(3) The old hire member shall be paid a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in the department. The member, after retirement, shall continue to accrue longevity, and the member's length of service shall continue to extend in the same manner and with the same limitations as if the member were still active and not retired. Said pension shall continue to be paid as long as the member is in retirement.

(4) All applicants for disability pensions shall be examined by one or more physicians selected for the purpose by the board and may be examined by one or more physicians selected by the applicant. All expenses of examination by the physician chosen by the board shall be paid by the board out of said fund.

(5) The board shall establish such general rules as it deems proper for the purpose of reexamination of all old hire members who have been retired for disability to determine from time to time the fitness of such members to return to active duty in the department. No such member who has reached the age of fifty years, either before or after the member's retirement, shall be reexamined. No such member who has completed twenty-five years of active duty in the department before the date of such retirement shall be reexamined. No member on the retired list shall be examined sooner than one year after date of retirement and not more often than once a year thereafter. In the event it is found by the board that any old hire member on the retired list has recovered from the disability that caused the member's retirement, such member, if the member is under fifty years of age and has served less than twenty-five years of active duty, shall be removed from the retired list and ordered to report to the chief officer of the fire department within thirty days for assignment to active duty. During said period of thirty days such member may file a written protest in which the member shall state any objection that the member may have to the member's removal from the retired list. The decision of the board shall be suspended pending a hearing on said protest, at that hearing the member shall have a right to appear and to be represented by counsel. During the period that any member is ordered retired for disability by the board, such member, if under the age of fifty years and having served less than twenty-five years of active duty, shall be carried on a special roll of the fire department and listed as inactive.

(6) In any case where an old hire member of the fire department in a municipality having a population of at least one hundred thousand becomes mentally or physically disabled while not on active duty during regularly assigned hours of duty and from any cause not self-inflicted or due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's regular fire department duties, the member shall be paid by the board, during the period of such disability and no longer, a monthly benefit equal to five percent of the amount set forth in subsection (3) of this section multiplied by the number of years the member has been in active service with the fire department; except that any such benefit under this section shall not exceed one-half of the member's monthly salary as of the date of the member's disability. The provisions covering examinations and reexaminations, as set forth in subsections (4) and (5) of this section, shall be applicable to all cases arising under this subsection (6).

(7) If any old hire member of a fire department in a municipality having a population of at least one hundred thousand dies from any cause while in the service or while on the retired list, leaving a surviving spouse, such surviving spouse shall be awarded a monthly annuity equal to one-third of the monthly salary of such member at the time of the member's death or retirement plus one-third of any increase in salary and longevity or additional pay based on length of service granted to firefighters of the rank or comparable successor rank that the member held in the department on the date of the member's death or retirement so long as such surviving spouse remains unmarried. No dissolution of a subsequent marriage shall have the effect of reinstating said spouse on the pension roll or authorizing the granting of a pension. This section shall apply alike to surviving spouses of firefighters and retired firefighters who die after April 11, 1947, and to surviving spouses of firefighters and retired firefighters who were dead on said date, it being the intent of the general assembly to provide an annuity for all surviving spouses of firefighters, which

annuity shall increase or decrease proportionately to any increase or decrease in the current rate of pay of firefighters.

(8) The board shall also order the payment to such surviving spouse or the legally appointed guardian of each child of such deceased old hire member of the fire department a monthly annuity of thirty dollars for each child, to continue until such child reaches the age of eighteen years. If such surviving spouse dies or there is no surviving spouse as limited and described but such deceased old hire member leaves surviving children under eighteen years of age, the board shall order a monthly payment equal to the full payment to which a firefighter's surviving spouse is entitled under subsection (7) of this section to be divided equally among the children or a monthly payment of thirty dollars for each child, whichever total amount is greater, to the guardian of the children for the children. In no event shall such surviving children of a deceased or retired firefighter receive an amount in excess of one-half of the current salary paid to a firefighter, first-grade, of said department.

(9) When an active or retired firefighter dies without necessary funeral expenses, the board shall appropriate from the fund a sum not exceeding one hundred dollars to the surviving spouse or family or other person paying said expenses for the purpose of assisting the proper burial of said deceased old hire member.

Source: L. 96: Entire article added with relocations, p. 887, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30.5-508 (1) to (6), 31-30-509, 31-30-510, and 31-30-512.

ANNOTATION

Annotator's note. Since § 31-30.5-705 is similar to §§ 31-30-509 and 31-30-510 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

If widow remarries, dependent child is not entitled to increased benefits. It was not the intention of the general assembly that, when a fireman entitled to pension died leaving a wife and dependent child, the dependent child should be entitled to increased benefits upon the remarriage of the widow. *Shearer v. Bd. of Trustees of Firemen's Pension Fund*, 121 Colo. 592, 218 P.2d 753 (1950).

Discrimination against common-law spouse unconstitutional. The provision of this section which distinguishes between common-law and statutory marriages, is unconstitutional, as benefits may not be denied a surviving common-law spouse. *Carter v. Firemen's Pension Fund*, 634 P.2d 410 (Colo. 1981).

Restriction of payments to surviving spouse married to employee previous to employee's retirement application held unconstitutional. Restriction defining surviving spouse as one "whom such officer, member, or employee married previous to his application for retirement or previous to April 5, 1945" is unconstitutional and may not be applied. *Branson v. City & County of Denver*, 707 P.2d 338 (Colo. 1985).

Remarried widow cannot declare a child an orphan and get increased benefits. A surviving child whose mother or stepmother also survives does not become entitled to additional benefits under this section upon the remarriage of the mother or stepmother, although she, on remarrying, declares the child an orphan. *Shearer v. Bd. of Trustees of Firemen's Pension Fund*, 121 Colo. 592, 218 P.2d 753 (1950).

Applied in *Carter v. Firemen's Pension Fund*, 634 P.2d 410 (Colo. 1981).

PART 8

EXEMPT PLANS

31-30.5-801. Exempt alternative programs authorized. (1) Notwithstanding any other provision of this article or the provisions of article 31 of this title that specifically refer to exempt plans, any municipality, fire protection district, or county improvement district, prior to January 1, 1980, may establish an alternative police officers' or firefighters' pension benefit program or combination pension and insurance benefit program for police officers or firefighters that, if found by an actuarial study to be actuarially sound, shall be exempt from all provisions of parts 3 to 7 of this article. Such program and any amendments thereto

must be approved in an election held or vote called for that purpose by at least sixty-five percent of the total votes cast by all police officers or firefighters actively employed by the municipality, fire protection district, or county improvement district and all former old hire members who have earned pension rights or benefits under this article at the time the program is adopted or amended. No amendment of an exempt alternative program may be adopted that would adversely affect the accrued pension benefits of former old hire members. Once established, such exempt alternative program shall cover all police officers or firefighters employed by the municipality, fire protection district, or county improvement district, regardless of the date of hire. Any municipality, fire protection district, or county improvement district having established an exempt alternative program pursuant to this section shall be entitled to receive its appropriate share of state contributions to local police officers' or firefighters' pension funds and shall file any reports required to receive such state contributions. The date limitation of January 1, 1980, established in this subsection (1) shall not be construed as limiting the ability of an employer to establish an exempt money purchase plan in accordance with the provisions of subsection (2) of this section and section 31-30.5-802.

(2) (a) Not later than January 1, 1983, any employer that covered its firefighters or police officers hired on or after April 8, 1978, under the statewide defined benefit plan established in part 4 of article 31 of this title, may withdraw from that plan upon establishment of a money purchase plan, in accordance with the requirements governing exempt alternative programs under subsection (1) of this section.

(b) Such money purchase plan shall include all firefighters or police officers hired on or after April 8, 1978, and may include all old hire firefighter or police officer members, at the option of the employer.

(c) The money purchase plan shall be approved by sixty-five percent of all firefighters or police officers hired on or after April 8, 1978. In order for old hire firefighter or police officer members to be included in such plan, pursuant to paragraph (b) of this subsection (2), sixty-five percent of those members shall approve the plan.

(d) Any employer desiring to withdraw pursuant to the provisions of this section shall file a resolution with the fire and police pension association stating such intent. The resolution shall also state a requested effective date for withdrawal.

(e) The withdrawal shall be effective on the requested effective date or on the first day of the month following certification by the fire and police pension association of the approval of the members, whichever occurs later.

Source: L. 96: Entire article added with relocations, p. 889, § 1, effective May 23.
L. 2005: (1) amended, p. 776, § 64, effective June 1.

Editor's note: This section was formerly numbered as § 31-30-325.

31-30.5-802. Exempt money purchase plan option. (1) Any employer that has not elected to affiliate with the fire and police pension association relating to an old hire plan established pursuant to this article may offer to the active old hire members of such plan the option of converting to a money purchase plan.

(2) Such option shall be available on an individual basis such that any member desiring to remain in the current defined benefit plan may do so.

(3) The money purchase plan offered may be a new plan established by the employer or an existing plan maintained for the benefit of other members employed in the same department.

(4) Any such money purchase plan shall be exempt from all provisions of parts 3 to 7 of this article.

(5) The option may be offered only if approved by at least sixty-five percent of all active old hire members. If approved, a deadline shall be set for electing between the current plan and the money purchase plan. Prior to said deadline, the employer shall provide to each active old hire member a disclosure statement describing the differences between the current plan and the money purchase plan and a statement as to the minimum beginning account balance for such employee in the event of conversion to a money purchase plan.

(6) If any active old hire member elects to remain in the current plan, the employer shall continue to fund such plan on an actuarially sound basis with any unfunded liability being amortized over a period not to exceed twenty years after January 1, 1989.

(7) Within ninety days after the election is made by each active old hire member, the employer shall make the final determination as to whether to adopt such option and shall be under no obligation to do so. In the event that the employer determines that the option will not be adopted at that time, the employer may reoffer the option at a later date in accordance with the provisions contained in this section.

(8) No such option may be adopted which, in its application, would adversely affect the pension benefits of retired old hire members.

(9) Nothing in this section shall be construed to prohibit an election by an employer to affiliate its local plan with the fire and police pension association after said employer has adopted a money purchase plan option pursuant to this section. Any such affiliation shall be governed by the provisions of section 31-31-701.

Source: L. 96: Entire article added with relocations, p. 890, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1003.3.

31-30.5-803. Investment authority. (1) Except as provided in subsection (2) of this section, moneys of exempt alternative plans that are not affiliated with the fire and police pension association under section 31-31-706 may be managed and invested by the trustees of such plans pursuant to the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S. Such investments shall be audited at least biennially.

(2) (a) (Deleted by amendment, L. 97, p. 10, § 2, effective March 13, 1997.)

(b) The trustees of an exempt alternative plan may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

(I) The trustees shall select at least three investment alternatives, each of which is diversified in itself, that allow the participant a broad range of investments and a meaningful choice between risk and return in the investment of the participant's accrued benefit;

(II) The trustees shall allow the participant to change investments at least once each calendar quarter; and

(III) The trustees shall provide the participant with information describing the investment alternatives and the nature, investment performance, fees, and expenses of the investment alternatives and other information to enable a participant to make informed investment decisions.

(c) Neither the state nor local governments shall be held responsible to pay for any or all financial losses experienced by participants of the exempt alternative plan; except that nothing in this section relieves a local government's responsibility as a trustee to the plan.

Source: L. 96: Entire article added with relocations, p. 892, § 1, effective May 23. L. 97: Entire section amended, p. 10, § 2, effective March 13. L. 2004: (1) amended, p. 1204, § 74, effective August 4. L. 2010: (1) amended, (SB 10-024), ch. 20, p. 90, § 3, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1012 (8).

ANNOTATION

Annotator's note. Since § 31-30.5-803 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through

10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must, as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits

provided by the local plan and, if necessary, investigate what benefits are "appropriate". *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

ARTICLE 31

Fire - Police - New Hire Pension Plans

Editor's note: This article was added with relocations in 1996 containing provisions of some sections formerly located in parts 3 to 10 of article 30 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

- 31-31-101. Legislative declaration.
- 31-31-102. Definitions.

PART 2

ADMINISTRATION

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PART 1

GENERAL PROVISIONS

31-31-101. Legislative declaration. The general assembly hereby declares that the establishment of police officers' and firefighters' pension plans in this state is a matter of statewide concern that affects the public safety and general welfare, that the ability of pension funds to pay earned benefits to present and future members is a necessary corollary to the establishment of pension plans, and that statewide pension plans establishing pension benefits that can be fully funded with local moneys will permit the continuation of pension plans for police officers and firefighters in this state. In addition, the general assembly declares that any pension plan must be actuarially sound in order to assure the security of the pension system and that this article is enacted to provide for the stability and security of police officers' and firefighters' pension plans in this state. The general assembly further declares that state moneys provided to municipalities, fire protection districts, and county improvement districts do not constitute a continuing obligation of the state to participate in the ongoing normal costs of pension plan benefits, except for state funding of death and disability benefits as specified in this article, but are provided in recognition that the local governments are currently burdened with financial obligations relating to pensions in excess of their present financial capacities. It is the intent of the general assembly in providing state moneys to assist the local governments that state participation decrease annually, terminating at the earliest possible date.

Source: L. 96: Entire article added with relocations, p. 893, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1001.

ANNOTATION

Annotator's note. Since § 31-31-101 is similar to § 31-30-1001 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Intention of general assembly in enacting plan was to preempt benefits provided under Denver city charter. The payment of state plan benefits in addition to those provided by the Denver city charter would disserve the basic purpose of the legislation which is to relieve communities of the intolerable financial burdens they would otherwise face in connection with their pension plans. *Peterson v. Fire and Police Pension Ass'n*, 725 P.2d 81 (Colo. App. 1986).

The Public Employee Retirement Association and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Plaintiffs not entitled to greater benefits under Denver plan. *Peterson v. Fire and Police Pension Ass'n*, 725 P.2d 81 (Colo. App. 1986), aff'd in part and rev'd in part on other grounds, 759 P.2d 720 (Colo. 1988).

Prior to death, benefits are partially vested and may be changed. Prior to a police officer's or firefighter's death, there is limited or partial vesting of survivor benefits, and, until survivor benefits fully vest, a pension plan can be changed; however any adverse change must be balanced by change that is beneficial, actuarially necessary or one that strengthens or improves pension plan. *Peterson v. Fire & Police Pension Ass'n*, 759 P.2d 720 (Colo. 1988), aff'd in part and rev'd in part on other grounds, 759 P.2d 720 (Colo. 1988).

Diminished benefits offered under state plan were offset by improved actuarial soundness and more stable funding. Though adoption of state plan meant reduced benefits to persons formerly covered by Denver city pension plan, this reduction was justified by improved funding and increased chance that pension fund obligations would be fulfilled. *Peterson v. Fire & Police Pension Ass'n*, 759 P.2d 720 (Colo. 1988).

31-31-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Actuarially sound" means a police officers' or firefighters' pension fund determined by the board to be receiving or scheduled to receive employer and member contributions in each fiscal year equal to the annual contributions actuarially determined to be necessary to pay the annual current service cost of pension benefits attributable to active employees and to pay the annual contribution necessary to amortize any unfunded accrued liability over a period not to exceed forty years. The actuarial cost method to be utilized shall be the entry age-normal cost method. The date from which unfunded liabilities shall be amortized shall be determined pursuant to part 3 of article 30.5 of this title.

(2) "Board" means the board of directors established as the governing body of the fire and police pension association as provided in section 31-31-201 (2).

(3) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district, fire authority, or county improvement district in this state offering fire protection service employing one or more members.

(4) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, fire authority, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the member's employer. "Member" also includes an active employee who works less than sixteen hundred hours per year but otherwise qualifies as a member and whose employer elects to treat all such other similar employees as members. The term does not include clerical or other personnel whose services are auxiliary to police protection, or any volunteer firefighter, as such term is defined in section 31-30-1102 (9). For the purpose of participation

in the statewide defined benefit plan pursuant to part 4 of this article or the statewide money purchase plan pursuant to part 5 of this article, but not for the purpose of participation in the statewide death and disability plan pursuant to part 8 of this article, the term may include clerical or other personnel employed by a fire protection district, fire authority, or county improvement district, whose services are auxiliary to fire protection. For the purpose of eligibility for disability or survivor benefits, "member" includes any employee on an authorized leave of absence.

(5) "Money purchase plan" or "money purchase pension plan" means a retirement plan under which:

- (a) The employer has a fixed obligation to make an annual contribution to the plan;
- (b) The plan provides for an individual account for each member; and
- (c) The member's benefits are based solely on the amount contributed to the member's account and any income, expenses, gains, and losses allocated to the member's account.

(6) "Retired member" means any member who is retired, disabled, or eligible for a benefit as provided in section 31-31-404 (2).

Source: **L. 96:** Entire article added with relocations, p. 893, § 1, effective May 23. **L. 98:** (5), amended, p. 24, § 3, effective March 16. **L. 2001:** (3) amended, p. 416, § 1, effective June 1. **L. 2003:** (4) amended, p. 1231, § 1, effective August 6.

Editor's note: This section was formerly numbered as § 31-30-1002 (1), (2), (4), (5), and (5.5).

PART 2

ADMINISTRATION

31-31-201. Association - creation - board - organization - tax exemption.

(1) There is hereby created an independent public body corporate and politic to be known as the fire and police pension association. The association is constituted as a public instrumentality, and its exercise of the powers conferred by this article and article 30.5 of this title shall be deemed to be the performance of an essential public function. The association shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(1.5) The general assembly hereby finds and declares that the fire and police pension association is a political subdivision of the state and that property owned, used, and occupied by the association is intended to be exempt from property tax as property of the state under section 4 of article X of the state constitution. Accordingly, for property tax years commencing on or after January 1, 2007, all real property owned, used, and occupied by the association and personal property owned and used by the association shall be exempt from the levy and collection of property tax.

(2) (a) The governing body of the association shall be a board of directors consisting of nine members appointed by the governor and confirmed by the senate as follows:

- (I) Two members who shall represent Colorado municipal employers;
- (II) One member who shall represent full-time paid firefighters;
- (III) One member who shall represent full-time paid police officers;
- (IV) One member who shall be a retired firefighter who, upon completion of the member's term, shall be replaced by a retired police officer. Thereafter, the appointments of retired officers shall alternate between a retired firefighter and a retired police officer for each successive six-year term.

(V) One member of a board of directors of a special district or the full-time paid professional manager of a special district who shall represent special districts having volunteer firefighters;

(VI) One member from the state's financial or business community with experience in investments;

(VII) One member from the state's financial or business community with experience in insurance disability claims; and

(VIII) One member of the state's financial or business community experienced in personnel or corporate administration in corporations of over two hundred employees.

(b) Members shall be appointed for terms of four years; except that a member appointed pursuant to subparagraph (IV) of paragraph (a) of this subsection (2) shall serve for a term of six years.

(c) Vacancy in any position shall be filled in the same manner as the original appointment was made. Appointments may be made without confirmation of the senate when the senate is not in session, but such appointments shall be confirmed within thirty days of the next meeting of the senate in regular session or they shall be void.

(d) The governor may remove any member of the board for cause.

(3) (a) The members of the board shall serve without compensation but shall be reimbursed for any necessary expenditures and shall suffer no loss of salary or wages through service on such board.

(b) The board shall elect a chair and a vice-chair, shall appoint an executive director and such other employees as may be necessary, and shall fix the compensation for the appointees. The board shall have the authority to retain actuaries, investment counselors, private legal counsel, and other consultants as deemed necessary. The fees of such persons shall be considered expenses of the association.

(4) Neither the members of the board nor any person authorized by the board to act in an official capacity shall be held personally liable for any act undertaken pursuant to the provisions of this article and article 30.5 of this title.

Source: L. 96: Entire article added with relocations, p. 894, § 1, effective May 23. L. 2007: (1.5) added, p. 1541, § 1, effective May 31. L. 2010: (2)(a)(IV) and (2)(b) amended, (HB 10-1016), ch. 72, p. 245, § 1, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1004.

ANNOTATION

Annotator's note. Since § 31-31-201 is similar to § 31-30-1004 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Fire and police pension association board is not an "agency" for purposes of the State Administrative Procedure Act and, therefore, appropriate standard of review of its actions is not the "substantial evidence" standard of such act but is the "no competent evidence" standard of C.R.C.P. 106 (a)(4). *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304 (Colo. 1986).

Presence and participation of member of fund's administrative board who was a retired firefighter and member of old hire plan did not undermine the impartiality of the board's decision where member's participation was limited to being present at the public hearing and member did not ask questions of witnesses or make comments during the hearing, nor participate in board's deliberations on or determination of issue. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597, (Colo. App. 1992).

31-31-202. Powers and duties of the board. (1) The board shall:

(a) Establish standards for determining the actuarial soundness of:

(I) The pension plans in the defined benefit system and the affiliated old hire plans and the affiliated exempt plans with assets in the fire and police members' benefit investment fund, in accordance with section 31-31-301 (1); and

(II) Alternative pension plans having defined benefits in whole or in part established pursuant to section 31-31-601 (1). Based upon such standards, the board shall require biennial actuarial reviews of such plans with the cost of the reviews to be paid by employers having established such plans.

(b) Establish standards for benefit projections for money purchase plans;

(c) Establish criteria for the determination of disability to administer the provisions of section 31-31-803;

(d) Promulgate rules relating to standards for disclosure of all ramifications of and procedures for obtaining the member approval provided for in section 31-31-601 (1);

(e) Administer or provide for the administration and, in accordance with the provisions of sections 31-31-302 (1) and 31-31-303, the investment of the fire and police members' benefit investment fund and the fire and police members' self-directed investment fund;

(f) Repealed.

(g) Review or initiate proposed legislation affecting or related to the provisions of this article and article 30.5 of this title;

(h) Provide for disbursements from the fire and police members' benefit investment fund created by section 31-31-301 (1) and from the fire and police members' self-directed investment fund created by section 31-31-301 (4). Such disbursements shall be made only for payment of the expenses of the association, payment of refunds to members, payment of survivor, disability, or retirement benefits, or for purposes of investment.

(i) Make such modifications to the minimum annual rates of contribution certified to municipalities, fire protection districts, and county improvement districts as may be justified by actuarial studies approved by the board, subject to the requirements of section 31-30.5-304. In addition, the board shall supervise the establishment of such minimum annual rates of contribution for any nonexempt municipalities, fire protection districts, or county improvement districts that, for any reason, did not receive such minimum annual rate of contribution. Such establishment and modification of minimum annual rates of contribution shall be conducted substantially in the manner provided by procedural regulations promulgated by the board.

(j) Promulgate such rules as may be necessary to implement the provisions of this article and article 30.5 of this title;

(k) Approve or deny applications for coverage under the statewide money purchase plan pursuant to section 31-31-501.

(2) (a) The board has the sole power to determine eligibility for retirement for disability, whether total or occupational, for any police officer or firefighter in this state whether or not such member is covered by the provisions of this article, except for the following:

(I) Those police officers and firefighters having social security coverage and not affiliated as to disability; and

(II) Those police officers and firefighters whose employers have established exempt alternative pension plans, including exempt alternative defined benefit plans that are administered on an actuarially sound basis, based upon assumptions and methodology adopted by the board for statewide use, on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title, unless such plans have elected to become covered under the statewide death and disability plan pursuant to section 31-31-802 (1).

(b) Except as provided in this subsection (2), the final power to determine disability status is vested in the board, but each employer shall determine whether positions are available for disabled members and shall make such appointments to such positions as it deems necessary.

(3) Under the direction of the board, each employer, including employers not covered by or specifically exempted from the statewide defined benefit plan in accordance with the provisions of section 31-31-401 (1), shall furnish such information and shall keep such records as the board may require for the discharge of its duties.

(4) (a) Except as otherwise provided in paragraph (d) of this subsection (4), the board shall provide for and determine the cost of a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments, the insurance to be applicable only when serving as a volunteer firefighter. The policy shall be paid for as provided in section 31-30-1112 (2) (h) (I) from proceeds of the tax imposed by section 10-3-209, C.R.S.

(b) Except as otherwise provided in paragraph (d) of this subsection (4), the board shall set the amount of coverage to be provided for each volunteer firefighter, take competitive bids for the policy from insurers, and make such rules as may be necessary to provide for the policy.

(c) The insurer shall have sole power to determine disability for volunteer firefighters under the policy provided by this subsection (4).

(d) On and after July 1, 2004, the responsibility to provide a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments shall be the responsibility of the department of local affairs pursuant to section 31-30-1134.

(5) (a) The board, in the performance of its duties under this article, shall have the power of subpoena over persons, and books, papers, records, and other things, and such power shall be enforceable by the courts; except that no subpoena shall be issued until the subpoena has been approved by a vote of the board.

(b) The chair of the board, or any other member of the board designated by the chair, shall have the power to administer oaths, in the performance of the duties of the board under this article.

(5.5) The board may release the names and addresses of retirees of a plan affiliated with the fire and police pension association pursuant to part 7 of this article to the local pension board of the affiliated plan if:

(a) The local pension board has filed a written request in the manner prescribed by the association; and

(b) The local pension board has provided the board with written assurances that the information requested will be used only for pension-related purposes.

(6) The board shall have such other powers and duties as are specifically granted pursuant to this article and parts 1 to 7 of article 30.5 of this title.

Source: L. 96: Entire article added with relocations, p. 896, § 1, effective May 23. L. 98: (2)(a)(II) amended, p. 827, § 44, effective August 5. L. 2001: (5.5) added, p. 416, § 2, effective June 1; (1)(f) repealed, p. 1276, § 41, effective June 5. L. 2004: (4) amended, p. 1137, § 4, effective July 1. L. 2006: (1)(a)(I), (1)(e), and (1)(h) amended, p. 182, § 8, effective March 31.

Editor's note: This section was formerly numbered as § 31-30-1005 (1) to (5).

ANNOTATION

Annotator's note. Since § 31-31-202 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597, (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character

or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597, (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-31-203. Fund not subject to levy. Except for assignments for child support debt pursuant to section 14-14-104, C.R.S., child support arrearages as requested as part of an enforcement action under article 5 of title 14, C.R.S., or child support arrearages that are the subject of enforcement services provided under section 26-13-106, C.R.S., for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, no portion of the funds created pursuant to sections 31-31-204 (4), 31-31-502, 31-31-701 (6), 31-31-706 (1), 31-31-813 (1), and 31-31-901 (3), before or after their order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the fire and police pension association or employers that belong to such association or the beneficiary of such funds. The funds shall be held and distributed for the purpose of this article and for no other purpose whatsoever.

Source: **L. 96:** Entire article added with relocations, p. 898, § 1, effective May 23; entire section amended, p. 627, § 46, effective July 1; entire section amended, p. 1464, § 14, effective January 1, 1997. **L. 2005:** Entire section amended, p. 76, § 13, effective August 8. **L. 2006:** Entire section amended, p. 183, § 9, effective March 31. **L. 2010:** Entire section amended, (SB 10-024), ch. 20, p. 90, § 4, effective August 11.

Editor's note: Amendments to this section by Senate Bill 96-002 and Senate Bill 96-204 were harmonized.

31-31-204. Defined benefit system. (1) There shall be a defined benefit system that shall consist of the following plans:

- (a) The statewide defined benefit plan established pursuant to part 4 of this article;
- (b) The statewide hybrid plan established pursuant to part 11 of this article;
- (c) Any exempt plan that is incorporated into the defined benefit system, pursuant to an agreement established under section 31-31-706 (2);
- (d) Any health care benefit plan established in association with the included plans; and
- (e) Any other plan authorized to be incorporated into the statewide defined benefit system.

(2) The board may create plan documents for the plans within the defined benefit system that shall be in substantial conformance with the statutory provisions for each plan and that may include modifications and plan amendments as authorized under law.

(2.5) Notwithstanding section 31-31-408 or 31-31-1102 (5) or the terms of an agreement entered into pursuant to section 31-31-706 (2), the board may modify or amend the plan provisions contained in part 4 of this article or a plan document or rules of a plan within the defined benefit system as the board deems prudent and necessary to administer benefits under the plan consistently and uniformly across the defined benefit system in a manner that does not result in an actuarial cost to the plan. Such modifications or amendments may include changes to the options for the distribution of benefits. This subsection (2.5) shall not be construed to authorize modification to the amount of a normal benefit.

(3) **Qualification requirements - internal revenue code - definitions.** (a) As used in this subsection (3), "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(b) The defined benefit system and each of the plans established by part 2, 4, 7, or 11 of this article included within the system shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans.

(c) The board may adopt any provision for a plan established by part 2, 4, 7, or 11 of this article that is necessary to comply with the internal revenue code.

(4) **Trust fund.** (a) There is hereby created the defined benefit system trust fund. All assets held in connection with the defined benefit system, including all contributions to the plans in the system, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property, or rights, shall be held in trust for the exclusive benefit of members and their designated beneficiaries under the plans. Such assets shall constitute the trust fund. No part of the assets and income of the trust fund shall be used for, or diverted to, purposes other than for the exclusive benefit of members and their designated beneficiaries and for defraying reasonable expenses of the system.

(b) All amounts of compensation contributed pursuant to the plans, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property, or rights held as part of the defined benefit system, including member contributions, employer contributions, any state contributions, fees collected, gifts received, unclaimed deposits, and investment income, shall be transferred to the board to be held, managed, invested, and distributed as part of the trust fund in accordance with the provisions of the documents governing the system. All contributions to the plans shall be transferred by the employers to the trust fund. All benefits under the plans shall be distributed solely from the trust fund pursuant to the documents governing the system.

(c) The board is the trustee of the defined benefit system trust fund.

(d) The following accounts shall be established within the trust fund:

(I) A new hire benefits account for the statewide defined benefit plan, into which contributions shall be deposited. The benefits provided by the statewide defined benefit plan shall be paid from such account.

(II) Accounts for the statewide hybrid plan as may be required under the statewide hybrid plan document;

(III) Accounts for exempt plans incorporated into the statewide defined benefit plan as may be required under the plan documents; and

(IV) Accounts for health care benefit plans as may be required under the health care plan documents.

Source: L. 2006: Entire section added, p. 183, § 10, effective March 31. **L. 2009:** (3) amended, (HB 09-1030), ch. 16, p. 90, § 4, effective August 5. **L. 2012:** (2.5) added, (HB 12-1031), ch. 68, p. 236, § 1, effective August 8.

PART 3

FIRE AND POLICE MEMBERS' BENEFIT FUND

31-31-301. Investment funds - creation. (1) (a) There is hereby created the fire and police members' benefit investment fund, which shall consist of the portion of the assets that are designated for investment by the board of the following plans:

(I) The defined benefit system established in part 2 of this article;

(II) Old hire police and fire pension plans established in article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(III) Exempt plans established pursuant to part 8 of article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(IV) Volunteer firefighter pension plans, which are affiliated with the association pursuant to part 7 of this article; and

(V) The statewide death and disability plan established in part 8 of this article.

(b) The board shall keep an accurate account of the assets of each plan deposited in the investment fund and shall disburse moneys in accordance with the provisions of this article and the applicable plan document.

(2) and (3) (Deleted by amendment, L. 2006, p. 186, § 11, effective March 31, 2006.)

(4) (a) There is hereby created the fire and police members' self-directed investment fund, which shall consist of the portion of the assets that are designated for self-direction by the member of the following plans:

(I) The defined benefit system established in part 2 of this article;

(II) Old hire police and fire pension plans established in article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(III) The fire and police members' statewide money purchase plan established in part 5 of this article;

(IV) Repealed.

(V) The fire and police members' deferred compensation plans established in part 9 of this article; and

(VI) The affiliated exempt plans which are affiliated with the association pursuant to part 7 of this article.

(b) The board shall keep an accurate account of the assets of each plan deposited in the investment fund and shall disburse moneys in accordance with the provisions of this article and the applicable plan document.

Source: **L. 96:** Entire article added with relocations, p. 899, § 1, effective May 23. **L. 2000:** (3)(d) repealed, p. 76, § 2, effective August 2. **L. 2003:** (1)(a)(V) added, p. 744, § 1, effective August 6. **L. 2006:** Entire section amended, p. 186, § 11, effective March 31. **L. 2010:** (4)(a)(IV) repealed, (SB 10-024), ch. 20, p. 90, § 5, effective August 11.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-1012 (1)(a) and 31-30-1012.5.

ANNOTATION

Annotator's note. Since § 31-31-301 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must,

as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-31-302. Fund - management - investment - definitions. (1) (a) The board shall be the trustee of the fire and police members' benefit investment fund and shall have full and unrestricted discretionary power and authority to invest and reinvest such portions of the fund as in its judgment may not be immediately required for the payment of refunds or benefits. In exercising its discretionary authority with respect to the management and investment of fund assets, the board shall be governed by the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S.

(b) (I) If the board invests fund moneys through an investment firm offering for sale corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, the investment firm shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the board whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the board and because of such agreement the investment firm:

(A) Had received compensation for investment services banking within the most recent twelve months; or

(B) May receive compensation for investment banking services within the next three consecutive months.

(II) For the purposes of this paragraph (b), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

(2) The board shall designate one or more financial institutions as custodians of the fund. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund and the custodian shall maintain a current inventory of all investments of the fund.

(3) Disbursements from the fund shall be made, subject to the approval of the board, only for payment of the expenses of the association, refunds to the members, benefits, and investment purposes.

(4) and (5) (Deleted by amendment, L. 97, p. 11, § 3, effective March 13, 1997.)

(6) All transactions involving the purchase and sale of investments authorized in this section shall be effected on behalf of the association. To facilitate sale and exchange transactions, securities belonging to the association may be registered in the name of nominees in the discretion of the board and in accordance with standard business practices. All such nominees shall be bonded in such amounts as may be determined to be advisable by the board. Nothing in this subsection (6) shall preclude the board or its authorized agents from forming a corporation described in section 501 (c) (2) and (c) (25) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (c) (2) and (c) (25), as amended, with respect to the ownership of investments in real property.

(7) The board shall submit an annual audit of the fund to the general assembly and the annual audit of the fund and annual actuarial study, with assumptions, to each employer. Each employer shall make the audit and study available for review by its members. Nothing in this subsection (7) shall be construed as diminishing the obligation of the board to provide any documentation required by the state auditor to carry out his or her responsibilities pursuant to section 2-3-103 (1), C.R.S., regarding state moneys held by the fire and police pension association.

(8) (a) As used in this subsection (8):

(I) "Association" means the fire and police pension association.

(II) "Investment" means the utilization of money or other assets in the expectation of future returns in the form of income or capital gain.

(III) "Investment fiduciary" means a person who or entity that exercises any discretionary authority or control over an investment of the association or renders investment advice for the association for a fee or other direct or indirect compensation.

(IV) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources and includes information the release of which might cause an investment vehicle, an investment manager, a general partner, a fund sponsor, or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, lists of co-investors and their level of investment, portions of lists of current or projected investment opportunities that would cause competitive harm, product and market data, rent rolls, leases, other types of proprietary information, or documents and information that investors are legally required to maintain as confidential as a condition of performing due diligence or participating in an investment.

(V) "Investment vehicle" means an entity in which an investment fiduciary has made or considered an investment on behalf of the association. Investment vehicles include but are not limited to sponsored funds, limited partnerships, and limited liability companies.

(VI) "Public record" means all or part of a writing, as defined in section 24-72-202 (6), C.R.S.

(b) Subject to paragraph (c) of this subsection (8), a public record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of the association that relates to investment information pertaining to an investment vehicle in which the investment fiduciary has invested or has considered an investment or that relates to investment information whether prepared by or for the investment fiduciary is exempt from the disclosure requirements of part 2 of article 72 of title 24, C.R.S.

(c) If a public record described in paragraph (b) of this subsection (8) is an agreement or instrument to which the association is a party, only those parts of the public record that contain investment information, as defined in subparagraph (IV) of paragraph (a) of this

subsection (8), are exempt from the disclosure requirements of part 2 of article 72 of title 24, C.R.S.

(d) At least annually the board shall publish and make available to the public a report of its investments that includes the following:

(I) The name of each investment vehicle in which the association invested during the reporting period;

(II) The aggregate amount of money invested by the association in investment vehicles during the reporting period; and

(III) The rate of return realized during the reporting period on the investments of the association in investment vehicles.

Source: **L. 96:** Entire article added with relocations, p. 900, § 1, effective May 23. **L. 97:** (1) and (4) to (6) amended, p. 11, § 3, effective March 13. **L. 2003:** (1) amended, p. 675, § 4, effective August 6; (7) amended, p. 1232, § 2, effective August 6. **L. 2004:** (1)(a) amended, p. 1204, § 75, effective August 4. **L. 2005:** (8) added, p. 26, § 1, effective March 11. **L. 2006:** (1)(a) amended, p. 188, § 12, effective March 31. **L. 2012:** (8)(a)(IV), (8)(a)(V), (8)(b), (8)(c), and (8)(d) amended, (HB 12-1077), ch. 26, p. 75, § 1, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1012 (2) to (7) and (9).

ANNOTATION

Annotator's note. Since § 31-31-302 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must,

as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-31-303. Fire and police members' self-directed investment fund - management - investment. (1) The board shall be the trustee of the fire and police members' self-directed investment fund subject to the members' allocation of moneys in their accounts to the alternatives offered by the board. A member who exercises control over the plan assets in the members' account shall not be deemed to be a fiduciary by reason of such exercise of control, and the board shall not be liable for any loss that results from such exercise of control.

(2) The board shall designate one or more financial institutions as custodians of the fire and police members' self-directed investment fund. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund, and the custodian shall maintain a current inventory of all investments of the fund.

(3) Disbursements from the fire and police members' self-directed investment fund shall be made, subject to the approval of the board, only for payment of the expenses of the association in connection with the administration of the fund, refunds to the members, benefits, and investment purposes.

(4) (a) The board may allow a member to exercise control of the investment of part or all of the member's accrued benefit under the member's plan. In allowing a member to exercise such control, the board shall:

(I) Select at least three investment alternatives, each of which is diversified in itself, that allow the member a broad range of investments and a meaningful choice between risk and return in the investment of the member's accrued benefit;

(II) Allow the member to change investments at least once each calendar quarter; and

(III) Provide the member with information describing the investment alternatives, the nature, investment performance, fees, and expenses of investment alternatives, and other information to enable a member to make informed investment decisions.

(b) The board shall adopt rules governing the calculation and allocation of earnings and losses under the various investment alternatives that it may offer, the transfer of assets between funds under each alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to its administration and management of the fire and police members' self-directed investment fund created pursuant to this section.

(5) Any provider of investment products that contracts with the board shall be held to the standard of conduct set forth in paragraph (a) of subsection (4) of this section with respect to those functions over which the provider has substantial discretion. The board is authorized to take such steps, including but not limited to making contract amendments, as are required to accomplish the provisions of this subsection (5).

(6) The board shall submit an annual audit of the fire and police members' self-directed investment fund to the general assembly and the annual audit of the fund to each employer. Each employer shall make the audit available for review by its members.

Source: L. 2006: Entire section added, p. 188, § 13, effective March 31.

PART 4

STATEWIDE DEFINED BENEFIT PLAN

31-31-401. Applicability of plan. (1) Every employer in this state shall provide the pension benefits of the statewide defined benefit plan established by this part 4 for members hired on or after April 8, 1978, except for the following:

(a) Any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, and any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, that chooses to cover members hired after August 11, 2005, under the federal "Social Security Act".

(b) Any employer that covers members under an exempt plan established pursuant to part 8 of article 30.5 of this title;

(c) Any employer that has withdrawn its members from the statewide defined benefit plan pursuant to part 6 of this article and established a locally administered and financed alternative pension plan;

(d) Any employer that has withdrawn its members from the statewide defined benefit plan for the purpose of covering them under the statewide money purchase plan established pursuant to part 5 of this article; and

(e) Any employer that covers a member hired on or after April 8, 1978, but before January 1, 1980, under an old hire pension plan as permitted by section 31-30.5-103 (1).

(2) Nothing in this part 4 shall affect retirement pensions or disability or survivor benefits of members hired prior to April 8, 1978, who retired, were disabled, or died prior to January 1, 1980.

(3) Where an employer results from a merger, a consolidation, or an exclusion or dissolution proceeding between or among one or more employers, including a new governmental entity created by intergovernmental agreement between or among one or more employers, all members transferred to or employed by such resulting employer shall, for the purposes of this article and article 30.5 of this title, have those rights and obligations they had prior to the merger, consolidation, exclusion, dissolution, or intergovernmental agreement. In the event of a transfer of members, provision shall be made in such agreement or proceeding for allocation and transfer of plan assets, and, in the event of the transfer of members of a defined benefit plan, provision shall be made in such agreement or proceeding for discharging plan liabilities and funding in order to maintain or enhance the actuarial soundness of the remaining and resulting plans. If the resulting employer had no members prior to the merger, consolidation, exclusion, or dissolution, it may continue as its plan any plan of a transferring employer, authorized by this article, for its members hired after the effective date of the agreement or proceeding or the resulting employer shall belong to the statewide defined benefit plan. The board may authorize the resulting employer to consolidate preexisting retirement plans and any retirement plan attributable solely to the resulting

employer into one or more plans if the plans to be consolidated are identical, the benefits are equal for all members covered under the retirement provisions of the plans, and no member suffers a reduction of benefits or an increase in member contributions due to such plan consolidation.

(4) (a) A department chief hired on or after April 8, 1978, shall be exempted from the statewide defined benefit plan, upon the execution of a written agreement between such department chief and the chief's employer and the submission of notice to the association. Alternatively, a department chief, with the agreement of the chief's employer, may elect coverage under the statewide money purchase plan. The transfer of member and employer contributions between the statewide defined benefit plan and the statewide money purchase plan shall be consistent with the provisions of section 31-31-501.

(b) For purposes of this subsection (4), a "department chief" means the senior command officer of any fire or police department of any employer, by whatever title known, including but not limited to chief, administrator, or director.

(5) A member normally serving less than one thousand six hundred hours in any calendar year shall be exempted from the statewide defined benefit plan and shall be covered under the statewide money purchase plan.

Source: L. 96: Entire article added with relocations, p. 902, § 1, effective May 23. L. 2003: (5) added, p. 1232, § 3, effective August 6. L. 2005: (1)(a) amended, p. 305, § 1, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1003 (1), (2)(a)(I), (4), (5), and (7).

Cross references: For the "Social Security Act", see 42 U.S.C. sec. 301 et seq.

ANNOTATION

Annotator's note. Since § 31-31-401 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. *Peterson v. Fire and Police Pension Ass'n*, 725 P.2d 81 (Colo. App. 1986), *aff'd in part and rev'd in part on the grounds*, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The pro-

visions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. *Littleton v. Fire and Police Pension Ass'n*, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. *City of Lamar v. Lamar Police Dept.*, 857 P.2d 457 (Colo. App. 1992).

31-31-402. Employer and member contributions. (1) On and after January 1, 1980, until the board is able to determine a contribution rate from the first annual actuarial valuation, every member covered under the statewide defined benefit plan established by this part 4 shall pay into the defined benefit system trust fund eight percent of salary paid or such higher member contribution rate established pursuant to section 31-31-408 (1.5) (a). The payment shall be made by the employer by deduction from the salary paid such member. Each employer shall pick up the member contributions required for all salaries paid after July 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, in determining tax treatment under such code. The employer shall pay these member contributions directly to the retirement association, instead of paying such amounts to members, and such contributions shall be paid from the same funds that are used in paying salaries to the members. Such contributions, although designated as member contributions, shall be paid by the employer in lieu of contributions by members. Members may not elect to choose to receive such contributions directly instead of having them paid by the employer to the pension plan. Member contributions so picked up shall be treated for

all purposes of this article, other than federal tax, in the same manner as member contributions made before the date picked up. Payment shall be made by one voucher for the aggregate amount deducted and shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the defined benefit system trust fund.

(2) On and after January 1, 1980, until the board is able to determine a contribution rate from the first annual actuarial valuation, every employer employing members who are covered by the statewide defined benefit plan established by this part 4 shall pay into the defined benefit system trust fund eight percent of the salary paid to such member, and such payment shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the defined benefit system trust fund.

(3) The general assembly declares that the rates of member and employer contributions shall be adequate to fund benefit liabilities accrued under the statewide defined benefit plan established by this part 4, and to this end, the board shall submit an annual actuarial valuation report to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities as accrued. Amortization of such liability over a forty-year period shall be deemed adequate to maintain actuarial stability. If the actual financial experience of the new hire benefits account in the defined benefit system trust fund is found to be more or less favorable than the assumed experience during the two-year period from January 1, 1980, and each biennium thereafter, adjustments may be made by the board in the member and employer contributions as may be deemed feasible and advisable so long as the employer contribution rate is at least equal to the member contribution rate. If the member contribution rate has been increased pursuant to section 31-31-408 (1.5) (a), the requirement that the employer contribution rate be at least equal to the member contribution rate shall not apply, but in such circumstance, any increase to the employer contribution rate shall be at least equal to the increase in the member contribution rate and any decrease in the member contribution rate shall be at least equal to the decrease in the employer contribution rate.

(4) The payments required by this section are subject to penalties if not submitted when due. Payments are due no later than ten days following the date of payment of salary to the member. An interest charge of one-half of one percent per month shall be levied against any unpaid amount and added to the employer payments required pursuant to this section; except that the board may waive the interest charge for new accounts in hardship cases, subject to rules promulgated by the board.

(5) (a) There shall be established in the defined benefit system trust fund a new hire benefits account into which contributions made pursuant to this section shall be deposited. The benefits provided by the statewide defined benefit plan established in part 4 of this article, together with the expenses of administering the plan, shall be paid from such account.

(b) Defined benefit assets of the statewide defined benefit plan shall be administered within the fire and police members' benefit investment fund and assets of the of the plan designated for self direction shall be administered within the fire and police members' self-directed investment fund.

Source: L. 96: Entire article added with relocations, p. 903, § 1, effective May 23. L. 2000: (1) amended, p. 1865, § 89, effective August 2; (4) amended, p. 45, § 1, effective August 2. L. 2006: (1), (2), and (3) amended and (5) added, p. 189, § 14, effective March 31. L. 2007: (1), (2), and (4) amended, p. 273, § 1, effective August 3. L. 2010: (1) and (3) amended, (SB 10-022), ch. 18, p. 82, § 1, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1013.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-403. Normal retirement - statewide defined benefit plan. (1) (a) Any member covered by the statewide defined benefit plan who has completed at least twenty-five

years of active service and has attained the age of fifty-five years shall be eligible for a normal retirement pension subject to adjustment pursuant to paragraph (b) of this subsection (1). The annual normal retirement pension shall be two percent of the average of the member's highest three years' base salary multiplied by the member's years of service, not to exceed twenty-five.

(b) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 for members covered under this section and the cost of a normal retirement pension beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to section 31-31-408 (1.5) (a). If the board cannot so determine, it shall order that the normal retirement pension commence such number of months as are actuarially supportable, from one to sixty, after age fifty-five for members who have completed at least twenty-five years of active service and are otherwise eligible in accordance with the board's determination. The determination of the board shall be conclusive in the absence of fraud. A pension commenced after age fifty-five pursuant to this paragraph (b) shall not be subject to annual review. If a court determines that this paragraph (b) is invalid, the age of retirement to be eligible for any normal retirement benefit shall be age sixty except for persons receiving a benefit at the time of the court's decision.

(2) (a) If in any year the board determines pursuant to this part 4 that the cost of the benefits described in paragraph (b) of subsection (1) of this section, excluding the benefit described in section 31-31-405, may not be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contribution made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to section 31-31-408 (1.5) (a), the board shall not increase such employer or member contributions unless:

(I) The board has terminated the benefit described in section 31-31-405; and

(II) The board has transferred all funds in the stabilization reserve account to the actuarial account as required by section 31-31-405 (1) and (2), except such funds as are attributable to the separate retirement account of any member who has terminated service after at least five years of credited service.

(b) Nothing in this subsection (2) shall be construed to prohibit the board from utilizing the provisions of section 31-31-405 to provide the benefit described in said section in any subsequent year when the total amount of additional deposits to the new hire benefits account exceeds the amount needed to meet the benefit liabilities funded by the actuarial account pursuant to section 31-31-405.

(c) Nothing in this subsection (2) shall be construed to require the reduction of benefits below the level sustainable by the higher member contribution rate established pursuant to section 31-31-408 (1.5) (a).

(3) Any member retiring and eligible for a normal retirement pension as provided by subsection (1) of this section may elect to defer receipt of such pension until attaining the age of sixty-five years. In the case of such election, the annual deferred retirement pension shall be the actuarial equivalent of the normal retirement pension.

(4) Any member covered by the statewide defined benefit plan who has completed at least thirty years of active service or has attained the age of fifty years and who is not receiving benefits pursuant to section 31-31-803 may elect to retire from active service and shall be eligible for an early retirement pension. The annual early retirement pension for a member shall be the benefit, as determined by the board, that the member would have received at normal retirement reduced on an actuarial equivalent basis to reflect the early receipt of the benefit.

(5) (a) A member eligible for a normal, deferred, or early retirement pension may elect to receive one of the following pension options in lieu of a pension computed in accordance with subsection (1), (3), or (4) of this section:

(I) Option 1. A reduced pension payable to the member and upon the member's death, all of such reduced pension to be paid to the member's designated beneficiary for life;

(II) Option 2. A reduced pension payable to the member and upon the member's death, one-half of such reduced pension to be paid to the member's designated beneficiary for life;

(III) Option 3. A reduced pension payable jointly to the member and the member's designated beneficiary and, upon the death of either, one-half of such reduced pension to be paid to the survivor for life.

(b) A member shall be considered to have elected option 1 and retired on the day before the member's death if the member is eligible for a normal or early retirement pension and dies;

(I) Before making an election as provided in paragraph (a) of this subsection (5);

(II) Before the first pension payment has been deposited or otherwise negotiated or sixty days from the date of issuance of such check, whichever occurs first; and

(III) Is survived by a spouse, a dependent child, or a designated beneficiary.

(c) (I) After an election has been made of any of the options provided in paragraph (a) of this subsection (5) and the first pension payment has been deposited or otherwise negotiated by the member, or sixty days from date of issuance of the check have elapsed, whichever occurs first, the election shall be irrevocable. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as the result of dissolution of marriage, marriage, remarriage, or in the event of the death of a beneficiary. In such case, the member may designate a new beneficiary; except that, in cases of dissolution of marriage, this provision shall only apply to any final dissolution of marriage decree of a member entered on or after July 1, 1990.

(II) Notwithstanding subparagraph (I) of this paragraph (c), an unmarried member who receives a single life annuity at the time benefits commence and whose marital status subsequently changes as the result of marriage or remarriage may elect one of the options provided in paragraph (a) of this subsection (5) within one hundred eighty days of the date of the marriage or remarriage or January 1, 2008, whichever date is later. If, after such selection of a different payment option, the member subsequently dies within one hundred eighty days following the marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or remarriage and prior to the member's death.

(d) The joint pension benefits provided by this subsection (5) shall be calculated as the actuarial equivalent of the normal or early retirement pension otherwise payable as provided in subsections (1), (3), and (4) of this section. In the event of a change in beneficiary designation pursuant to paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits based upon the member's initial beneficiary designation, if any. In the event of a change in option elected pursuant to subparagraph (II) of paragraph (c) of this subsection (5), the joint pension benefits payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original pension benefits payable to the member immediately prior to the change in option.

(6) If the total amount of pension benefits paid as provided in this section is less than the amount of the member's accumulated contributions at the time of death, the difference shall be paid to:

(a) The member's estate if no pension payment was made pursuant to subsection (5) of this section; or

(b) The survivor's estate if pension payments were made pursuant to subsection (5) of this section.

(7) All service of a member who is employed by successive employers shall be aggregated for determining eligibility and benefits provided by this section if the service for each employer was rendered while the employer covered its members under the statewide defined benefit plan established by this part 4. The service of a member who is employed by successive employers shall be aggregated for determining eligibility and benefits provided by the statewide defined benefit plan established by this part 4 if the service for any employer was rendered while the employer did not cover its members under the

statewide defined benefit plan established by this part 4 only on the basis of agreements made with the board.

(8) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under section 401 (a) (9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401 (a) (9), as amended, and the regulations promulgated pursuant to section 401 (a) (9).

Source: **L. 96:** Entire article added with relocations, p. 905, § 1, effective May 23. **L. 2001:** (1), (4), (5)(b)(II), (5)(b)(III), and (5)(c) amended and (8) added, p. 417, § 3, effective June 1. **L. 2003:** (2)(a)(II) amended, p. 742, § 2, effective August 6. **L. 2006:** (2)(a)(II) and (2)(b) amended, p. 191, § 15, effective March 31. **L. 2007:** (5)(c) and (5)(d) amended, p. 50, § 1, effective March 14. **L. 2010:** (1)(b) and IP(2)(a) amended and (2)(c) added, (SB 10-022), ch. 18, p. 83, § 2, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1006.

31-31-404. Return or transfer of contributions - vested retirement. (1) (a) Any member covered by the statewide defined benefit plan established by this part 4 and terminating service may elect to have the member's accumulated contributions refunded in a lump sum and shall sign a statement to be filed with the member's employer evidencing such election and acknowledging that the member has no right to benefits provided by this article. A member shall only be eligible for a refund, from the association, of the contributions paid by the member to the association and any of the member's contributions that have been transferred to the association by an affiliating employer. Nothing in this subsection (1) shall prevent a member from obtaining a refund to which the member may be entitled from a nonaffiliating employer pursuant to policies established by the employer prior to December 1, 1978. In addition to receiving accumulated contributions, the member shall also receive, as interest, five percent of the member's total accumulated contributions. The contributions refunded pursuant to this subsection (1) shall not include contributions other than those required to be made by the member, and the return of contributions shall be made within one hundred twenty days.

(b) If the member who terminated service subsequently returns to service as an active member with an employer that covers its members under the statewide defined benefit plan, the member's prior service credit shall be restored when the member returns the member's refunded contributions, with interest accrued from the date of refund to the date of return, according to the terms and conditions established by the board. If the member fails to return such contributions and interest, the member shall be treated as a new member, and the member's prior service shall not be recognized in determining pension eligibility or pension benefits.

(2) (a) In lieu of having the member's contributions returned as provided in paragraph (a) of subsection (1) of this section, a member who has at least five years of credited service may leave the contributions with the fund. When the inactive member attains age fifty-five, the member shall be eligible to receive an annual vested benefit equal to two percent of the member's average highest three years' salary multiplied by years, not to exceed twenty-five, of active service. Any such member shall be eligible to receive the applicable vested benefit as provided in this section or to make an election for a reduced pension in the manner provided in section 31-31-403 (5). All the provisions of section 31-31-403 (5) shall apply to the member; except that the benefits used to calculate the reduced benefits shall be the vested benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. The member may not elect one of the options earlier than sixty days prior to the commencement of vested benefit payments. In the event that an inactive member who is eligible for vested benefits dies prior to the commencement of the member's benefit payments, the fire and police pension association shall refund the inactive member's contributions to the member's estate, and no vested benefits shall be payable to the inactive member's survivors or beneficiaries.

(b) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 for members covered under section 31-31-403 and the

cost of vested benefits beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis without necessitating an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to section 31-31-408 (1.5) (a). If the board cannot so determine, it shall order that the vested benefits commence such number of months as are actuarially supportable, from one to one hundred twenty, after age fifty-five for eligible members in accordance with the board's determination. The determination of the board shall be conclusive in the absence of fraud. A vested benefit commenced before age fifty-five pursuant to this paragraph (b) shall not be subject to annual review. If a court determines that this paragraph (b) is invalid, the age to be eligible for a vested benefit shall be age sixty-five except for persons receiving a benefit at the time of the court's decision.

(3) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under section 401 (a) (9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401 (a) (9), as amended, and the regulations promulgated pursuant to section 401 (a) (9).

Source: **L. 96:** Entire article added with relocations, p. 907, § 1, effective May 23. **L. 99:** (1)(b) amended, p. 36, § 2, effective August 4. **L. 2001:** (2) amended and (3) added, p. 418, § 4, effective June 1. **L. 2003:** (2)(a) amended, p. 742, § 3, effective August 6. **L. 2010:** (2)(b) amended, (SB 10-022), ch. 18, p. 84, § 3, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1011.

31-31-405. Stabilization reserve account and separate retirement account - creation - allocation. (1) Within the new hire benefits account, created pursuant to section 31-31-402 (5), there shall be established two subaccounts:

(a) An actuarial account, into which that portion of the new hire benefits account necessary to fund benefit liabilities accrued under sections 31-31-403 and 31-31-404 (2), as determined by the 1987 actuarial study, shall be deposited;

(b) A stabilization reserve account, into which the remainder in the new hire benefits account, after allocation pursuant to subparagraph (a) of this subsection (1), may be deposited.

(2) In each year after 1987, the board may allocate additional deposits to the new hire benefits account between the actuarial account and the stabilization reserve account based upon the actuarial study for the previous year. If in any year the total amount of additional deposits to the new hire benefits account is not sufficient to meet the benefit liabilities funded by the actuarial account, then such additional amount as may be necessary to fund the increase shall be transferred from the stabilization reserve account to the actuarial account. If in any year the total amount of additional deposits to the new hire benefits account exceeds the amount required to meet any increase in the benefit liabilities funded by the actuarial account, the board, in its sole discretion, may allocate all or any part of such excess to the stabilization reserve account. Any excess allocated to the stabilization reserve account in any year shall be allocated from that portion of deposits to the new hire benefits account constituting employer contributions to the statewide defined benefit plan established by this part 4.

(3) For accounting purposes only, the stabilization reserve account created by subsection (1) of this section shall consist of individual separate retirement accounts established in the name of each member covered by the statewide defined benefit plan established by this part 4, except such members as are covered on a supplemental basis pursuant to section 31-31-704. Members covered on a supplemental basis pursuant to section 31-31-704.5 shall be eligible for individual separate retirement accounts.

(4) Such amount as may be allocated to the stabilization reserve account pursuant to subsection (1) of this section shall be further allocated to each member's separate retirement account based upon the difference between a member's employer and employee contributions to the new hire benefits account for each payroll period and the proportionate amount

of such contributions that is allocated to the actuarial account pursuant to subsection (1) of this section.

(5) Earnings accruing on the amount allocated to the member's separate retirement account shall be allocated at least monthly on a time-weighted basis as determined by the board until the account is exhausted.

(6) Any amount allocated to a member's separate retirement account shall be subject to reduction prior to the time a member has terminated service in the event that additional amounts must be transferred to the actuarial account as set forth in subsections (1) and (2) of this section. Reductions in a member's separate retirement account pursuant to this subsection (6) shall be made on a pro rata basis in the proportion that the balance in a member's separate retirement account bears to the total balance of all members' separate retirement accounts.

Source: **L. 96:** Entire article added with relocations, p. 909, § 1, effective May 23. **L. 2000:** (4) amended, p. 76, § 1, effective August 2. **L. 2001:** (3) amended, p. 419, § 5, effective June 1. **L. 2006:** (1) amended, p. 101, § 1, effective March 27; entire section amended, p. 191, § 16, effective March 31.

Editor's note: (1) This section was formerly numbered as § 31-30-1017.

(2) Amendments to subsection (1) by House Bill 06-1068 were relocated to subsection (3) due to its harmonization with amendments made to this section by House Bill 06-1059.

31-31-406. Separate retirement accounts - administration. (1) Any member having a separate retirement account who terminates service and at the time of termination has less than five years of credited service or who terminates service and at the time of termination has more than five years of credited service but elects a refund of contributions as provided under section 31-31-404 (1) (a) shall forfeit the entire balance in the member's separate retirement account to the actuarial account.

(2) (a) Any member having a separate retirement account who is retired for disability shall receive the entire balance in the member's separate retirement account in accordance with the member's selection of one of the payment options permitted by subsection (3) of this section or pursuant to rules promulgated by the board that allow members who are eligible to receive retirement benefits to defer receipt of the benefits to the extent permitted under section 401 (a) (9) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 401 (a) (9), as amended, and the regulations promulgated pursuant to section 401 (a) (9). If the member subsequently returns to work pursuant to section 31-31-805 (2) and had been receiving periodic payments from the member's separate retirement account, such payments shall cease and any remaining balance shall remain in the member's separate retirement account, subject to subsequent distribution in accordance with this section.

(b) If any member having a separate retirement account dies prior to termination, the entire balance in the member's separate retirement account shall be payable to the member's surviving spouse or dependent children in accordance with their selection of one of the payment options permitted by subsection (3) of this section.

(3) Any member retiring pursuant to the provisions of section 31-31-403 or 31-31-404 (2) may elect to receive the balance in the member's separate retirement account in accordance with one of the following payment options:

(a) Option 1: In a lump sum;

(b) Option 2: In periodic installments of a specified and substantially equal amount, payable monthly over a period not to exceed the joint life expectancy of the member and the member's spouse. This maximum period shall be determined under the applicable actuarial tables then being used by the association at the time the initial monthly installment payment becomes payable.

(c) Option 3: In an annuity. The member may choose an annuity payable to the member for life or may choose any of the joint and survivor options permitted by section 31-31-403 (5) (a).

(4) A member may elect to commence payment of the amount in the member's separate retirement account at any time after the member terminates service but in no event later than

the commencement of the member's retirement benefits under section 31-31-403 or 31-31-404 (2). A member will continue to accrue earnings on the amount in the member's separate retirement account until such time as the account is exhausted.

(5) The restoration of a member's service credit pursuant to section 31-31-404 (1) (b) shall not entitle the member to reinstatement of any previously forfeited balance in the member's separate retirement account.

(6) If a member terminates service with less than five years of credited service and does not elect a refund of accumulated contributions, the amount in the member's separate retirement account shall not be forfeited but shall continue to be subject to the earnings and reduction provisions of section 31-31-405, and, upon the member's return to active service with an employer covering its members under the normal retirement provisions of this part 4, the member shall be credited with any amount which has accrued in the member's separate retirement account.

(7) The balance in a member's separate retirement account, the member's accumulated contributions to the account, and the earnings on the account shall be paid to the member's estate if the member:

- (a) Dies while in active service;
- (b) Has more than five years of credited service;
- (c) Does not leave a surviving spouse, dependent child, or designated beneficiary; and
- (d) Is not eligible for the normal retirement pension described in section 31-31-403 at the time of death.

Source: **L. 96:** Entire article added with relocations, p. 909, § 1, effective May 23; (2) amended, p. 1342, § 7, effective June 1. **L. 2001:** (2)(a) and (4) amended and (7) added, p. 419, § 6, effective June 1. **L. 2003:** (1), (6), and (7)(b) amended, p. 742, § 4, effective August 6.

Editor's note: This section was formerly numbered as § 31-30-1018.

31-31-407. Adjustment of benefits. (1) The benefits payable under the statewide defined benefit plan established by this part 4 may be redetermined effective October 1 each year. If such benefits are redetermined, such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. Any redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

(2) and (3) (Deleted by amendment, L. 2008, p. 13, § 1, effective August 5, 2008.)

(4) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other defined benefits established by this part 4.

(5) (a) Effective October 1, 2008, and each year thereafter, any redetermination of benefits made pursuant to subsection (1) of this section shall be determined by the board in its discretion as a fiduciary of the statewide defined benefit plan after considering the funding level of the plan, the cost of such increase, whether the increase creates an adverse actuarial impact on the plan's ability to fund future benefits, and any other factors the board deems appropriate. The redetermined benefits shall not exceed the greater of:

- (I) One hundred three percent of the benefits paid for the prior twelve-month period; or
- (II) The benefits paid during the prior twelve-month period multiplied by a fraction using the consumer price index for the immediately preceding calendar year as the numerator and the consumer price index for the calendar year prior to the immediately preceding calendar year as the denominator.

(b) As used in subparagraph (II) of paragraph (a) of this subsection (5), the term "consumer price index" means the national consumer price index for urban wage earners and clerical workers prepared by the United States department of labor.

Source: **L. 96:** Entire article added with relocations, p. 910, § 1, effective May 23; (2) amended, p. 1340, § 3, effective June 1. **L. 2002:** (1), (2), and (4) amended, p. 173, § 2, effective October 1. **L. 2008:** (1), (2), and (3) amended and (5) added, p. 13, § 1, effective August 5.

Editor's note: This section was formerly numbered as § 31-30-1010.

31-31-408. Modification of state plan by the board. (1) Notwithstanding any other provision of this part 4, and in addition to the authority granted in part 2 of this article, the board may modify the pension benefits and the age and service requirements for pension benefits set forth in this part 4 with respect to the members of the statewide defined benefit plan if:

(a) The board determines that such modification will maintain or enhance the actuarial soundness, as specified in section 31-31-102 (1), of the plan;

(b) The modification does not require an increase in the employer and member contribution rates established as of January 1, 1980, pursuant to section 31-31-402 or such higher member contribution rate established pursuant to paragraph (a) of subsection (1.5) of this section;

(c) The modification does not adversely affect the plan's status as a qualified plan pursuant to the federal "Internal Revenue Code of 1986", as amended;

(d) The modification is approved by sixty-five percent of the active members of the plan;

(e) The modification is approved by more than fifty percent of the employers having active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes; and

(f) The modification does not adversely affect the pension benefits of retired members.

(1.5) (a) Notwithstanding any other provision of this part 4, the board may increase the member contribution rate above the rate established pursuant to section 31-31-402 with respect to the members of the statewide defined benefit plan if the increase:

(I) Does not require an increase in the employer contribution rate established pursuant to section 31-31-402;

(II) Does not adversely affect the plan's status as a qualified plan pursuant to the federal "Internal Revenue Code of 1986", as amended;

(III) Is approved by sixty-five percent of the active members of the plan; and

(IV) Is approved by more than fifty percent of the employers having active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes.

(b) The increase in the member contribution rate established pursuant to paragraph (a) of this subsection (1.5) shall be paid from a member's salary and otherwise be treated in the same manner specified in section 31-31-402 (1) for other member contributions for purposes of the federal "Internal Revenue Code of 1986", as amended. The increase in the member contribution rate shall not be subject to negotiation for payment by the employer.

(c) The board may eliminate an increase in the member contribution rate established pursuant to paragraph (a) of this subsection (1.5) so long as the requirements for an increase set forth in said paragraph (a) are met.

(2) In no event shall the board adopt a modification that reduces the statewide defined benefit plan's normal retirement age below that permitted by section 31-31-403 (1) (b).

(3) The board shall adopt rules setting forth the procedures for the member elections required by paragraph (d) of subsection (1) and subparagraph (III) of paragraph (a) of subsection (1.5) of this section. Each employer having members in the statewide defined benefit plan shall comply with the procedures established by the board and shall certify the results of any member election to the board as prescribed by the board's rules.

(4) A written copy of the language of any modifications to the statewide defined benefit plan or an increase in the member contribution rate adopted by the board pursuant to this section shall be kept and maintained by the board at its offices and be made available for copying and inspection by any interested party.

(5) If at any time the cost of any modification adopted by the board pursuant to subsection (1) of this section would require an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to paragraph (a) of subsection (1.5) of this section, the board shall revoke the modification as it applies to active members of the plan. The board may reinstitute the modification at a later date, in its discretion, if reinstituting the modification would not require an increase in the eight percent employer and eight percent member contributions made pursuant to section 31-31-402 or such higher member contribution rate established pursuant to paragraph (a) of subsection (1.5) of this section.

Source: L. 96: Entire article added with relocations, p. 911, § 1, effective May 23. L. 2010: (1)(b), (3), (4), and (5) amended and (1.5) added, (SB 10-022), ch. 18, p. 84, § 4, effective August 11. L. 2012: IP(1) amended, (HB 12-1031), ch. 68, p. 236, § 2, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1006.5.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-409. Qualification requirements - internal revenue code. (Repealed)

Source: L. 96: Entire article added with relocations, p. 912, § 1, effective May 23. L. 98: (2)(f), (2)(i), and (2)(j) amended and (2)(k) added, p. 25, § 4, effective March 16. L. 2006: Entire section repealed, p. 192, § 17, effective March 31.

Editor's note: This section was formerly numbered as § 31-30-1019.

31-31-410. Purchased or rolled over service credit. (1) A member may purchase service credit or may be granted service credit upon the qualified roll over of distributions from an eligible plan, for other public employment within the United States not covered by the plan, as may be allowed under rules adopted by the board, subject to all of the following conditions:

(a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan.

(b) The member provides documentation of the dates of employment not covered by the plan and a record of the salary received.

(c) The member verifies that the member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law.

(d) The member pays or transfers to the fire and police pension association, at the time and in the manner prescribed by the board, the cost of the service credit, such cost to be calculated by the board on an actuarially equivalent basis.

(2) A member may purchase up to five years of service credit for periods of active duty in the uniformed services of the United States, subject to all of the following conditions:

(a) The member has at least one year of continuous service credit with the same employer covered by the statewide defined benefit plan.

(b) The member provides documentation of the dates of service in the uniformed services of the United States and that the member was honorably discharged from such service.

(c) The member provides certification from the employer that the service is not intervening service covered by the federal "Uniformed Services Employment and Reemployment Rights Act of 1994", chapter 43 of title 38, U.S.C., as amended.

(d) The member verifies that the member will not receive a benefit from any retirement plan covering such service and that the service credit to be purchased has not vested with that plan, except to the extent otherwise required by federal law.

(e) The member pays to the fire and police pension association, at the time and in the manner prescribed by the board, the cost of the service credit purchased, such cost to be calculated by the board on an actuarially equivalent basis.

(2.5) A member may purchase up to five years of service credit, or may be granted up to five years of service credit upon the qualified roll over of distributions from an eligible plan, for employment with any private employer in the United States, as may be allowed under rules adopted by the board, subject to all of the following conditions:

(a) The member has at least five years of continuous service credit with the same employer covered by the statewide defined benefit plan.

(b) The member provides documentation of the dates of employment not covered by the plan and a record of the salary received.

(c) The member verifies that the member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law.

(d) The member pays or transfers to the fire and police pension association, at the time and in the manner prescribed by the board, the cost of the service credit, such cost to be calculated by the board on an actuarially equivalent basis.

(3) Any service credit purchased under this section must cover a period of one year or longer.

Source: L. 99: Entire section added, p. 35, § 1, effective January 1, 2000. **L. 2002:** IP(1), (1)(c), and (1)(d) amended and (2.5) added, p. 53, § 1, effective January 1, 2003.

31-31-411. Return to work by participating member after retirement - rules.

(1) The board may, in its discretion, adopt rules suspending the benefits of a member who participates in the defined benefit system, separates from service, elects a retirement, and subsequently returns to work with an employer who participates in the defined benefit system. Such rules shall indicate whether the member shall earn additional service credit as determined by the plan in which the subsequent employer participates and whether the benefit distribution shall resume at such time as the member subsequently separates from service.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules that allow a member who has reached normal retirement age and who has separated from service, elected a retirement under the defined benefit system, and subsequently returned to work with an employer who provides benefits under the defined benefit system to:

(a) Continue receiving distribution of the member's retirement benefits; and

(b) Earn additional retirement benefits in an alternate money purchase plan.

(3) Prior to the adoption of any rules promulgated pursuant to subsection (2) of this section, the board shall make a finding that such rules are in compliance with section 31-31-204 (3), and that there will be no adverse actuarial impact to the defined benefit system as a result of the implementation of such rules.

Source: L. 2010: Entire section added, (SB 10-023), ch. 19, p. 87, § 1, effective August 11.

PART 5

STATEWIDE MONEY PURCHASE PLAN

31-31-501. Withdrawal into statewide money purchase plan. (1) Any employer may withdraw from its participation in the statewide defined benefit plan established by part 4 of this article for the sole purpose of electing participation in the statewide money purchase plan created pursuant to the authority granted in section 31-31-502.

(2) (a) The employer may initiate withdrawal from the statewide defined benefit plan by filing with the board a resolution adopted by the employer pursuant to paragraph (b) of this subsection (2) no less than nine months prior to the effective date of withdrawal unless a shorter waiting period is approved by the board. The effective date of withdrawal shall be

the first day of the month immediately following the month in which the waiting period expires.

(b) The employer's withdrawal resolution shall be adopted by the governing body of the employer and shall state the employer's intent to withdraw from participation in the statewide defined benefit plan for the purpose of electing participation in the statewide money purchase plan.

(c) Any withdrawal shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the statewide defined benefit plan at the time of the election.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval provided for in paragraph (c) of this subsection (2).

(e) All withdrawals from the statewide defined benefit plan shall comply with the requirements set forth in this section, and, except as otherwise provided in this section, all withdrawals meeting such requirements shall be approved by the board. Withdrawal requests that do not meet the requirements of this section shall not be approved by the board.

(3) The rights of benefit recipients and the vested rights of inactive members shall not be impaired or reduced in any manner as a result of the withdrawal of an employer as provided in this section.

(4) (a) (I) The board shall determine the amount of reserves required as of the effective date of withdrawal to maintain current benefits payable by the association to benefit recipients and to preserve the vested rights of inactive members. The amount of reserves shall be determined by the board utilizing certified actuarial reports prepared by the actuary for the statewide defined benefit plan. Any such actuarial report shall also certify that the employer's withdrawal shall not have an adverse financial impact on the actuarial soundness of the new hire benefits account. If the actuary determines, in accordance with accepted actuarial principles, that the withdrawal will not have an adverse financial impact on the actuarial soundness of the new hire benefits account, the board shall transfer such employer's share of the employer contribution reserve in the new hire benefits account, as determined by the actuary, and all member contributions for the employer's active members to a short-term investment account. If the actuary determines, in accordance with accepted actuarial principles, that the withdrawal shall have an adverse financial impact on the actuarial soundness of the new hire benefits account, the employer shall not be permitted to withdraw.

(II) At least sixty days prior to the effective date of the withdrawal, the actuarial reports shall be updated and appropriate adjustments made to the amount of reserves transferred by the board to the short-term investment account on behalf of the employer if an update is required pursuant to rules adopted by the board. Within thirty days after the receipt of such updated reports, the withdrawal may be terminated by either:

(A) The employer filing with the board a subsequent resolution revoking the employer's resolution of intent to withdraw; or

(B) More than thirty-five percent of the employer's active members who are eligible to vote filing with the board ballots indicating that they no longer wish to withdraw.

(III) If a resolution or a sufficient number of ballots is timely filed with the board pursuant to subparagraph (II) of this paragraph (a), the withdrawal shall be terminated, and the board shall return to the new hire benefits account any amounts transferred to the short-term investment account pursuant to subparagraph (I) of this paragraph (a). If no resolution or an insufficient number of ballots is timely filed, the withdrawal shall proceed in accordance with the provisions of this section.

(IV) The board shall prescribe the form of the ballot to be submitted by members indicating that they no longer wish to withdraw and any other rules necessary for the implementation of this subsection (4).

(b) On the effective date of withdrawal, the actuarial reports prepared pursuant to the provisions of paragraph (a) of this subsection (4) shall be updated to finalize the amount of reserves required for the purposes specified in paragraph (a) of this subsection (4).

(c) Expenses incurred by the board for the actuarial reports prepared as a result of an application for withdrawal shall be paid by the employer making such application.

(d) The board shall provide any information contained in such actuarial reports upon request of the employer making the application for withdrawal.

(5) (a) In the event that the amount of the reserves required pursuant to the provisions of subsection (4) of this section exceeds the amount of the employer's share of the employer contribution reserve in the new hire benefits account as calculated by the actuary, the employer shall make an additional payment no later than ten working days after the effective date of withdrawal in an amount equal to the difference between the amount of reserves required and the amount of reserves on deposit.

(b) In the event that the amount of the reserves on deposit in the new hire benefits account, as calculated by the actuary, for the employer making application for withdrawal, exceeds the amount of reserves required pursuant to the provisions of subsection (4) of this section, such excess amount and the amount required for the transfer of member contributions as provided in subsection (6) of this section shall be transferred to the fire and police members' statewide money purchase plan benefit trust fund on the effective date of withdrawal. Allocation of such amounts to individual member accounts under the statewide money purchase plan shall be made as set forth in section 31-31-502.

(c) If any payment required pursuant to the provisions of paragraph (a) or (b) of this subsection (5) is not made, interest shall be assessed on the amount due at the rate specified for employers in section 31-31-402 (4) until such amount is paid in full.

(6) (a) Members who are not vested under the statewide defined benefit plan and who are employed by an employer who has withdrawn from the statewide defined benefit plan shall have their member contributions credited to the statewide money purchase pension plan as set forth in section 31-31-502.

(b) (I) Members who are vested under the statewide defined benefit plan and who are employed by an employer who has filed a resolution of intent to withdraw from the statewide defined benefit plan may elect that, if the withdrawal becomes effective, their contributions remain with the statewide defined benefit plan by giving written notice to the association no later than the date established for completion of the member election provided in paragraph (c) of subsection (2) of this section.

(II) Members who have made such an election shall become inactive statewide defined benefit plan members entitled to vested benefits upon termination and attainment of vested retirement age.

(III) Members who have made such an election shall not be entitled to withdraw any amounts from their separate retirement account until they have terminated their current employment.

(IV) If members who have made such an election die or become disabled prior to termination of employment, neither they nor their survivors shall be eligible for benefits under the statewide defined benefit plan, but rather they shall be limited to those benefits provided in sections 31-31-803, 31-31-807, and 31-31-807.5.

(c) Members who do not elect to leave their contributions with the statewide defined benefit plan pursuant to paragraph (b) of this subsection (6) shall have their member contributions credited to the statewide money purchase pension plan as set forth in section 31-31-502.

(7) The provisions of section 31-31-404 (1) (b) that relate to the purchase of service credit forfeited by the refund of member contributions shall not apply to members who are employees of an employer that has withdrawn from the statewide defined benefit plan. Such service credit forfeited by such withdrawal may be purchased pursuant to the provisions of section 31-31-403 (7).

Source: L. 96 Entire article added with relocations, p. 914, § 1, effective May 23. L. 98: (6)(b)(IV) amended, p. 62, § 2, effective February 8, 1999. L. 2001: (2)(a), (2)(d), and IP(4)(a)(II) amended, p. 420, § 7, effective June 1. L. 2006: (5)(b) amended, p. 194, § 18, effective March 31.

31-31-502. Statewide money purchase plan - creation - management. (1) The board shall develop, maintain, and amend a statewide money purchase plan document that is intended to comply with the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. As used in this subsection (1), "internal revenue code" shall have that meaning set forth in section 31-31-204 (3). The plan shall cover the members of those employers that have withdrawn from the statewide defined benefit plan pursuant to section 31-31-501.

(2) (a) There is hereby created the fire and police members' statewide money purchase plan benefit trust fund, which shall consist of moneys of employers that have withdrawn from the statewide defined benefit plan pursuant to section 31-31-501, including member and employer contributions and such amounts as are transferred pursuant to section 31-31-501. The board shall keep an accurate account of the fund and of each member's separate account in the fund.

(b) The plan document created by the board pursuant to subsection (1) of this section shall govern the calculation and allocation of earnings and losses under the various investment alternatives which the board may offer, the transfer of assets between funds under each alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to the board's administration and management of the fund created pursuant to this section.

(c) In its administration, investment, and management of the fire and police members' statewide money purchase plan benefit trust fund, the board shall be subject to the provisions of section 31-31-303.

(3) Each member's member contributions transferred to the fund pursuant to section 31-31-501 (5) (b) shall be allocated to the member's separate account within the fund. In addition, each member's separate account will be credited with a portion of any excess employer reserve that is transferred to the fund, such amount to be calculated by multiplying the excess employer reserve times the proportion that the member's transferred member contributions bears to the total member contributions transferred.

(4) (a) Except as provided in paragraph (b) of this subsection (4), upon the effective date of an employer's withdrawal from the statewide defined benefit plan and election to participate in the statewide money purchase plan, each member covered by the statewide money purchase plan shall pay into the fund eight percent of salary paid. The payment shall be made by the employer by deduction from the salary paid such member. Except as provided in paragraph (b) of this subsection (4), for each such member, the employer shall pay into the fund eight percent of the salary paid to such member. All such payments shall be made by one voucher for the aggregate amount and shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the fund. Late payments are subject to the penalty set forth in section 31-31-402 (4).

(b) (I) Upon the request of an employer, the board shall permit a higher mandatory employer contribution rate, mandatory employee contribution rate, or both, than is set forth in paragraph (a) of this subsection (4) if the board determines that:

(A) A local resolution or ordinance setting forth the higher mandatory contribution rate or rates was enacted and is in effect; and

(B) An employee election was conducted and the higher mandatory contribution rate or rates was approved by sixty-five percent of the employer's active members of the plan.

(II) Any active member and any employer may make voluntary contributions to the plan by payroll deduction. Voluntary member contributions are not subject to the employer pickup provisions of section 414 (h) of the federal "Internal Revenue Code of 1986", as amended.

(III) In no event shall increased contributions resulting from a higher contribution rate or rates cause a member to exceed the limit on annual additions under the federal "Internal Revenue Code of 1986", as amended, as applicable to government plans.

(5) The board may amend the pension benefits provided under the statewide money purchase plan document created pursuant to subsection (1) of this section only upon the approval of at least sixty-five percent of the active members of the plan and more than fifty percent of the employers having active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the

plan shall be assigned two votes; and except that the board may amend the plan document, without further approval, as it deems prudent and necessary to comply with state and federal law or as it deems necessary to efficiently administer benefits under the plan.

(6) (a) Any employer who has established a local money purchase plan pursuant to part 6 of this article or article 30.5 may apply to the board to cover the members of its local money purchase plan under the statewide money purchase plan. An application may be initiated by filing with the board a resolution adopted by the employer pursuant to paragraph (b) of this subsection (6) no less than six months prior to the proposed effective date of coverage under the statewide money purchase plan, unless a shorter waiting period is approved by the board. The effective date of coverage shall be the first day of the month following the waiting period.

(b) The employer's resolution applying for coverage under the statewide money purchase plan shall be adopted by the governing body of the employer and shall state the employer's intent to cover the members of its local money purchase plan under the statewide money purchase plan.

(c) Any application for coverage under the statewide money purchase plan shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the local money purchase plan at the time of the application.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval described in paragraph (c) of this subsection (6). The board shall also promulgate rules relating to standards for granting an employer's application for participation in the statewide money purchase plan and for the submission of information to the board by the employer.

(e) An application for coverage under the statewide money purchase plan shall not be complete until the employer certifies to the board that:

(I) The employer's local money purchase plan meets the qualification requirements of section 401 (a) of the "Internal Revenue Code of 1986" that are applicable to governmental plans;

(II) In connection with the employer's resolution pursuant to paragraph (b) of this subsection (6), the employer's governing body has adopted a resolution for complete or partial termination of the local money purchase plan in accordance with the terms of that plan and that:

(A) The termination resolution does not adversely affect the qualified status of the local money purchase plan; and

(B) The rights of all participants in the local money purchase plan who are affected by the termination to benefits accrued to the date of termination are nonforfeitable;

(III) All active and retired fire and police participants in the local money purchase plan will become participants in the statewide money purchase plan;

(IV) As directed by the board, the employer will transfer or cause to be transferred to the statewide money purchase plan all assets of the local money purchase plan that are attributable to the accrued benefits of the transferred participants;

(V) All employer and employee contributions required to be made to the local money purchase plan as of the date of termination have been paid;

(VI) Participants in the local money purchase plan will not incur a reduction in their respective accrued benefits, determined as of the date of transfer, as a result of their transfer to the statewide money purchase plan; and

(VII) The employer agrees to participate in the statewide money purchase plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

Source: L. 96: Entire article added with relocations, p. 917, § 1, effective May 23. L. 97: (2) amended, p. 13, § 4, effective March 13. L. 2000: (4) and (5) amended, p. 53, § 1, effective August 2. L. 2006: (1), (2)(a), and (2)(c) amended, p. 194, § 19, effective March 31. L. 2007: (4)(a) amended, p. 274, § 2, effective August 3. L. 2012: (5) amended, (HB 12-1031), ch. 68, p. 236, § 3, effective August 8.

PART 6

WITHDRAWN LOCAL ALTERNATIVE PENSION PLAN

31-31-601. Withdrawn local alternative pension plan - creation - administration.

(1) (a) Any employer may withdraw from the statewide defined benefit plan, and any employer may subsequently reenter the statewide defined benefit plan, by filing with the board a resolution adopted by the employer pursuant to paragraph (c) of this subsection (1), no less than twelve months prior to the effective date of withdrawal or reentry unless a shorter waiting period is approved by the board. The effective date of withdrawal or reentry shall be January 1 of the year following the waiting period, but no withdrawal or reentry may become effective after January 1, 1985, except a withdrawal to establish a money purchase plan. No withdrawal to establish a money purchase plan may become effective after January 1, 1988, except as provided pursuant to section 31-31-501.

(b) An employer that withdraws from the statewide defined benefit plan prior to January 2, 1988, as provided in this subsection (1) shall establish and maintain a locally administered and financed alternative pension plan subject to the following:

(I) If the plan is a defined benefit plan, in whole or part, such plan shall be financed by contributions determined by the board on the basis of the entry age-normal cost method and shall include the payment required to amortize the unfunded accrued liability over forty years from January 1, 1979; and

(II) The members of such plan hired before, on, or after April 7, 1978, shall be covered by the provisions of sections 31-31-803, 31-31-807, and 31-31-807.5 in lieu of any other defined disability and preretirement death benefits.

(c) Any reentry of both the withdrawal and the alternative pension plan, together with any amendments thereto, shall be approved by at least sixty-five percent of all active members. No amendment of an alternative pension plan may be adopted that would adversely affect the pension benefits of retired members. Notwithstanding any other provision of this subsection (1), however, an alternative pension plan, with the approval of the employer and sixty-five percent of the active members of the plan, may be amended so as to change the nature of the plan from a defined benefit plan to a money purchase plan or from a money purchase plan to a defined benefit plan.

(d) This subsection (1) shall not apply to any employer first established after January 1, 1980.

(2) (a) Within six months from the effective date of withdrawal, the association shall refund to the employer all employer and member contributions in its custody, together with the net earnings of such funds. For the purposes of this subsection (2), "net earnings" means actual earnings, less actual administrative expenses and expenses connected with the withdrawal. The determination of net earnings shall be made by the board.

(b) The refunded moneys shall be used only as contributions to the alternative pension plan.

(c) Upon the effective date of withdrawal, the employer is liable for the payment of all benefits then vested under the provisions of section 31-31-403.

(d) The provisions of this subsection (2) apply to all employers whose withdrawals are effective on or after January 1, 1981.

Source: L. 96: Entire article added with relocations, p. 920, § 1, effective May 23.
L. 98: (1)(b)(II) amended, p. 62, § 3, effective February 8, 1999.

Editor's note: This section was formerly numbered as § 31-30-1003 (2)(b).

ANNOTATION

Annotator's note. Since § 31-31-601 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the

provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire and Police

Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part and rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously

made by them on behalf of both present and former employees. Littleton v. Fire and Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-31-602. Withdrawn local alternative pension plans - investment authority.

(1) Except as provided in subsection (2) of this section, any locally administered and financed alternative pension plan fund established pursuant to this part 6 may be managed and invested by the trustees of such plan pursuant to the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S. Such investments shall be audited at least biennially.

(2) The trustees of a locally administered and financed alternative plan may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

(a) The trustees shall select at least three investment alternatives, each of which is diversified in itself, that allow the participant a broad range of investments and a meaningful choice between risk and return in the investment of the participant's accrued benefit;

(b) The trustees shall allow the participant to change investments at least once each calendar quarter; and

(c) The trustees shall provide the participant with information describing the investment alternatives and the nature, investment performance, fees, and expenses of the investment alternatives and other information to enable a participant to make informed investment decisions.

Source: L. 96: Entire article added with relocations, p. 921, § 1, effective May 23. L. 97: Entire section amended, p. 14, § 5, effective March 13. L. 2004: (1) amended, p. 1204, § 76, effective August 4.

PART 7

AFFILIATION OF PLANS WITH THE ASSOCIATION

31-31-701. Affiliation by old hire pension plans. (1) Any employer may elect affiliation with the association relating to an old hire fire or police pension plan that it has established pursuant to article 30.5 of this title by filing with the board a resolution adopted no less than nine months prior to the effective date of affiliation, unless a shorter waiting period is approved by the board. The effective date of affiliation shall be January 1 of the year following the waiting period.

(2) Each old hire member hired by an affiliating employer shall irrevocably elect, not later than sixty days after affiliation, either to remain covered under the provisions of the old hire plan in effect on January 1, 1979, or to become covered under the provisions of the statewide defined benefit plan established by part 4 of this article. In the event an old hire member hired by an affiliating employer fails to make such an election for any reason, the old hire member shall be deemed to have elected to remain covered under the provisions of the old hire plan in effect on January 1, 1979. An old hire member who elects to become covered under the statewide defined benefit plan established by part 4 of this article shall be deemed to have waived all rights to benefits under the old hire plan but shall receive full credit for all service credited under the old hire plan, and an old hire member electing to remain covered under the old hire plan shall not be governed by the provisions of part 4 of this article relating to defined retirement benefits.

(3) On the effective date of affiliation pursuant to this section, the assets of the old hire pension plan shall be transferred to the trust fund created by subsection (6) of this section. Such transfer shall be at the market value of such assets at the close of business on date of

affiliation. Upon affiliation and the transfer of assets to the fund, benefits due pursuant to the old hire plan shall be paid by the association.

(4) An eligible employer may request of the board, prior to filing a resolution of affiliation, an estimate of the employer's contribution rate necessary to comply with the contribution requirements established by subsection (5) of this section.

(5) An employer that affiliates pursuant to this section shall annually contribute an amount approved by the board, upon advice of its actuary, to pay the normal cost plus amortize the unfunded past service liability attributed to old hire members hired prior to April 8, 1978, over a period of forty years from January 1, 1982.

(6) There is hereby created the old hire plan members' benefit trust fund that shall consist of the assets of old hire plans administered and managed by the board pursuant to this section. The board shall keep an accurate account of each such individual old hire plan.

Source: L. 96: Entire article added with relocations, p. 921, § 1, effective May 23. L. 2006: (3) amended and (6) added, p. 195, § 20, effective March 31.

Editor's note: This section was formerly numbered as § 31-31-1003 (3).

ANNOTATION

Annotator's note. Since § 31-31-701 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire and Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part and rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The pro-

visions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire and Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-31-702. Affiliation by local money purchase plans. (Repealed)

Source: L. 96: Entire article added with relocations, p. 922, § 1, effective May 23. L. 2010: Entire section repealed, (SB 10-024), ch. 20, p. 89, § 1, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1003.3.

31-31-703. Money purchase plan benefit trust fund - creation - management. (Repealed)

Source: L. 96: Entire article added with relocations, p. 922, § 1, effective May 23. L. 97: (1), (2), (5), and (6) amended, p. 15, § 6, effective March 13. L. 2000: (2) amended, p. 51, § 1, effective August 2. L. 2004: (2) amended, p. 1204, § 77, effective August 4. L. 2006: Entire section amended, p. 195, § 21, effective March 31. L. 2010: Entire section repealed, (SB 10-024), ch. 20, p. 89, § 2, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1012.3.

31-31-704. Optional affiliation by social security employers. (1) Prior to January 1, 2007, and notwithstanding the exemption provided in section 31-31-401 (1) (a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees whose duties are directly involved with the provision of law enforcement or fire protection, as certified by the county under the federal "Social

Security Act", as amended, may have elected affiliation with the association, either as to coverage under the statewide death and disability plan or as to retirement under the statewide defined benefit plan, or as to both, by filing with the board a resolution of the governing body of such employer, but any such affiliation shall either exclude past service credit or include past service credit funded by contribution levels established by the board.

(1.5) to (4) (Deleted by amendment, L. 2012.)

(5) Benefits provided pursuant to the statewide defined benefit and statewide death and disability plans established by this article to members of employers that have affiliated pursuant to this section prior to January 1, 2007, shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(6) to (10) (Deleted by amendment, L. 2012.)

Source: L. 96: Entire article added with relocations, p. 924, § 1, effective May 23. L. 2003: (1) and (3) amended and (1.5) and (3.5) added, p. 1232, § 4, effective August 6. L. 2006: (2) amended and (9) and (10) added, p. 101, § 2, effective March 27. L. 2012: Entire section amended, (HB 12-1018), ch. 24, p. 62, § 1, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1003.5.

Cross references: For the federal "Social Security Act", see 42 U.S.C. sec. 301 et seq. For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-704.5. Entry into the social security supplemental plan. (1) (a) Notwithstanding the exemption provided in section 31-31-401 (1) (a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees under the federal "Social Security Act", as amended, whose duties are directly involved with the provision of law enforcement or fire protection as certified by the county may elect coverage under the social security supplemental plan established pursuant to section 31-31-704.6 by filing a resolution of affiliation with the board pursuant to subsection (2) of this section. Election of coverage under the plan shall be irrevocable.

(b) A county electing to affiliate with the social security supplemental plan shall make such election through the county's governing board. For purposes of administering to counties affiliated pursuant to this section, any county electing to affiliate shall be included in the definition of "employer", as defined in section 31-31-102 (3), and any covered employee of such county shall be included in the definition of "member", as defined in section 31-31-102 (4).

(2) The employer's resolution applying for coverage under the social security supplemental plan shall first be adopted by the governing body of the employer and shall state the employer's intent to cover its members under the plan.

(3) Any application for coverage under the social security supplemental plan shall be approved by at least sixty-five percent of all active members employed by the employer at the time of the application.

(4) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining member approval pursuant to subsection (3) of this section. The board shall also promulgate rules relating to standards for granting an employer's application for participation in the social security supplemental plan and for the submission of information to the board by the employer. The rules shall contain a provision specifying that an employer that opts to participate in the plan shall not be permitted to opt out of the plan at any later date.

(5) An application for coverage under the social security supplemental plan filed by an employer shall include the employer's certification to the board:

(a) That all active fire and law enforcement employees as certified by the employer will become participants in the social security supplemental plan and the election to participate in the plan is irrevocable; and

(b) That the employer agrees to participate in the social security supplemental plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

(6) An employer that participates in the social security supplemental plan established pursuant to section 31-31-704.6, shall not be prohibited from participating in other governmental pension or benefit plans to the extent allowed under the federal "Internal Revenue Code of 1986", as amended.

(7) Nothing contained in this section shall affect the ability of an employer to terminate social security coverage or affect the procedures for such termination.

Source: L. 2006: Entire section added, p. 102, § 3, effective March 27. **L. 2012:** (7) added, (HB 12-1018), ch. 24, p. 64, § 2, effective August 8.

Cross references: For the federal "Social Security Act", see 42 U.S.C. sec. 301 et seq. For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-704.6. Social security supplemental plan - creation - management. (1) The board is authorized to develop, maintain, and amend a social security supplemental plan document, as a component of the defined benefit system, that offers a defined benefit and that is intended to comply with the qualification requirements specified in section 401 of the federal "Internal Revenue Code of 1986", as amended, that are applicable to governmental plans. The plan shall cover the members of those employers that have elected coverage under the plan pursuant to section 31-31-704.5.

(2) (a) Contributions and earnings of the social security supplemental plan shall be held in trust as part of the defined benefit system trust fund.

(b) The social security supplemental plan document created by the board pursuant to subsection (1) of this section shall govern the accrual of service credit, vesting, the benefits to be offered based on age and service, the establishment and payment of contributions, the allocation of contributions towards funding the defined benefit, amendment of the plan, and such other matters as may be necessary to the board's administration and management of the plan.

(3) Upon the effective date of coverage under the social security supplemental plan, each member covered by the plan shall pay four percent of his or her salary paid into the fund. The payment shall be made by the employer by deduction from the salary paid to the member. For each member, the employer shall pay four percent of the salary paid to the member into the defined benefit plan trust fund. Payments are due no later than ten days following the date of payment of salary to the member, unless the salary is paid more than once monthly, in which event the payments are due no later than the tenth day of the month following the month the salary is paid to the member. An interest charge of one-half of one percent per month shall be levied against any unpaid amount and added to the employer payments required pursuant to this section.

(4) Each employer shall pay the employee contributions required for all salaries, and the contributions so paid shall be treated as employer contributions pursuant to section 414 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, in determining tax treatment under the code. The employer shall pay the employee contributions directly to the retirement association, instead of paying the amounts to employees, and the contributions shall be paid from the same funds that are used in paying salaries to the employees. The contributions, although designated as employee contributions, shall be paid by the employer in lieu of contributions by employees. Employees may not elect to choose to receive the contributions directly instead of having them paid by the employer to the pension plan. Employee contributions so paid shall be treated for all purposes of this article, other than federal tax, in the same manner as employee contributions made before the date paid. Payment shall be made by one voucher for the aggregate amount deducted and shall be made no later than the tenth day after the end of each pay period.

(5) Benefits payable under the social security supplemental plan shall be equivalent to one half of the benefits paid under the statewide defined benefit plan.

Source: L. 2006: Entire section added, p. 102, § 3, effective March 27.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-704.7. Participation in statewide death and disability plan. Any employer participating in the social security supplemental plan created pursuant to section 31-31-704.6 may also elect coverage under the statewide death and disability plan by filing with the board a resolution to that effect from the governing body of such employer.

Source: L. 2012: Entire section added, (HB 12-1018), ch. 24, p. 64, § 3, effective August 8.

31-31-705. Affiliation by volunteer pension plans. The board is authorized to make agreements with governing bodies that provide pension plans for volunteer firefighters to administer such plans and manage the funds of such plans for investment.

Source: L. 96: Entire article added with relocations, p. 926, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1005 (1)(k).

ANNOTATION

Annotator's note. Since § 31-31-705 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character

or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-31-706. Affiliation by exempt defined benefit pension plans. (1) At the request of any local employer having an exempt defined benefit pension plan, the board is authorized to make an agreement with the employer's governing body to manage such employer's exempt defined benefit pension plan fund for investment.

(2) (a) As an alternative to affiliation for investment management pursuant to subsection (1) of this section, at the request of any local employer having an exempt defined benefit pension plan, the board is authorized to make an agreement with the employer's governing body to incorporate the exempt defined benefit pension plan into the defined benefit system. The incorporation shall be under terms and conditions that are mutually agreeable to the employer's governing body and the board and as may be required to maintain the qualified status of the plan under the federal "Internal Revenue Code of 1986", as amended.

(b) Prior to the implementation of an agreement of incorporation pursuant to paragraph

(a) of this subsection (2), the board shall find that the incorporation is not projected to have an adverse actuarial impact on existing members of the defined benefit system. The board and the employer's governing body are authorized to take all actions necessary to accomplish the agreement and to maintain the qualified status of the formerly exempt defined benefit pension plan after incorporation into the defined benefit system. Notwithstanding any other requirement, an exempt defined benefit pension plan may be incorporated into the defined benefit system without the approval of the members of the exempt plan or the statewide plan.

(c) The board may require that employees hired by the local employer with the formerly exempt defined benefit pension plan after the date of incorporation pursuant to this subsection (2) be members of the statewide defined benefit plan pursuant to part 4 of this article.

Source: L. 96: Entire article added with relocations, p. 926, § 1, effective May 23. **L. 2005:** Entire section amended, p. 309, § 1, effective April 14. **L. 2006:** (2)(a) and (2)(b) amended, p. 196, § 22, effective March 31.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-707. Multiple plan employers. An employer with multiple plans may exercise its options of affiliation and withdrawal pursuant to this article on an individual plan basis.

Source: L. 2001: Entire section added, p. 420, § 8, effective June 1.

PART 8

DISABILITY AND SURVIVOR BENEFITS

31-31-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Assigned duties" means those specific tasks or jobs designated by the employer for a particular position within a job classification. The term does not include the duties of a member's rank or grade that the member is not actually required to regularly perform in the position which the member occupies.

(2) "Dependent child" means an unmarried child under the age of twenty-three and includes, if the board so determines, any child, regardless of age or marital status, who is so mentally or physically incapacitated that the child cannot provide for the child's own care. The term also includes a child who is conceived but unborn at the date of the member's death or the date of disability, whichever applies. Any applicable increase in benefits will occur upon birth.

(3) "Occupational disability" means a disability resulting in an incapacity to perform assigned duties and expected, with reasonable medical probability, to exist for at least one year.

(3.2) "Permanent occupational disability" means an occupational disability caused by a condition that is permanent or degenerative, and for which there is no prognosis for improvement or recovery through surgical treatment, counseling, medication, therapy, or other means.

(3.4) "Temporary occupational disability" means an occupational disability for which there is a prognosis for improvement or recovery through surgical treatment, counseling, medication, therapy, or other means.

(4) "Total disability" means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that may be expected to result in death or that has lasted or may be expected to last for a period of not less than twelve months.

Source: **L. 96:** Entire article added with relocations, p. 926, § 1, effective May 23. **L. 2001:** (2) amended, p. 420, § 9, effective June 1. **L. 2002:** (1) amended and (3.2) and (3.4) added, p. 174, § 3, effective October 1. **L. 2009:** (2) amended, (SB 09-017), ch. 53, p. 188, § 1, effective March 25.

Editor's note: This section was formerly numbered as § 31-30-1002 (1.5), (3), (6), and (7).

31-31-802. Coverage. (1) Except as provided in section 31-31-803, any member hired before, on, or after April 7, 1978, is eligible for the benefits provided by this part 8, with the exception of the following:

(a) Any member whose employer covers them under the federal "Social Security Act" shall be exempt from the provisions of this part 8 except the provisions of section 31-31-202;

(b) Members whose employer had established an exempt defined benefit pension plan in accordance with part 8 of article 30.5 of this title, on January 1, 1980, unless an employer irrevocably elects not later than October 1, 1983, to be subject to the provisions of this part 8; and

(c) Members whose employer had established a money purchase plan on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title; except that members of a police or fire department of any such employer may elect, with the approval of sixty-five percent of all active members employed by the department and with the consent of the members' employer, to be covered by the provisions of this part 8, but any member hired on or after the date determined by the board to be the effective date of affiliation for coverage under this part 8 shall be covered under said part and shall have no right of election. Upon election of such coverage, members shall complete a statewide standard health history form pursuant to section 31-31-810 (1) (c) and, for purposes of this part 8, shall be considered as if first employed as of the date the election is effective. The board shall establish procedures for obtaining the required member and employer approval for coverage under this part 8. Once a member has elected the coverage of this part 8, the member's election shall be irrevocable. No employer that elects coverage on or after July 1, 1996, under this part 8 pursuant to this paragraph (c) shall be permitted to withdraw from such coverage pursuant to subsection (2) of this section.

(d) Any member whose employer has affiliated with the public employees' retirement association for the purpose of administering retirement benefits for its members.

(2) (a) Any employer may withdraw the active members of its police or fire department from coverage under the disability and survivor benefit provisions of this part 8 in order to establish its own exempt disability and survivor benefit program. Such withdrawal must be approved by at least sixty-five percent of all active members employed by the department, but if the members do not so approve, the employer may request approval of the withdrawal by the board. The board shall approve the request only if the proposed alternative program will provide disability and survivor benefits which are at least the actuarial equivalent of benefits provided under this part 8, as determined by an actuary appointed by the board. In making its determination, the actuary shall follow the association's standards for actuarial equivalency and shall include a review of the income tax consequences of the benefits offered. The cost of an actuarial review shall be paid by the employer and the employer will provide the information requested by the actuary. In the event the employer proposes the use of a private insurance company to provide the alternative program, the company shall have a minimum rating from a recognized rating agency as prescribed by rules of the board.

(b) An employer requesting to withdraw as provided in this subsection (2) must file a resolution of intent to withdraw with the board no later than December 31, 1999. No withdrawal will be permitted to take effect after December 31, 2001.

(c) An employer that withdraws pursuant to this subsection (2) shall establish and maintain a locally financed alternative disability and survivor benefit plan. Except for the one time payment specified in paragraph (e) of this subsection (2), the state shall not have any financial or other responsibility for a plan that has been withdrawn pursuant to this subsection (2).

(d) The board shall promulgate rules relating to the standards for disclosure of all ramifications of and procedures for obtaining the member approval of withdrawal provided for in paragraph (a) of this subsection (2).

(e) Within sixty days of the effective date of a withdrawal under this subsection (2), the association shall pay to the withdrawn employer its actuarially determined proportionate share of the state contribution made by the state treasurer on January 31, 1997, for funding of death and disability benefits pursuant to section 31-31-811 (3). The board shall promulgate rules for determining the calculation of a withdrawn employer's actuarially determined proportionate share of the state contribution. Such rules shall consider the number of members hired prior to January 1, 1997, who are being withdrawn, the number of members hired prior to January 1, 1997, who continue to be covered for death and disability benefits under this part 8, including those members and survivors already receiving benefits, and the cost of covering the withdrawn employer's members for the period prior to the withdrawal. Any money paid to a withdrawn employer pursuant to this paragraph (e) shall be applied to the funding of that employer's exempt disability and survivor benefit program created pursuant to paragraph (a) of this subsection (2).

(f) Once an employer has withdrawn under this subsection (2), reentry into the disability and survivor benefit plan provided by this part 8 shall be permitted only once, in accordance with procedures established by the board.

Source: L. 96: Entire article added with relocations, p. 926, § 1, effective May 23; (1)(c) amended and (2) added, p. 1337, § 1, effective June 1. L. 2003: (1)(d) added, p. 1233, § 5, effective August 6.

Editor's note: Provisions of this section were formerly numbered as § 31-30-1003 (2)(a)(II) and (2)(a)(III).

ANNOTATION

Annotator's note. Since § 31-31-802 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire and Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part and rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The pro-

visions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire and Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-31-803. Retirement for disability. (1) (a) (I) Any member hired before, on, or after April 7, 1978, who becomes totally disabled, as defined in section 31-31-801 (4), shall be retired from active service for disability and shall be eligible to receive the disability benefit provided by this subsection (1) or section 31-31-806.5 if the member:

(A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(II) The normal annual disability benefit for total disability for a member who is retired pursuant to subparagraph (I) of this paragraph (a) shall be seventy percent of the annual base salary paid to the member immediately preceding retirement for disability.

(b) Notwithstanding subsection (5) of this section, a member eligible for the normal annual disability benefit for total disability may elect to receive one of the following

disability benefit options in lieu of the normal annual disability benefit provided under paragraph (a) of this subsection (1):

(I) Option 1. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's designated beneficiary for life;

(II) Option 2. A reduced annual disability benefit payable to the member and, upon the member's death, one-half of such reduced annual disability benefit to be paid to the member's designated beneficiary for life; or

(III) Option 3. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's surviving spouse and dependent children, if any, until the death of the surviving spouse, the death of any adult dependent child found to be incapacitated by the board, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(c) A member shall be deemed to have elected option 3 specified in subparagraph (III) of paragraph (b) of this subsection (1) if the member is eligible for a benefit for total disability under this subsection (1), is survived by a spouse or dependent child, and dies before making an election allowed under paragraph (b) of this subsection (1).

(d) (Deleted by amendment, L. 2009, (SB 09-017), ch. 53, p. 188, § 2, effective March 25, 2009.)

(2) (a) A member who becomes occupationally disabled, as defined in section 31-31-801 (3), and is awarded a disability retirement prior to October 1, 2002, shall be retired from active service for such time as the occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(II) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) The annual disability benefit for occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2) shall be thirty percent of the annual base salary paid to the member immediately preceding retirement for disability. The benefit shall be increased by:

(I) Ten percent of the annual base salary if such member had a spouse at the time of becoming occupationally disabled, for so long as such spouse survives and is married to such member or is legally entitled to maintenance from such member in an amount equal to or greater than the amount of the increase in the benefit authorized by this subparagraph (I). If the amount of maintenance is less than the amount of the increase in the benefit authorized by this subparagraph (I), the benefit shall be increased by an amount equal to the amount of the maintenance; except that, for any member who is receiving the benefit authorized by this subparagraph (I) and who becomes legally required to pay maintenance prior to June 1, 2001, the amount of the benefit shall be ten percent of the annual base salary.

(II) Ten percent of the annual base salary if such member has any dependent children.

(III) (Deleted by amendment, L. 2009, (SB 09-017), ch. 53, p. 188, § 2, effective March 25, 2009.)

(2.1) (a) A member who becomes permanently occupationally disabled, as defined in section 31-31-801 (3.2), shall be retired from active service for such time as the permanent occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2.1) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(II) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) The annual disability benefit for a permanent occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2.1) shall be fifty percent of the annual base salary being paid to the member immediately preceding retirement for disability.

(2.2) (a) A member who becomes temporarily occupationally disabled, as defined in section 31-31-801 (3.4), shall be retired from active service for such time as the temporary occupational disability continues for a period up to five years from the date of original disablement and shall be eligible to receive the disability benefit provided by this subsection (2.2) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension provided pursuant to article 30.5 of this title; or

(II) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) The annual disability benefit for a temporary occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2.2) shall be forty percent of the annual base salary being paid to the member immediately preceding retirement for disability.

(c) A member found to have a temporary occupational disability shall be subject to reexamination at such times and in such manner as the board may direct. Based on the recommendations of the physician panel, the board may require treatment, counseling, or therapy necessary to rehabilitate the member for return to work. At the time of reexamination, a member with a temporary disability shall provide evidence of compliance with the requirements established by the board. Benefits may be terminated by the board if the member fails to make rehabilitation efforts or if sufficient evidence of compliance and continuing disability is not provided to the board by the disabled member.

(d) A member who remains disabled may apply for an upgrade to permanent occupational disability or to total disability no later than six months prior to the end of five years from the date of original disablement. A member may be upgraded to a permanent occupational disability upon a finding by the board that the member meets the definition contained in section 31-31-801 (3.2) or to a total disability upon a finding by the board that the member meets the definition contained in section 31-31-801 (4). After the five-year period, benefits shall cease unless the member has been upgraded to either permanent occupational disability or total disability.

(e) A member whose disability benefits cease and who is not restored to active service or a member who elects to terminate his or her disability benefits shall be entitled to:

(I) Any vested benefit earned through his or her years of service prior to becoming disabled, payable at normal retirement age; or

(II) A refund of the member's contributions if no benefit is vested.

(3) (a) Notwithstanding any other provision of this section, no benefits shall be payable for any disability resulting in whole or in part from:

(I) Addiction to a controlled substance, the use of which is prohibited in article 18 of title 18, C.R.S.;

(II) Engaging in any act for which the member has been convicted of a felony; or

(III) An intentionally self-inflicted injury.

(b) For the purposes of this subsection (3), the terms "addiction" and "controlled substance" shall have the same meanings as such terms have in part 2 of article 80 of title 27, C.R.S.

(4) (a) (I) The determination of disability, whether occupational or total or whether on-duty, shall be made by the board, and the board shall consider reports to be made by a panel of three physicians who shall be appointed by the board upon the recommendation of a medical advisor with whom the board shall contract to provide advisory services and any other evidence the board deems relevant. The board shall not make a determination of disability unless two of the three physicians examining the applicant agree that a disability exists, but the board shall not be bound by the physicians' determination that a disability exists.

(II) The board may consider any relevant evidence, including medical evidence, in making its determination regarding the origin of an applicant's disability and may request that the three physicians appointed by the board to examine the applicant also provide an opinion as to whether the applicant's injury was received while performing official duties or whether the applicant's occupational disease arose out of and in the course of the applicant's employment.

(III) In all cases under this subsection (4), section 31-31-805, or section 31-31-806.5, the board:

(A) May appoint hearing officers who are experienced in disability matters to conduct hearings and make findings and recommendations to the board on any issue relating to an applicant's disability;

(B) May adopt rules to establish a process for the administrative approval of disability applications, including standards of review for the applications, without board review; and

(C) Shall take any final action that constitutes a denial of a disability application or a reduction of a benefit.

(b) The board shall have the authority to investigate claims for disability retirement benefits at the time of initial application for benefits or subsequent to an award of benefits in order to determine eligibility or continuing eligibility for such benefits. The board shall appoint such investigators and other personnel as may be necessary to carry out this function. No investigation of a member who has been awarded a disability retirement shall be pursued if more than five years has elapsed since the date of the award.

(c) If the board determines that an applicant for retirement for disability is not disabled and the applicant is on sick leave, disability leave, or other type of leave of absence, is serving in a temporary position pending the determination of an application, or has been terminated from employment by the employer on the basis of an alleged disability, the employer shall reinstate the applicant to active service in the same position the applicant held prior to the commencement of such leave, assignment to a temporary position, or termination. If the employer refuses to reinstate the applicant to the applicant's prior position, the employer shall thereafter pay benefits to the applicant as if the applicant had been determined occupationally disabled by the board. The employer shall continue to pay such benefits until the applicant is reinstated to the applicant's prior position or declines an offer of reinstatement.

(5) (a) Any member who is awarded a total disability pension or a permanent occupational disability pension under this section or section 31-31-806.5 shall be eligible to receive the applicable normal disability pension provided in this section or to make an election for a reduced pension in the manner provided in this section.

(b) (I) If, after making the election of a normal disability pension, an unmarried member who receives a single life annuity at the time benefits commence and whose marital status changes as the result of marriage or remarriage shall be eligible to change the member's original election to take a reduced pension in the same manner as the original election authorized in paragraph (a) of this subsection (5) within one hundred eighty days of the date of the marriage or remarriage or January 1, 2008, whichever date is later. If, after such selection of a different payment option, the member subsequently dies within one hundred eighty days following the marriage or remarriage, the only survivor benefit payable to the member's designated beneficiary shall be the difference between the single life option amount payable to the member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or remarriage and prior to the member's death.

(II) The newly elected pension shall be recalculated as the actuarial equivalent of the remainder of the original pension for which the member would otherwise have been eligible if the member had not changed the original election.

(6) (a) The benefits payable under the statewide death and disability plan established in this part 8 shall be redetermined effective October 1 each year, and such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. The annual redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

(b) (I) For the redetermination of occupational disability benefits payable pursuant to subsections (2), (2.1), and (2.2) of this section and section 31-31-806.5, the amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but not more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(II) For the redetermination of total disability benefits payable pursuant to subsection (1) of this section and section 31-31-806.5, the amount of the benefit on the effective date of the benefit shall be increased by three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(c) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other benefits established by this part 8.

(7) (a) The benefits payable under this section or section 31-31-806.5 to any member who is awarded an occupational disability prior to October 1, 2002, a total disability, or who is permanently occupationally disabled and who is also eligible to receive payments from the member's separate retirement account pursuant to section 31-31-406 or a similar provision in a local pension plan shall be reduced by an amount that is the actuarial equivalent of the benefits such member is eligible to receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

(b) The benefits payable under this section or section 31-31-806.5 to any member who is awarded a total disability or who is permanently occupationally disabled and who is also eligible to receive a defined benefit from a statewide or local pension plan shall be reduced by the amount of the defined benefit.

(8) (a) A member eligible for a permanent occupational disability benefit under subsection (2.1) of this section or a permanent occupational disability benefit under section 31-31-806.5 may elect to receive one of the following disability benefit options in lieu of such disability benefit:

(I) Option 1. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's designated beneficiary for life;

(II) Option 2. A reduced annual disability benefit payable to the member and, upon the member's death, one-half of such reduced annual disability benefit to be paid to the member's designated beneficiary for life; or

(III) Option 3. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's surviving spouse and dependent children, if any, until the death of the surviving spouse, the death of any adult dependent child found to be incapacitated by the board, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(b) A member shall be deemed to have elected option 3 specified in subparagraph (III) of paragraph (a) of this subsection (8) if the member is awarded a permanent occupational disability benefit under subsection (2.1) of this section or an occupational disability benefit under section 31-31-806.5, is survived by a spouse or dependent child, and dies before making an election allowed under paragraph (a) of this subsection (8).

(9) After an election has been made of any of the options provided in paragraph (b) of subsection (1) or paragraph (a) of subsection (8) of this section, the election shall be irrevocable when the first disability benefit payment has been deposited or otherwise negotiated by the member or sixty days after the date of issuance of the check, whichever occurs first. The member's beneficiary designation shall also be irrevocable at such time unless the member's marital status changes as a result of dissolution of marriage, death of a beneficiary, marriage, or remarriage or in the event of the death of a beneficiary. In such case, the member may designate a new beneficiary; except that, in cases of dissolution of marriage, this subsection (9) shall only apply to any final dissolution of marriage decree of a member entered on or after July 1, 1990.

(10) The joint disability benefit provided in this section shall be calculated as the actuarial equivalent of the normal annual disability benefit otherwise payable as provided in this section. In the event of a change in the beneficiary designation pursuant to subsection (9) of this section, the joint disability benefit payable shall be recalculated so as to be the actuarial equivalent of the remainder of the original disability benefit based upon the member's initial beneficiary designation, if any.

(11) Repealed.

(12) Notwithstanding any limitation provided under article 80 of title 13, C.R.S., or any other applicable limitation, any application for disability must be filed by the member no later than one hundred eighty days after the last day on the payroll under which disability coverage under this section is provided.

(13) Within the application for disability benefits, a member may irrevocably elect not to be considered for reinstatement in the event that such member becomes eligible. Any such election shall terminate any obligation for reinstatement by the employer.

(14) Within the application for disability benefits, the employer shall:

(a) Make a statement indicating the reason for the member's separation from employment; and

(b) State any additional basis for disability under the death and disability program which the employer believes exists and include any documentation of relevant medical evidence. In the event the member's disability ceases to exist and the member becomes eligible to be restored to active service pursuant to section 31-31-805 (2), the member may be considered for a continuing disability by the board with regard to the additional basis provided by the employer. The consideration shall be conducted as if the member had filed an original application; except that limitation periods under section 31-31-805 (2) shall accrue from the date of the original disablement. If the member fails to be examined with regard to the additional basis, the member shall be entitled to neither reinstatement nor continuing disability benefits.

Source: **L. 96:** Entire article added with relocations, p. 927, § 1, effective May 23; (7) added, p. 1339, § 2, effective June 1; IP(1), IP(2), (4)(a), and (5)(a) amended, pp. 316, 317, §§ 4, 5, effective November 17. **L. 97:** (1)(c) and (2)(c) added, p. 196, §§1, 2, effective August 6. **L. 99:** (1) amended, p. 20, § 1, effective January 1, 2000; (5) amended and (8), (9), (10), and (11) added, p. 40, § 1, effective January 1, 2000. **L. 2000:** (9) amended, p. 50, § 1, effective August 2; (11) repealed, p. 1866, § 90, effective August 2. **L. 2001:** (1)(a), (2), (4)(a)(II), and (9) amended and (4)(a)(III) added, p. 421, § 10, effective June 1. **L. 2002:** (1)(b)(III), IP(2)(a), (4)(a)(I), (5)(a), (6), (7), IP(8)(a), (8)(a)(III), and (8)(b) amended and (2.1), (2.2), (12), (13), and (14) added, p. 175 § 4, effective October 1. **L. 2005:** (8)(b) amended, p. 777, § 65, effective June 1. **L. 2007:** (5)(b)(I) amended, p. 51, § 2, effective March 14; (1)(a)(I)(A), (2)(a)(I), (2.1)(a)(I), (2.2)(a)(I), and (7) amended, p. 269, § 1, effective March 29. **L. 2009:** (1)(a)(II), (1)(b)(III), (1)(d), (2)(b)(III), (7)(b), and (8)(a)(III) amended, (SB 09-017), ch. 53, p. 188, § 2, effective March 25. **L. 2012:** (3)(b) amended, (HB 12-1311), ch. 281, p. 1630, § 80, effective July 1; (1)(a)(I)(A), (2)(a)(I), (2.1)(a)(I), and (2.2)(a)(I) amended, (HB 12-1018), ch. 24, p. 64, § 4, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1007 (1), (2)(a), (2.5), (4), and (5).

ANNOTATION

Annotator's note. Since § 31-31-803 is similar to § 31-30-1007 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

District court or reviewing court should not substitute its own judgment as to the weight of the evidence for that of the board. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d

496 (Colo. App. 1984), *aff'd*, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd* on other

grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304 (Colo. 1986).

Limitations imposed by the amendment providing that investigation of a member shall not be pursued when more than five years have elapsed since the date of the award, must be pleaded and proved as an affirmative defense. *Kilbourn v. Fire and Police Pension Ass'n*, 971 P.2d 284 (Colo. App. 1998).

31-31-803.5. Supplemental disability benefit program. (Repealed)

Source: **L. 97:** Entire section added, p. 197, § 3, effective August 6. **L. 2001:** (1)(c) amended, p. 423, § 11, effective June 1. **L. 2009:** Entire section repealed, (SB 09-017), ch. 53, p. 189, § 3, effective March 25.

31-31-804. Reduction of disability benefits - definitions.

(1) (a) (Deleted by amendment, L. 2009, (SB 09-017), ch. 53, p. 191, § 4, effective March 25, 2009.)

(b) Any disability benefit provided pursuant to section 31-31-803 shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(c) Any member receiving an occupational disability benefit pursuant to section 31-31-803 or 31-31-806.5 and a social security benefit attributable to the member's quarters of social security coverage derived from employment as a member shall file an annual report concerning any social security income. If such member knowingly fails to file such report or files a fraudulent report, the disability benefit shall be discontinued.

(2) The benefits payable under section 31-31-803 or 31-31-806.5 to any member who is occupationally disabled prior to October 1, 2002, is permanently occupationally disabled, or who is totally disabled and who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article or article 30.5 of this title, including any department chief, who at the time of the award of such benefits has been exempted from the statewide defined benefit plan as permitted by section 31-31-401 (4), shall be reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31-402 (1) and (2) as is required for benefits under section 31-31-403.

Source: **L. 96:** Entire article added with relocations, p. 929, § 1, effective May 23; (1)(a), (1)(c), and (2) amended, p. 317, § 5, effective November 17. **L. 2001:** (1)(a) and (1)(c) amended, p. 423, § 12, effective June 1. **L. 2002:** (1)(a), (1)(c), and (2) amended, p. 179, § 5, effective October 1. **L. 2007:** (1)(a) amended, p. 270, § 2, effective March 29. **L. 2009:** (1) amended, (SB 09-017), ch. 53, p. 191, § 4, effective March 25.

Editor's note: Provisions of this section were formerly numbered as § 31-30-1007 (3) and (9).

ANNOTATION

Annotator's note. Since § 31-31-804 is similar to § 31-30-1007 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

District court or reviewing court should not substitute its own judgment as to the

weight of the evidence for that of the board. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd*, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability appli-

cation even through two of the reexamining physicians found the applicant to have a disability. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd* on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of

physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304 (Colo. 1986).

31-31-805. Change in disability status - reexamination. (1) At any time that a total disability, including an on-duty disability pursuant to section 31-31-806.5 (1), ceases to exist, based upon periodic reexamination as may be required by the board or based upon other evidence of ability to engage in substantial gainful activity, a member retired for such disability shall be declared permanently occupationally disabled, and the benefits provided by section 31-31-803 (1) or 31-31-806.5 (1) shall be reduced to the level provided in section 31-31-803 (2.1). The five-year limitation on investigations contained in section 31-31-803 (4) (b) shall not be applicable to the enforcement of this subsection (1).

(2) (a) At any time that an occupational disability, including an on-duty disability pursuant to section 31-31-806.5 (2), ceases to exist, based upon periodic reexamination as may be required by the board, a member retired for such disability may be restored to active service, and the benefits provided by section 31-31-803 or 31-31-806.5 (2) shall be discontinued. The member shall be restored to active service by the member's former employer if a vacancy exists in the same position the member held prior to retirement, or if there is a position of equal base pay available, or if the member agrees to accept another available position that may not be the same or of equal base pay to the member's former position.

(b) In addition, if the position to which the member will be restored requires, as a matter of state law, that the member maintain any type of state certification, the employer need not restore the member to such position if the member does not have the necessary certification or the member's certification has otherwise lapsed, expired, or been revoked. The employer, however, must afford the member an opportunity to attain certification, recertification, or reactivation of an existing certification and must hold open any position that the member has agreed to accept pursuant to this subsection (2) for a period not to exceed one year. The board is directed to evaluate the impact of this requirement on employers of association members. The one-year period may extend beyond the five-year limitation set forth in paragraph (f) of this subsection (2), as long as the opening occurs within the five-year period. Disability benefits will be continued during any period, not to exceed one year, that the member is attempting to attain certification, recertification, or reactivation.

(c) If, at the time of a board finding that a member's occupational disability has ceased to exist, there is no opening in the same position the member held prior to retirement or one of equal base pay and there is no opening in a position of lesser base pay that the member agrees to accept, the board may order the member to proceed with any necessary training in order to attain, reinstate, or reactivate any certification required for the position from which the member retired. Disability benefits shall be continued during the training period up to a maximum of one year.

(d) If the member refuses to take the steps necessary to attain certification, recertification, or reactivation as required by paragraphs (b) and (c) of this subsection (2), or if at the end of the one-year limitation on attaining certification, recertification, or reactivation the member has not attained the necessary certification, recertification, or reactivation, disability benefits shall be discontinued, and the employer shall be relieved of further obligations pursuant to this subsection (2).

(e) If a member refuses to accept the same or a position of equal base pay, the benefits provided by section 31-31-803 shall be discontinued, but a member shall not lose benefits if there is no such vacancy or if the member refuses to accept a position that is not the same or of equal base pay to the member's former position, or if the employer refuses to restore the member to active service, except as provided pursuant to paragraph (b) of this subsection (2).

(f) If at least two members of the three-member physician panel examining the member agree that an occupational disability ceases to exist, if the board determines that such disability ceases to exist, and if no appropriate vacancy is available at that time, the member shall have the first right of refusal to fill such a vacancy if it occurs within five years from the date of original disablement. In the event an occupational disability is based on a medical determination of mental impairment or disease, all three members of the physician panel must agree, and the board must determine, that the occupational disability ceases to exist before the member is granted such first right of refusal.

(g) At least thirty days prior to making its determination, the board shall provide written notice to the employer and member of the agreement of the appropriate number of physicians and of the opportunity for a hearing, upon request of the employer or member, before the board. If a hearing is requested, the board shall provide the employer with copies of the medical reports prepared by the physician panel with respect to any examination or reexamination of the member. Neither the employer, the agents of the employer, including any physician retained to review such reports, nor the association shall release such reports to any other person except as otherwise allowed pursuant to section 24-72-204 (3) (a) (I), C.R.S.

(h) If the member refuses a vacancy in the same position the member held prior to retirement or in a position of equal base pay to the member's former position, the benefits provided by section 31-31-803 shall be discontinued. Except as otherwise provided pursuant to this subsection (2), if the employer refuses to allow a member who exercises such first right of refusal to fill the vacancy, the employer shall thereafter pay the cost of the benefits provided by section 31-31-803.

(i) When a temporary occupational disability ceases to exist and the member is restored to active service with the member's employer, a transfer will be made from the statewide death and disability plan to the member's normal retirement plan in the amount of sixteen percent of the monthly base salary that the member was being paid at the time of disability retirement, multiplied by the number of months the member received temporary occupational disability benefits. The member will receive service credit for such transfer. A restored member of a local plan which has a contribution rate in excess of sixteen percent shall have the difference between the amount transferred and the amount that would have been contributed at the excess rate, made up by an additional contribution from the employer.

(2.5) When a member on temporary occupational disability satisfies the age and service requirements for a normal retirement, including the time the member was on temporary occupational disability, a transfer shall be made from the statewide death and disability plan to the member's normal retirement plan in the amount of sixteen percent of the monthly base salary that the member was being paid at the time of disability retirement, multiplied by the number of months the member received temporary occupational disability benefits. A member of a statewide or local retirement plan that has a mandatory contribution rate in excess of sixteen percent shall have the difference between the amount transferred and the amount that would have been contributed at the excess rate made up by an additional contribution from the employer. The member shall then be granted a normal retirement under the member's normal retirement plan and the temporary occupational disability benefits under the statewide death and disability plan shall terminate.

(3) Within five years from the date of a board finding of occupational disability pursuant to subsection (1) of this section or from the date of original disablement pursuant to section 31-31-803 (2), (2.1), or (2.2), a member retired for such disability may be declared totally disabled based upon periodic reexamination as ordered by the board in its discretion. If the member is declared totally disabled, the benefits provided by section 31-31-803 (2), (2.1), or (2.2) shall be increased to the level provided in section 31-31-803 (1).

Source: L. 96: Entire article added with relocations, p. 930, § 1, effective May 23; (1) and (2)(a) amended, p. 318, § 6, effective November 17. **L. 2002:** (1), (2)(e), (2)(h), and (3) amended and (2)(i) and (2.5) added, pp. 179, 180, §§ 6, 7, effective October 1. **L. 2009:** (2.5) amended, (SB 09-017), ch. 53, p. 191, § 5, effective March 25.

Editor's note: Provisions of this section were formerly numbered as § 31-30-1007 (1.5), (2)(b), and (2)(c).

ANNOTATION

Annotator's note. Since § 31-31-805 is similar to § 31-30-1007 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

District court or reviewing court should not substitute its own judgment as to the weight of the evidence for that of the board. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd*, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. *Ross v. Fire & Police Pension Ass'n*, 682

P.2d 496 (Colo. App. 1984), *aff'd* on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304 (Colo. 1986).

Before discontinuing an employee's occupational disability payments, there is no need for a physician to examine the former employee if the physician's sole purpose would be to determine whether the employee could perform the duties which he was already performing in his job. *Kilbourn v. Fire and Police Pension Ass'n*, 971 P.2d 284 (Colo. App. 1998).

31-31-806. Disqualification upon reemployment. If, subsequent to disability benefits being awarded to a member pursuant to the provisions of section 31-31-803 or 31-31-806.5, but prior to a decision of the board that an occupational disability ceases to exist pursuant to section 31-31-805 (2), a member is employed or reemployed in this state or any other jurisdiction, pursuant to either an agreement or court order, in a full-time salaried position that normally involves working at least one thousand six hundred hours in any given calendar year and the duties of which are directly involved with the provision of police or fire protection as determined by the board, the benefits provided pursuant to section 31-31-803 shall be discontinued. Any application for retirement for disability made by the member after such appointment or reinstatement shall be treated in all respects as a new application. The five-year limitation on investigations contained in section 31-31-803 (4) (b) shall not be applicable to the enforcement of this section.

Source: L. 96: Entire article added with relocations, p. 932, § 1, effective May 23; entire section amended, p. 318, § 7, effective November 17. L. 2002: Entire section amended, p. 181, § 8, effective October 1.

Editor's note: This section was formerly numbered as § 31-30-1007 (3.5).

ANNOTATION

Annotator's note. Since § 31-31-806 is similar to § 31-30-1007 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

This statute, as amended, provides an alternative remedy for determining a claimant's continuing eligibility for occupational disability benefits and is remedial in nature. *Kilbourn v. Fire and Police Pension Ass'n*, 971 P.2d 284 (Colo. App. 1998).

District court or reviewing court should not substitute its own judgment as to the

weight of the evidence for that of the board. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd*, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd* on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational dis-

ability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of ben-

efits, court of appeals was correct in reinstating board's decision. *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304 (Colo. 1986).

31-31-806.5. Disability benefits - on-duty. (1) If the board determines that a member, who is otherwise eligible to apply for disability retirement benefits under section 31-31-803, is required to terminate the member's regular employment due to a total disability, as defined in section 31-31-801 (4), that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section 31-31-803 (1).

(2) If the board determines that a member who is otherwise eligible to apply for disability retirement benefits under section 31-31-803 is required to terminate the member's regular employment due to an occupational disability, a temporary occupational disability, or a permanent occupational disability that, regardless of the type of occupational disability, is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section 31-31-803.

(3) The board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of employment and that establish procedures for making such determination.

(4) (a) The board shall promulgate rules that specify the method of reviewing existing disability retirement awards to determine whether a member's total disability or occupational disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment and that establish procedures for making such determination, including the appointment of hearing officers to conduct hearings.

(b) The determinations made by the board pursuant to this subsection (4) shall be made solely on the basis of the medical evidence that was previously submitted in connection with the member's application for disability retirement benefits and other relevant evidence that is contemporaneous in time with the termination of the member's employment.

(c) Any decision made by the board to change a member's existing disability retirement award to an on-duty disability retirement benefit under this section shall operate on a prospective basis from the date of the board's decision.

Source: **L. 96:** Entire section added, p. 315, § 3, effective August 7. **L. 97:** (2) amended, p. 198, § 4, effective August 6. **L. 2002:** (2) amended, p. 181, § 9, effective October 1. **L. 2009:** (2) amended, (SB 09-017), ch. 53, p. 192, § 6, effective March 25.

31-31-807. Death of member - survivor benefits. (1) (a) If a member dies while in active service or while on temporary occupational disability under section 31-31-803 (2.2) and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1) shall be paid if the member:

(I) Is not eligible for a normal retirement pension under an old hire pension plan established pursuant to article 30.5 of this title that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement; and

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) One of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(I) When there is a surviving spouse and no dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(II) When there is a surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(III) When there is a surviving spouse and two or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to such member immediately preceding death.

(IV) When there is no surviving spouse and three or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to such member immediately preceding death.

(V) When there is no surviving spouse and two dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(VI) When there is no surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(2) Any benefit provided in accordance with this section to the surviving spouse or dependent child of a member who dies while in active service shall terminate upon the death of the surviving spouse or upon the death or termination of dependency of such dependent child, as defined in section 31-31-801 (2), as applicable.

(3) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse shall receive twenty-five percent of the monthly base salary and the child shall receive the balance of the benefit pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse shall receive twenty-five percent of the monthly base salary and the children shall receive the balance of the benefit pursuant to subparagraph (III) of paragraph (b) of subsection (1) of this section.

(c) Upon the termination of the benefit payable to the child or children pursuant to paragraph (a) or (b) of this subsection (3), the surviving spouse shall receive the benefit pursuant to subparagraph (I) of paragraph (b) of subsection (1) of this section.

(4) In the event that a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to subparagraph (III), (IV), or (V) of paragraph (b) of subsection (1) of this section and the dependent children reside in separate households from each other, the benefit shall be divided equally among the children.

(5) Any surviving spouse or dependent child receiving benefits pursuant to subparagraph (I) or (VI) of paragraph (b) of subsection (1) of this section prior to January 1, 2002, shall receive any increased benefit established in subparagraph (I) or (VI) of paragraph (b) of subsection (1) of this section on January 1, 2002, as applicable.

(6) (a) The survivor benefits payable under the statewide death and disability plan established in this part 8 shall be redetermined effective October 1 each year, and such redetermined amount shall be payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. The annual redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment.

(b) For the redetermination of survivor benefits payable pursuant to this section, the amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but not more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(c) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other benefits established by this part 8.

Source: L. 96: Entire article added with relocations, p. 933, § 1, effective May 23.
L. 99: (2) added, p. 375, § 2, effective January 1, 2000. **L. 2001:** (1) amended, p. 424,

§ 13, effective June 1; entire section amended, p. 80, § 1, effective January 1, 2002. **L. 2002:** (4) amended, p. 1029, § 57, effective June 1; IP(1)(a) and (1)(a)(II)(A) amended and (6) added, p. 181, § 10, effective October 1. **L. 2007:** (1)(a)(II)(A) amended, p. 271, § 3, effective March 29. **L. 2012:** (1)(a)(II)(A) amended, (HB 12-1018), ch. 24, p. 65, § 5, effective August 8.

Editor's note: (1) This section was formerly numbered as § 31-30-1008 (1).

(2) Subsection (1) was amended in House Bill 01-1011. Those amendments were superseded by the amendment of the section in House Bill 01-1027, effective January 1, 2002.

31-31-807.5. Death of member - line-of-duty - survivor benefits. (1) (a) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in either paragraph (b) or (c) of this subsection (1) shall be paid if the member:

(I) Is not eligible for a normal retirement pension under an old hire pension established pursuant to article 30.5 of this title that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement; and

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) Except as otherwise provided in paragraph (c) of this subsection (1), one of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(I) When there is a surviving spouse and no dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(II) When there is a surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(III) When there is a surviving spouse and two or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to such member immediately preceding death.

(IV) When there is no surviving spouse and three or more dependent children, the monthly benefit shall be fifty percent of the monthly base salary paid to each member immediately preceding death.

(V) When there is no surviving spouse and two dependent children, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(VI) When there is no surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(c) For survivors who become eligible for survivor benefits on or after October 15, 2002, one of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(I) The monthly benefit when there is a surviving spouse, either with or without children, shall be seventy percent of the monthly base salary being paid to such member immediately preceding death.

(II) The monthly benefit when there is no surviving spouse but a surviving child or children shall be:

(A) Seventy percent of the monthly base salary being paid to such member immediately prior to death if the child or children were living in the member's home at the time of the member's death; or

(B) Forty percent of the monthly base salary being paid to such member immediately prior to death for one child and fifteen percent for each additional child; except that the total benefit received shall not be greater than seventy percent of the monthly base salary if the child or children were not living in the member's home at the time of the member's death.

(1.5) (a) On or after October 1, 2001, if a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1.5) shall be paid if the member:

(I) Is eligible for a normal retirement pension under an old hire pension established pursuant to article 30.5 of this title that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement;

(II) Is eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(III) Has reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article or under a local money purchase plan.

(b) One of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1.5) are satisfied and if the survivor benefit currently received pursuant to subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5) is less than seventy percent of the monthly base salary being paid to the member immediately preceding death:

(I) The monthly benefit to be paid in addition to the monthly retirement benefit otherwise payable when there is a surviving spouse, either with or without children, shall be the difference between seventy percent of the monthly base salary paid to such member immediately preceding death and the amount payable pursuant to benefits received under the plan identified in subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5).

(II) The monthly benefit to be paid in addition to the monthly retirement benefit otherwise payable when there is no surviving spouse but there is a surviving child or children shall be:

(A) If the child or children were living in the member's home at the time of the member's death, the difference between seventy percent of the monthly base salary being paid to such member immediately preceding death and the amount payable pursuant to benefits received under the plan identified in subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5); or

(B) If the child or children were not living in the member's home at the time of the member's death, the sum of forty percent of the monthly base salary being paid to such member immediately prior to death for the first child plus fifteen percent for each additional child, the total of which shall not be greater than seventy percent of the monthly base salary less the amount payable pursuant to benefits received under the plan identified in subparagraph (I), (II), or (III) of paragraph (a) of this subsection (1.5).

(2) The board shall promulgate rules that specify standards and establish procedures for determining whether a member's death is the direct and proximate result of a personal injury sustained while performing official duties or an occupational disease arising out of and in the course of a member's employment and, in the case of a line-of-duty death, whether any of the exceptions specified in section 101 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, are applicable. The procedures established by the board may include the appointment of hearing officers to conduct hearings and make findings and recommendations to the board on any issue. The board may adopt rules to establish a process for the administrative approval of a death benefit application, including

standards of review of applications, without board review. The board shall take any final action that constitutes a denial of a disability application or a reduction of a benefit.

(3) (a) The board shall promulgate rules that specify the method of reviewing existing survivor benefit awards to:

(I) Determine whether a member's death was the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment;

(II) Determine, in the case of line-of-duty deaths occurring after December 31, 1996, whether any of the exceptions specified in section 101 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, are applicable;

(III) Establish procedures for making such determinations, including the appointment of hearing officers to conduct hearings.

(b) The determinations made by the board pursuant to this subsection (3) shall be made on the basis of the medical evidence that was previously submitted in connection with the application for survivor benefits and other relevant nontestimonial evidence.

(c) Any decision made by the board to change an existing survivor benefit award to an on-duty survivor benefit under this subsection (3) shall operate on a prospective basis from the date of the board's decision.

(4) Any benefit provided in accordance with this section to the surviving spouse or dependent child of a member who dies while in active service shall terminate upon the death of the surviving spouse or upon the death or termination of dependency of the dependent child, as defined in section 31-31-801 (2), as applicable.

(5) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse shall receive two-thirds of the benefit and the child shall receive the balance of the benefit pursuant to subsection (1) or (1.5) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse shall receive fifty percent of the benefit and the children shall receive the balance of the benefit pursuant to subsection (1) or (1.5) of this section.

(c) Upon the termination of the benefit payable to the child or children pursuant to paragraph (a) or (b) of this subsection (5), the surviving spouse shall receive the entire benefit pursuant to subsection (1) or (1.5) of this section.

(6) In the event that a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to subsection (1) or (1.5) of this section and the dependent children reside in separate households from each other, the children's benefit shall be divided equally among the children.

(7) (Deleted by amendment, L. 2002, p. 183, § 12, effective October 1, 2002.)

(8) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment and otherwise qualifies for benefits under subsection (1.5) of this section, but falls within one or more of the exceptions specified in section 101 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, said survivors shall:

(a) Receive benefits as allowed under section 31-31-807; or

(b) Receive benefits as allowed under the member's normal retirement plan.

Source: L. 98: Entire section added, p. 60, § 1, effective February 8, 1999. L. 2001: (1) and (2) amended, p. 425, § 14, effective June 1; (1) amended and (4) to (7) added, p. 82, § 2, effective January 1, 2002. L. 2002: IP(1)(a), (1)(a)(II)(A), IP(1)(b), (5), (6), and (7) amended and (1)(c), (1.5), and (8) added, pp. 182, 183, §§ 11, 12, effective October 1. L. 2007: (1)(a)(II)(A) and (1.5)(a)(II) amended, p. 271, § 4, effective March 29. L. 2012: (1)(a)(II)(A) and (1.5)(a)(II) amended, (HB 12-1018), ch. 24, p. 65, § 6, effective August 8.

Editor's note: Subsection (1) was amended in House Bill 01-1011. Those amendments were superseded by the amendment of subsection (1) in House Bill 01-1027, effective January 1, 2002.

Cross references: For section 101 (h) (2) of the federal "Internal Revenue Code of 1986" referenced in this section, see 26 U.S.C. sec. 101 (h) (2).

31-31-808. Reduction of survivor benefits. (1) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member, who at the time of the member's death was a member of a money purchase plan established under this article or article 30.5 of this title, including any department chief, who at the time of the chief's death had been exempted from the statewide defined benefit plan as permitted by section 31-31-401 (4), shall be reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31-402 (1) and (2) as are required for benefits under section 31-31-403.

(2) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member who are also receiving payments from the member's separate retirement account pursuant to section 31-31-406 shall be reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

(3) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member who are also receiving payments from a statewide or local Colorado fire or police defined benefit pension plan shall be reduced by the amount of the defined benefit payments to be received.

Source: **L. 96:** Entire article added with relocations, p. 933, § 1, effective May 23; entire section amended, p. 1339, § 3, effective June 1. **L. 98:** Entire section amended, p. 62, § 4, effective February 8, 1999. **L. 2002:** (2) amended, p. 185, § 13, effective October 1. **L. 2007:** (3) added, p. 272, § 5, effective March 29. **L. 2009:** (3) amended, (SB 09-017), ch. 53, p. 192, § 7, effective March 25. **L. 2012:** (2) amended, (HB 12-1018), ch. 24, p. 66, § 7, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1008 (4).

31-31-809. Termination of benefits. Except as otherwise provided in section 31-31-807 (2), any benefit provided in accordance with this part 8 to a surviving spouse shall terminate upon the death of the surviving spouse. Any benefit provided in accordance with section 31-31-803 (2) to a surviving spouse of a member who was occupationally disabled shall terminate upon the remarriage of the surviving spouse. Except as otherwise provided in section 31-31-807 (2), any benefit provided in accordance with this part 8 to a dependent child shall terminate upon the death of the dependent child or the termination of dependency of the dependent child.

Source: **L. 96:** Entire article added with relocations, p. 934, § 1, effective May 23. **L. 99:** Entire section amended, p. 375, § 1, effective January 1, 2000. **L. 2001:** Entire section amended, p. 426, § 15, effective June 1. **L. 2007:** Entire section amended, p. 272, § 6, effective March 29. **L. 2009:** Entire section amended, (SB 09-017), ch. 53, p. 192, § 8, effective March 25.

Editor's note: This section was formerly numbered as § 31-30-1009.

31-31-810. Employer liability - statewide standard health history form. (1) (a) The employer of a member shall be liable for the total payment of benefits awarded under this part 8 if the board determines that:

(I) The member's occupational or total disability existed at the commencement of employment by the employer, or the occupational or total disability is the proximate consequence or result of a medical condition that existed at the commencement of employment by the employer, and such employment commenced on or after September 1, 1989;

(II) The employment was not ordered by a court; and

(III) The employer failed to obtain and file the health form required by paragraph (c) of this subsection (I).

(b) The board shall enforce a claim for repayment against the employer by either increasing the contribution of the employer under section 31-31-402 (2) or by the commencement and prosecution of a civil action. The choice of remedies shall be in the sole discretion of the board.

(c) (I) Every member whose employment commences on or after September 1, 1989, shall complete a health history on the statewide standard health history form, described in subparagraph (III) of this paragraph (c).

(II) Every employer of a member who commences employment on or after September 1, 1989, shall furnish the statewide standard health history form to the prospective member and shall require its completion by the prospective member before allowing the member to enter upon employment. The completed form shall be filed with the fire and police pension association by the employer within sixty days from commencement of employment.

(III) Not later than July 1, 1989, the board shall adopt, pursuant to the authority granted it by section 31-31-202 (1) (j), a statewide standard health history form. The board shall consult with its medical advisor in the preparation of the form. Copies of the form shall be delivered to all employers not later than August 1, 1989. The board may revise the form from time to time and shall deliver revised forms to all employers not later than thirty days prior to the effective date of use of such revised form.

(IV) Any member who fraudulently conceals any material fact concerning health history when completing the form may be disqualified from receiving an award of disability benefits under this section if the board determines that the condition concealed by the member proximately caused the total or occupational disability.

(V) Any member shall be ineligible for disability benefits with respect to an occupational or total disability that is the proximate consequence or result of a medical condition disclosed by the member on the statewide standard health history form.

(2) (a) The employer of a deceased member shall be liable for the total payment of benefits awarded under this part 8 if the board determines that:

(I) The member was occupationally or totally disabled at the time of the commencement of employment by the employer, or had a medical condition at the time of the commencement of employment by the employer, and such employment commenced on or after September 1, 1989;

(II) Such preexisting disability or medical condition was the proximate cause of the death of the member;

(III) The employment was not ordered by a court; and

(IV) The employer failed to obtain and file the health form required by paragraph (c) of subsection (I) of this section.

(b) The board shall enforce a claim for repayment against the employer either by increasing the contribution of the employer under section 31-31-402 (2) or by the commencement and prosecution of a civil action. The choice of remedies shall be in the sole discretion of the board.

(c) (I) The surviving spouse and dependent children of a member, whose employer filed the statewide standard health history form pursuant to paragraph (c) of subsection (I) of this section, may be disqualified from receiving an award of survivor benefits under this section if the deceased member fraudulently concealed any material fact concerning the member's health history when completing the form, and the board determines that the condition concealed by the member proximately caused the death of the member.

(II) The surviving spouse and dependent children of any member shall be ineligible for an award of survivor benefits in the event the member's death is the proximate consequence or results of a medical condition disclosed by such member on the statewide standard health history form.

Source: L. 96: Entire article added with relocations, p. 934, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-1007 (6) and 31-30-1008 (2).

ANNOTATION

Annotator's note. Since § 31-31-810 is similar to § 31-30-1007 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

District court or reviewing court should not substitute its own judgment as to the weight of the evidence for that of the board. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd*, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not

abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. *Ross v. Fire & Police Pension Ass'n*, 682 P.2d 496 (Colo. App. 1984), *aff'd* on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304 (Colo. 1986).

31-31-811. State funding of death and disability benefits. (1) Every employer in this state, except those employers covering their employees under social security and those described in section 31-31-802 (2) (b) and (2) (c) who have not elected to be subject to the provisions of this part 8, shall be governed by the provisions of this section. For members who die or are disabled on or after January 1, 1980, the death and disability benefits provided to any member pursuant to this part 8 shall be paid for by state moneys transferred to the fire and police members' benefit investment fund created by section 31-31-301 (1) (a), subject to the limitations imposed by this section. Moneys in the disability and death benefits trust fund created by section 31-31-813 shall not be used for any purpose other than the payment of the death and disability benefits established by this part 8.

(2) (a) The board shall submit an annual actuarial valuation report regarding the benefit liabilities accrued under this part 8 to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities as accrued.

(b) (I) In addition to the actuarial valuation report required by paragraph (a) of this subsection (2), the board shall submit an annual actuarial valuation report regarding the disability and survivor benefit plan established by this part 8 to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly. No later than January 1 of each year, commencing January 1, 1993, and continuing through January 1, 1996, the board shall certify the amount of the state contribution to be made pursuant to subsection (3) of this section based on the latest actuarial valuation report regarding the disability and survivor benefit plan. In order to effectuate any transfer of funds required by section 31-31-802 (2) (e), the actuarial valuation report regarding the disability and survivor benefit plan shall include, at least through the year 2005, members who have withdrawn from the plan pursuant to section 31-31-802 (2).

(II) Following the submittal of the annual actuarial valuation report dated January 1, 1995, and continuing through the submittal of the report dated January 1, 1999, the board shall submit biennial actuarial valuation reports for the purposes described in subsection (4) of this section.

(III) (A) By September 30, 2001, and by each September 30 thereafter, the board shall submit an annual actuarial valuation report dated January 1 of the year in which the report is submitted for the purposes described in subsection (4) of this section.

(B) The general assembly reviewed the reporting requirements to the general assembly in sub-subparagraph (A) of this subparagraph (III) during the 2008 regular session and continued the requirements.

(3) On the first day of each month of each fiscal year commencing July 1, 1993, the state treasurer shall transfer one-twelfth of the amount certified by the board for that fiscal year for state funding of death and disability benefits pursuant to subsection (2) of this section, which amount shall in no case exceed seven million five hundred thousand dollars for such fiscal year, to the fund created by section 31-31-301 (1) (a) for allocation to the death and disability account in the fund; except that no such transfer shall be made after December 31, 1996. On January 31, 1997, the state treasurer shall transfer thirty-nine million dollars for state funding of death and disability benefits pursuant to this subsection (3) for members hired before January 1, 1997, to the fund created by section 31-31-301 (1) (a) for allocation to the death and disability account in the fund. No transfer of any amounts shall be made after January 31, 1997, for state funding of death and disability benefits. Moneys in the fund created by section 31-31-301 (1) (a) shall not revert to the general fund but shall be continuously available for the purposes provided in this part 8.

(4) For each member hired on or after January 1, 1997, who is eligible for the death and disability coverage provided by this part 8, a contribution shall be made to the death and disability account in the fund for the years 1997 and 1998 in an amount not greater than two and four tenths percent of the member's salary. Thereafter, the board, based on an annual actuarial valuation, may adjust the contribution rate every two years, but in no event may the adjustment for any two-year period exceed one-tenth of one percent of the member's salary. Any employer and any local pension board or authority shall provide such information as may be required by the board in order to complete the annual actuarial valuations. The actuary appointed by the board may utilize either the entry age-normal cost method or the aggregate cost method for purposes of the study required by this subsection (4). Any unfunded accrued liability shall be funded over a period not to exceed thirty years. The actuarial study shall not include any consideration of a cost of living adjustment to benefits awarded to members who are occupationally disabled. Payments shall be made by the employer and are due no later than ten days following the date of payment of salary to the member. An interest charge of one-half of one percent per month shall be levied against any unpaid amount and shall be the responsibility of the employer. Any decision regarding whether the contribution required by this subsection (4) shall be assessed against the employer or the member, or shall in some manner be assessed jointly against the employer and the member, will be made at the local level utilizing the usual process for determining employee benefits. If it is not already part of the usual process for determining employee benefits, the employer shall confer with the employees or their representative prior to making a determination on how the contribution will be assessed.

Source: **L. 96:** Entire article added with relocations, p. 935, § 1, effective May 23; (2) and (3) amended and (4) added, pp. 1340, 1341, §§ 5, 6, effective June 1. **L. 2001:** (2)(b)(II) and (4) amended and (2)(b)(III) added, p. 426, § 16, effective June 1. **L. 2006:** (1) amended, p. 197, § 23, effective March 31. **L. 2007:** (4) amended, p. 274, § 3, effective August 3. **L. 2008:** (2)(b)(III) amended, p. 1269, § 8, effective August 5.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-1013 (3), 31-30-1014 (2)(c), and 31-30-1015.

ANNOTATION

Annotator's note. Since § 31-31-811 is similar to § 31-30-1014 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contribu-

tions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Ample and competent evidence supported the decision of fund's administrative board that city had elected to continue rank escalation

benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-31-812. Military leave of absence. (1) Authorized leave of absence shall include leave for military service as allowed by the board. The board shall adopt rules regarding authorized leave of absence for military service, including, but not limited to:

- (a) Limits on the length of the term of the leave of absence;
- (b) Assessment of costs for coverage during the leave of absence; and
- (c) Any other matter that the board deems necessary for coverage under the statewide death and disability plan.

(2) The benefits payable to the member, the surviving spouse of the member, and the dependent children of the member pursuant to this part 8 shall be reduced by an amount that is the actuarial equivalent of any military benefit received as a result of the death or disability of a member while on authorized leave for military service whether the benefits are paid on a periodic basis or in a lump sum.

Source: L. 2002: Entire section added, p. 185, § 14, effective October 1.

31-31-813. Statewide death and disability trust fund - created. (1) There is hereby created a disability and death benefits trust fund into which contributions for death and disability benefits, including state contributions made pursuant to section 31-31-811, shall be deposited. The benefits provided by this part 8, together with the expenses of administering said part, shall be paid from the fund.

(2) The assets of the disability and death benefits trust fund shall be invested in the fire and police members' benefit investment fund.

Source: L. 2006: Entire section added, p. 197, § 24, effective March 31.

Cross references: For the fire and police members' investment fund, see part 3 of this article.

31-31-814. Suspension and termination of benefits for noncompliance. If a member refuses to submit to a medical examination required by the fire and police pension association and authorized by this part 8, fails to provide information necessary for the association to assess eligibility or continuing eligibility for benefits, or obstructs the association from receiving such necessary information, all rights to collect or to begin or maintain any proceeding for the collection of benefits pursuant to this part 8 shall be suspended, and all rights to benefits that accrue and become payable during the period of such refusal or obstruction shall be barred. If the member continues to refuse to submit to the examination or to provide the additional information after direction by the board or its hearing officer or in any way obstructs the same, the board shall terminate the benefit.

Source: L. 2008: Entire section added, p. 160, § 1, effective August 5.

31-31-815. Amendment of plan provisions. The board may amend the provisions for disability and survivor benefits under this part 8 as it deems prudent and necessary to comply with state and federal law or as it deems necessary to efficiently administer the benefits under the plan.

Source: L. 2012: Entire section added, (HB 12-1031), ch. 68, p. 237, § 4, effective August 8.

PART 9

SUPPLEMENTAL PROGRAMS

31-31-901. Deferred compensation plan - definitions. (1) Upon the request of any employer, the board may administer and amend or provide for the administration and

amendment of any deferred compensation plan adopted by such employer for members or other employees who provide direct support to the employer's public safety department.

(2) In order to assist employers in establishing a deferred compensation plan, the board may develop, maintain, and amend a master deferred compensation plan document that is intended to comply with the provisions of section 457 of the "Internal Revenue Code of 1986", 26 U.S.C. sec. 457, as amended. Any employer may adopt such master plan for its participants with the assistance of the board; however, such employer shall be responsible for ensuring that such master plan is in compliance with applicable law. Participation by nonmember employees shall be subject to the requirements and limitations of said section 457 of the "Internal Revenue Code of 1986", and the regulations promulgated under section 457.

(3) There is hereby created the fire and police members' deferred compensation trust fund, which shall consist of the assets of deferred compensation plans administered by the board pursuant to the provisions of this section. The board shall be the trustee of the trust fund and shall keep a separate account of the assets of each deferred compensation plan held within the trust fund. The assets of each deferred compensation plan shall be held for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of the plan and any trust established to hold the assets of the plan. The board shall allow investment of the trust fund through the fire and police members' self-directed investment fund pursuant to section 31-31-301 (4).

(4) The expenses incurred by the board in the administration of each deferred compensation plan shall be paid from the assets of such plan being held in the fire and police members' deferred compensation fund pursuant to the provisions of subsection (3) of this section. Such expenses shall not be paid for by the fire and police pension association.

(5) For the purposes of this section, unless the context otherwise requires:

(a) "Deferred compensation" means that income that a participant may legally defer pursuant to current rulings of the internal revenue service and that, while invested under a deferred compensation plan adopted pursuant to this section, is exempt from federal income taxes on both the employer's contribution and all interest, dividends, and capital gains until the ultimate distribution to the participant.

(b) "Participant" means:

(I) A member employed by an employer who has requested the board, pursuant to subsection (1) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer; or

(II) An employee who provides direct support to the public safety department of an employer who has requested the board, pursuant to subsection (1) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer.

Source: **L. 96:** Entire article added with relocations, p. 937, § 1, effective May 23. **L. 98:** (3) amended, p. 138, § 1, effective April 2. **L. 2001:** (1), (2), (3), and (8) amended, p. 427, § 17, effective June 1. **L. 2006:** Entire section amended, p. 197, § 25, effective March 31.

Editor's note: This section was formerly numbered as § 31-30-1005.5.

31-31-902. Group health insurance plans. (1) The board may enter into contracts with carriers to provide group health insurance plans for the following individuals if they are receiving a benefit from another plan administered by the association:

(a) A retired member;
(b) A retired volunteer firefighter;
(c) A surviving spouse;
(d) A dependent child; and
(e) A recipient of a benefit from the fire and police members' deferred compensation fund created by section 31-31-901.

(2) The administration and management of the group health insurance plans shall be the exclusive responsibility of the respective carrier. The cost of the plan, coverage, and

eligibility requirements shall be as negotiated in the contract between the association and the carrier.

(3) The association shall pay no premium subsidy for group health insurance authorized to be offered by this section. Premiums shall be deducted from the monthly benefit payments of participating retired members or their beneficiaries.

(4) For purposes of this section, the term "carrier" means a private insurance company holding a valid outstanding certificate of authority from the division of insurance or a nonprofit hospital service plan or a nonprofit medical service plan incorporated as a nonprofit corporation pursuant to article 40 of title 7, C.R.S., or a health maintenance organization established pursuant to parts 1 and 4 of article 16 of title 10, C.R.S.

Source: L. 96: Entire article added with relocations, p. 938, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1005 (7).

ANNOTATION

Annotator's note. Since § 31-31-902 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character

or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. *Pueblo v. Fire and Police Pension Ass'n*, 827 P.2d 597 (Colo. App. 1992).

31-31-903. Group life insurance plans. (1) (a) The board may enter into contracts with carriers to provide group life insurance coverage to active members of paid pension plans administered by the association and, if they are receiving a benefit from another plan administered by the association, to the following individuals:

- (I) A retired member;
- (II) A retired volunteer firefighter;
- (III) A surviving spouse;
- (IV) A dependent child; and

(V) An individual who is receiving a benefit from the fire and police members' deferred compensation fund created by section 31-31-901.

(b) For purposes of this section, "carrier" means a private insurance company holding a valid outstanding certificate of authority from the division of insurance.

(2) The administration and management of the group life insurance plan shall be the exclusive responsibility of the carrier. The terms and conditions of coverage shall be as

negotiated in the contract between the association and the carrier. The board may change the terms of or discontinue the coverage if the board determines that such action is in the best interests of the members. Participating members shall be notified sixty days prior to the effective date of any such change or discontinuance.

(3) The association shall pay no premium subsidy for group life insurance authorized to be offered by this section. Premiums shall be deducted from the salaries of participating active members and submitted to the association with the employer's monthly contribution reports or shall be deducted from the monthly benefit payments of participating retired members or their beneficiaries. Participating members who receive neither salaries nor benefits may arrange alternative methods of premium payment with the association.

(4) The named beneficiary shall be the beneficiary of life insurance obtained pursuant to the provisions of this section, unless the member or a court order names a different beneficiary for life insurance purposes. Life insurance obtained pursuant to the provisions of this section may be assigned by the member.

Source: L. 96: Entire article added with relocations, p. 938, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1005 (8).

ANNOTATION

Annotator's note. Since § 31-31-903 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character

or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-904. Statewide health care defined benefit plan - definitions. (1) The board may develop, maintain, and amend a statewide health care defined benefit plan, including a plan document, that complies with the qualification requirements specified under the internal revenue code, as applicable to governmental plans. The purpose of such plan shall be to provide a defined benefit to assist in paying for the costs of health care for each retired eligible member.

(2) The board may conduct an election of all eligible members for the purpose of determining whether the eligible members want to participate in the statewide health care defined benefit plan created pursuant to subsection (1) of this section. If sixty-five percent of all eligible members vote in favor of participating in the plan, all eligible members shall be required to participate in such plan, except as provided in subsection (3) of this section.

(3) The board shall certify the results of the election held pursuant to subsection (2) of this section, including the vote total for the eligible members of each employer. The board shall mail a copy of the certification to each employer within ten days after the certification. If less than a majority of an employer's eligible members vote in favor of participating in the statewide health care defined benefit plan, the employer, on behalf of its eligible members, may elect not to participate in the plan. Such election by the employer must be made within ninety days after the certification of the election results by the board.

(4) Contributions to the statewide health care defined benefit plan shall be the responsibility of the eligible members, unless an eligible member's employer elects to pay all or a portion of his or her contribution. All of the contributions shall be credited to the defined benefit system trust fund.

(5) The board shall administer the statewide health care defined benefit plan on an actuarially sound basis. Neither the state nor any employer shall be liable for any unfunded accrued liability of the plan.

(6) As used in this section, unless the context otherwise requires:

(a) "Eligible member" means each member who participates in a statewide retirement plan administered by the board pursuant to this title.

(b) "Internal revenue code" shall have the same meaning as provided in section 31-31-204 (3).

Source: L. 2003: Entire section added, p. 744, § 2, effective August 6. **L. 2006:** (4) and (6)(b) amended, p. 199, § 26, effective March 31.

PART 10

POLICE OFFICERS' AND FIREFIGHTERS' PENSION REFORM COMMISSION

31-31-1001. Police officers' and firefighters' pension reform commission - creation - duties. (1) (a) There is hereby created the police officers' and firefighters' pension reform commission to be comprised of five senators appointed by the president of the senate and ten representatives appointed by the speaker of the house of representatives. The party representation shall be in proportion generally to the relative number of members of the two major political parties in each chamber. The chair shall be designated by the speaker of the house of representatives in odd-numbered years and by the president of the senate in even-numbered years. The vice-chair shall be appointed by the speaker of the house of representatives in even-numbered years and by the president of the senate in odd-numbered years. Members of the commission shall receive the same per diem allowance authorized for other members of the general assembly serving on interim study committees and actual expenses for participation in meetings of the commission. Staff services for the commission shall be furnished by the state auditor's office, the legislative council, and the office of legislative legal services. The state auditor, with the approval of the commission, may contract for services deemed necessary for the implementation of this part 10.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (1). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(2) The commission shall study and develop proposed legislation relating to funding of police officers' and firefighters' pensions in this state and benefit designs of such pension

plans. The commission study shall include a review of, and the proposed legislation may include, among other subjects, the following:

- (a) Normal retirement age and compulsory retirement;
 - (b) Payment of benefits prior to normal retirement age;
 - (c) Service requirements for eligibility;
 - (d) Rate of accrual of benefits;
 - (e) Disability benefits;
 - (f) Survivors' benefits;
 - (g) Vesting of benefits;
 - (h) Employee contributions;
 - (i) Postretirement increases;
 - (j) Creation of an administrative board;
 - (k) Creation of a consolidated statewide system;
 - (l) Distribution of state funds;
 - (m) Coordination of benefits with other programs;
 - (n) The volunteer firefighter pension system;
 - (o) The provisions of this article and article 30.5 of this title.
- (3) Repealed.

Source: **L. 96:** Entire article added with relocations, p. 939, § 1, effective May 23. **L. 2000:** (1) amended, p. 116, § 3, effective March 15. **L. 2007:** (1) amended, p. 190, § 27, effective March 22. **L. 2010:** (3) added, (SB 10-213), ch. 375, p. 1763, § 10, effective June 7.

Editor's note: (1) This section was formerly numbered as § 31-30-901.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2011. (See L. 2010, p. 1763.)

ANNOTATION

Annotator's note. Since § 31-31-1001 is similar to § 31-30-901 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

The city of Colorado Springs is subject to the state statutory scheme which requires that

cities which have a paid fire department and a population in excess of 100,000 establish a fire fighters pension fund. These provisions require that the fund be administered by a board of trustees who must follow certain guidelines. *Colo. Springs Fire Fighters v. Colo. Springs*, 784 P.2d 766 (Colo. 1989).

PART 11

ALTERNATIVES FOR MONEY PURCHASE PLAN MEMBERS

31-31-1101. Entry into the statewide hybrid plan - rules. (1) Any employer who has established a local money purchase plan pursuant to part 6 of this article or article 30.5 of this title or has withdrawn into the statewide money purchase plan pursuant to part 5 of this article may apply to the board to cover some or all of the existing members of its money purchase plan under the statewide hybrid plan established pursuant to section 31-31-1102. An application may be initiated by filing with the board a resolution adopted by the employer pursuant to subsection (2) of this section no less than six months prior to the proposed effective date of coverage under the statewide hybrid plan, unless a shorter waiting period is approved by the board.

(2) The employer's resolution applying for coverage under the statewide hybrid plan shall be adopted by the governing body of the employer and shall state the employer's intent to cover under the statewide hybrid plan some or all of the current members of its money purchase plan and all of the employees hired on or after the effective date of coverage under the statewide hybrid plan that meet the definition of a member, as defined in section 31-31-102 (4).

(3) Except as otherwise provided in subsection (3.5) of this section, any application for coverage under the statewide hybrid plan shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the money purchase plan at the time of the application.

(3.5) (a) In lieu of an election to obtain the approval by at least sixty-five percent of all active members as required by subsection (3) of this section, and when the local plan allows for the individual self-direction of each member's account, the employer may offer each active local plan member the option to discontinue participation in the local money purchase plan and to participate in the statewide hybrid plan. The offer shall be a one-time event and shall be extended to all active local plan members employed by the employer at the time of the offer. Active local plan members that choose to discontinue participation in the local money purchase plan and to participate in the statewide hybrid plan and all of the employees hired on or after the effective date of coverage under the statewide hybrid plan that meet the definition of a member, as defined in section 31-31-102 (4), shall be included in the employer's application for coverage under the statewide hybrid plan.

(b) Nothing contained in paragraph (a) of this subsection (3.5) shall be construed to waive or invalidate the requirement for an election of members that may be required by a local plan document, trust agreement, or labor agreement.

(4) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining member approval pursuant to subsection (3) of this section or for allowing active members to join the statewide hybrid plan pursuant to subsection (3.5) of this section. The board shall also promulgate rules relating to standards for granting an employer's application for participation in the statewide hybrid plan and for the submission of information to the board by the employer. Such rules shall contain a provision specifying that an employer that opts to participate in the statewide hybrid plan shall not be permitted to opt out of such plan at any later date.

(5) An application for coverage under the statewide hybrid plan filed by an employer who administers a local money purchase plan shall include the employer's certification to the board:

(a) That the employer's local money purchase plan meets the qualification requirements of section 401 (a) of the federal "Internal Revenue Code of 1986", as amended, that are applicable to governmental plans;

(b) That, in connection with the employer's resolution pursuant to subsection (2) of this section, the employer's governing body has adopted a resolution for complete or partial termination of the local money purchase plan in accordance with the terms of that plan and that:

(I) The termination resolution does not adversely affect the qualified status of the local money purchase plan; and

(II) The rights of all participants in the local money purchase plan who are affected by the termination of the local money purchase plan to benefits accrued to the date of termination are nonforfeitable;

(c) That all active fire and police participants in the local money purchase plan and all employees hired on or after the effective date of coverage under the statewide hybrid plan that meet the definition of a member, as defined in section 31-31-102 (4), will become participants in the statewide hybrid plan, except as may be allowed in subsection (3.5) of this section;

(d) Whether the employer will transfer or cause to be transferred to the statewide hybrid plan all assets of the local money purchase plan that are attributable to the accrued benefits of the transferred participants, pursuant to the procedure established by the board;

(e) That all employer and employee contributions required to be made to the local money purchase plan as of the date of termination have been paid;

(f) That participants in the local money purchase plan will not incur a reduction in their account balances in their local money purchase plan, determined as of the date of transfer, as a result of their transfer to the statewide hybrid plan. For vesting purposes with regard to the local money purchase plan account balances, years of service in the local money purchase plan shall be combined with years of service in the statewide hybrid plan. For

vesting purposes with regard to the statewide hybrid plan, years of service shall be based upon service credit either earned or purchased in the statewide hybrid plan.

(g) That the employer agrees to participate in the statewide hybrid plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

(6) An application for coverage under the statewide hybrid plan filed by an employer who participates in the statewide money purchase plan shall include the employer's certification to the board that:

(a) All active fire and police participants in the statewide money purchase plan and all employees hired on or after the effective date of coverage under the statewide hybrid plan that meet the definition of a member, as defined in section 31-31-102 (4), will become participants in the statewide hybrid plan, except as may be allowed in subsection (3.5) of this section;

(b) The board is authorized by the employer to transfer to the statewide hybrid plan all assets of the statewide money purchase plan that are attributable to the accrued benefits of the transferred participants;

(c) All employer and employee contributions required to be made to the statewide money purchase plan as of the date of termination have been paid;

(d) Participants in the statewide money purchase plan will not incur a reduction in their account balances in the statewide money purchase plan, determined as of the date of transfer, as a result of their transfer to the statewide hybrid plan. For vesting purposes with regard to the statewide money purchase plan account balances, years of service in the statewide money purchase plan shall be combined with years of service in the statewide hybrid plan. For vesting purposes with regard to the statewide hybrid plan, years of service shall be based upon service credit either earned or purchased in the statewide hybrid plan.

(e) The employer agrees to participate in the statewide hybrid plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

Source: L. 2003: Entire part added, p. 735, § 1, effective August 6. **L. 2006:** (1), (2), (3), (4), (5)(c), and (6)(a) amended and (3.5) added, p. 302, § 1, effective August 7.

31-31-1102. Statewide hybrid plan - creation - management. (1) The board is authorized to develop, maintain, and amend a statewide hybrid plan document that is a component of the defined benefit system and that offers a combination of defined benefit and defined contribution benefits and that is intended to comply with the qualification requirements specified in section 401 of the federal "Internal Revenue Code of 1986", as amended, that are applicable to governmental plans. The plan shall cover the members of those employers that have elected coverage under the plan pursuant to section 31-31-1101.

(2) (a) There is hereby created the fire and police members' statewide hybrid plan benefit account that shall be a component of the defined benefit system trust fund and that shall consist of moneys of employers that have elected coverage pursuant to section 31-31-1101, including member and employer contributions and such amounts as may be transferred pursuant to section 31-31-1101. The board shall keep an accurate account of the fund, each member's separate account in the fund, and each member's service credit earned under the statewide hybrid plan.

(b) The statewide hybrid plan document created by the board pursuant to subsection (1) of this section shall govern the accrual of service credit, vesting, the benefits to be offered based on age and service, the allocation of contributions towards funding the defined benefit and the defined contribution, the calculation and allocation of earnings and losses under the various investment alternatives which the board may offer, the transfer of assets between funds under each investment alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to the board's administration and management of the plan created pursuant to this section.

(c) Defined benefit assets of the statewide hybrid plan shall be administered within the fire and police members' benefit investment fund, and self-directed assets of the plan shall be administered within the fire and police members' self-directed investment fund. In its administration, investment, and management of the defined contribution assets of the statewide hybrid plan the board shall be subject to the provisions of section 31-31-303.

(3) Each member's member and employer contributions transferred to the statewide hybrid plan pursuant to section 31-31-1101 shall be allocated to the member's separate account within the plan.

(4) (a) Except as provided in paragraph (b) of this subsection (4), upon the effective date of coverage under the statewide hybrid plan, each member covered by the plan shall pay into the defined benefit system trust fund eight percent of salary paid. The payment shall be made by the employer by deduction from the salary paid to such member. Except as provided in paragraph (b) of this subsection (4), for each such member, the employer shall pay into the defined benefit system trust fund eight percent of the salary paid to such member. Payments are due no later than ten days following the date of payment of salary to the member. An interest charge of one-half of one percent per month shall be levied against any unpaid amount and added to the employer payments required pursuant to this section.

(b) (I) Upon the request of an employer, the board shall permit a higher mandatory employer contribution rate, mandatory employee contribution rate, or both, than is set forth in paragraph (a) of this subsection (4) if the board determines that:

(A) A local resolution or ordinance setting forth the higher mandatory contribution rate or rates was enacted and is in effect; and

(B) An employee election was conducted and the higher mandatory contribution rate or rates was approved by sixty-five percent of the employer's active members of the plan.

(II) Any active member and any employer may make voluntary contributions to the statewide hybrid plan by payroll deduction. Voluntary member contributions are not subject to the employer pickup provisions of section 414 (h) of the federal "Internal Revenue Code of 1986", as amended.

(III) In no event shall increased contributions resulting from a higher contribution rate or rates cause a member to exceed the limit on annual additions under the federal "Internal Revenue Code of 1986", as amended, that are applicable to government plans.

(5) Except with respect to amendments necessary to comply with state and federal law, including amendments adopted pursuant to section 31-31-204 (2.5), or amendments necessary to maintain the actuarial soundness of the statewide hybrid plan, the board may amend the plan document created pursuant to subsection (1) of this section only upon the approval of at least sixty-five percent of the active members of the plan and more than fifty percent of the employers having active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes.

Source: L. 2003: Entire part added, p. 737, § 1, effective August 6. L. 2006: (1), (2), (3), and (4)(a) amended, p. 199, § 27, effective March 31. L. 2007: (4)(a) amended, p. 275, § 4, effective August 3. L. 2012: (5) amended, (HB 12-1031), ch. 68, p. 237, § 5, effective August 8.

31-31-1103. Entry into the statewide defined benefit plan. (1) (a) Any employer who has established a local money purchase plan pursuant to part 6 of this article or article 30.5 of this title or has withdrawn into the statewide money purchase plan pursuant to part 5 of this article may apply to the board to cover some or all of the members of its money purchase plan and its future members under the statewide defined benefit plan pursuant to part 4 of this article. An application may be initiated by filing with the board a resolution adopted by the employer pursuant to paragraph (b) of this subsection (1) no less than six months prior to the proposed effective date of coverage under the statewide defined benefit plan, unless a shorter waiting period is approved by the board.

(b) The employer's resolution applying for coverage under the statewide defined benefit plan shall be adopted by the governing body of the employer and shall state the employer's intent to cover under the statewide defined benefit plan some or all of the members of its money purchase plan and employees hired on or after the effective date of coverage under the statewide defined benefit plan that meet the definition of a member, as defined in section 31-31-102 (4).

(c) Except as otherwise provided in paragraph (c.5) of this subsection (1), any application for coverage under the statewide defined benefit plan shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the money purchase plan at the time of the application.

(c.5) (I) In lieu of an election to obtain the approval by at least sixty-five percent of all active members as required by paragraph (c) of this subsection (1), and when the local plan allows for the individual self-direction of each member's account, the employer may give each active local plan member the option to discontinue participation in the local money purchase plan and to participate in the statewide defined benefit plan. The offer shall be a one-time event and shall be extended to all active local plan members employed by the employer at the time of the offer. Active local plan members that choose to discontinue participation in the local money purchase plan and to participate in the statewide defined benefit plan and all of the employees hired on or after the effective date of coverage under the statewide defined benefit plan that meet the definition of a member, as defined in section 31-31-102 (4), shall be included in the employer's application for coverage under the statewide defined benefit plan.

(II) Nothing contained in subparagraph (I) of this paragraph (c.5) shall be construed to waive or invalidate the requirement for an election of members that may be required by a local plan document, trust agreement, or labor agreement.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval described in paragraph (c) of this subsection (1) or for allowing active members to change plans pursuant to paragraph (c.5) of this subsection (1). The board shall also promulgate rules relating to standards for granting an employer's application for participation in the statewide defined benefit plan and for the submission of information to the board by the employer.

(e) An application for coverage under the statewide defined benefit plan filed by an employer who administers a local money purchase plan shall include the employer's certification to the board that:

(I) The employer's local money purchase plan meets the qualification requirements of section 401 (a) of the federal "Internal Revenue Code of 1986", as amended, that are applicable to governmental plans;

(II) In connection with the employer's resolution pursuant to paragraph (b) of this subsection (1), the employer's governing body has adopted a resolution for complete or partial termination of the local money purchase plan in accordance with the terms of that plan and that:

(A) The termination resolution does not adversely affect the qualified status of the local money purchase plan; and

(B) The rights of all participants in the local money purchase plan who are affected by the termination to benefits accrued to the date of termination are nonforfeitable;

(III) All active fire and police participants in the local money purchase plan and all employees hired on or after the effective date of coverage under the statewide defined benefit plan who meet the definition of a member, as defined in section 31-31-102 (4), will become participants in the statewide defined benefit plan, except as may be allowed in paragraph (c.5) of this subsection (1);

(IV) All employer and employee contributions required to be made to the local money purchase plan as of the date of termination have been paid;

(V) Participants in the local money purchase plan will not incur a reduction in their account balances in their local money purchase plan, determined as of the date of transfer, as a result of their transfer to the statewide defined benefit plan. For vesting purposes with regard to the local money purchase plan account balances, years of service in the local money purchase plan shall be combined with years of service in the statewide defined benefit plan. For vesting purposes with regard to the statewide defined benefit plan, years of service shall be based upon service credit either earned or purchased in the statewide defined benefit plan.

(VI) The employer agrees to participate in the statewide defined benefit plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to

the plan. The employer further agrees that all members hired after the effective date of coverage shall be members of the plan pursuant to part 4 of this article.

(f) An application for coverage under the statewide defined benefit plan filed by an employer who participates in the statewide money purchase plan shall include the employer's certification to the board that:

(I) All active fire and police participants in the statewide money purchase plan and all employees hired on or after the effective date of coverage under the statewide defined benefit plan who meet the definition of a member, as defined in section 31-31-102 (4), will become participants in the statewide defined benefit plan, except as may be allowed under paragraph (c.5) of this subsection (1);

(II) All employer and employee contributions required to be made to the statewide money purchase plan as of the date of termination have been paid;

(III) Participants in the statewide money purchase plan will not incur a reduction in their account balances in their local money purchase plan, determined as of the date of transfer, as a result of their transfer to the statewide defined benefit plan. For vesting purposes with regard to the local money purchase plan account balances, years of service in the statewide money purchase plan shall be combined with years of service in the statewide defined benefit plan. For vesting purposes with regard to the statewide defined benefit plan, years of service shall be based upon service credit either earned or purchased in the statewide defined benefit plan.

(IV) The employer agrees to participate in the statewide defined benefit plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan. The employer further agrees that all members hired after the effective date of coverage shall be members of the plan pursuant to part 4 of this article.

(2) The board shall determine a continuing uniform rate of contribution for all members who are active on the effective date of coverage to fund the benefits payable by the association under the statewide defined benefit plan. The continuing rate of contribution shall be determined by the board utilizing certified actuarial reports prepared by the actuary for the plan. Any such actuarial report shall also certify, in accordance with accepted actuarial principals, that the employers' coverage shall not have an adverse financial impact on the actuarial soundness of the plan. Continuing contributions for each member who is active on the effective date of coverage shall be made at the rate established on said date until the member's retirement or termination. The board may periodically adjust the rate prior to the election of coverage by an employer based on certified actuarial reports prepared by the actuary for the plan.

Source: L. 2003: Entire part added, p. 739. § 1, effective August 6. L. 2006: (1)(a), (1)(b), (1)(c), (1)(d), (1)(e)(III), and (1)(f)(I) amended and (1)(c.5) added, p. 304, § 2, effective August 7.

PART 12

ENSURING PROPER PAYMENTS

31-31-1201. Review of award of benefits and benefit payments. (1) At any time, the board may review an award of benefits or a benefit payment under any benefit plan in the defined benefit system, the statewide money purchase plan, or the statewide death and disability plan for the purpose of determining whether there has been fraud, an overpayment, an error, or a mistake.

(2) At any time, the board may review a benefit payment under any benefit plan or compensation plan other than the plans identified in subsection (1) of this section that the board administers for the purpose of determining whether there has been an overpayment, an error, or a mistake.

(3) Based upon a preponderance of the evidence from the review authorized by this section, the board:

(a) May determine that a benefit payment be terminated, diminished, maintained, or increased;

(b) May order a member or beneficiary to repay any overpayments made on or after five years prior to the date of the first notice of overpayment issued by the fire and police pension association; or

(c) Shall order the termination of benefits and the repayment of any past benefits paid to a member or beneficiary where the board finds that the benefits were granted based on false representations or a willful failure to disclose a material fact.

(4) The board shall adopt rules establishing procedures for the review of benefits and payments. The board may delegate the review pursuant to the rules. Any rules established by the board shall provide that a member or beneficiary shall have the opportunity to appeal any adverse action to the board for a final determination.

(5) Any appeal of a final determination by the board shall be in accordance with rule 106 (a) (4) of the Colorado rules of civil procedure.

Source: L. 2008: Entire part added, p. 160, § 2, effective August 5.

31-31-1202. Collection of overpaid benefits. (1) The board shall institute practices and procedures as it deems necessary to collect money due a plan administered by the fire and police pension association as determined in section 31-31-1201, including but not limited to withholding subsequent benefit payments to which the member or beneficiary is or becomes entitled, applying the amount withheld as an offset against the amount due, and referring an account to a collection agency or attorney for collection. If, after due notice, any member or beneficiary defaults in any repayment of overpaid benefits, the amount due may be collected by civil action, which shall include the right of attachment in the name of the association. The board may allow installment payments of amounts due based on equitable considerations.

(2) Reasonable fees for collection, including attorney fees, as determined by the fire and police pension association, shall be added to the amount of debt. The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee.

(3) A certified copy of any final determination of the board ordering the repayment of overpayments pursuant to this article may be filed with the clerk of the district court of any judicial district in this state at any time after the period provided for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The fire and police pension association shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the association's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thereafter have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the association.

Source: L. 2008: Entire part added, p. 161, § 2, effective August 5.

31-31-1203. False statement - felony. If, for the purpose of obtaining any order, benefit, award, compensation, or payment under the provisions of articles 30, 30.5, and 31 of this title, either for self-gain or for the benefit of any other person, anyone willfully makes a false statement or representation material to the claim, such person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and shall forfeit all right to compensation under said articles upon conviction of such offense.

Source: L. 2008: Entire part added, p. 162, § 2, effective August 5.

ARTICLE 32

Utilities

PART 1

31-32-105.

Cities or towns may erect utilities.

PUBLIC UTILITIES - FRANCHISES

PART 2

PUBLIC UTILITIES - ACQUISITION - METHOD

- 31-32-101. Franchise granted by ordinance.
- 31-32-102. Notice of application - publication.
- 31-32-103. Ordinance read twice - publication before passage.
- 31-32-104. Majority vote required for passage.

31-32-201.

Financing acquisition of utilities.

PART 1

PUBLIC UTILITIES - FRANCHISES

Cross references: For requirement that a municipality be made a party in any proceeding involving the validity of an ordinance or franchise and that the attorney general be served with a copy in any proceeding involving the constitutionality of an ordinance or franchise, see § 13-51-115 and C.R.C.P. 57(j).

31-32-101. Franchise granted by ordinance. No franchise or license giving or granting to any person the right or privilege to erect, construct, operate, or maintain a street railway, electric light plant or system, gasworks, gas plant or system, geothermal system, solar system, or telegraph or telephone system within any city or town or to use the streets or alleys of a city or town for such purposes shall be granted or given by any city or town in this state in any other manner or form than by an ordinance passed and published in the manner set forth in this part 1.

Source: L. 75: Entire title R&RE, p. 1243, § 1, effective July 1.

Editor’s note: This section is similar to former § 31-32-101 as it existed prior to 1975.

ANNOTATION

The only specific power conferred by this section is to grant a franchise in the form of an ordinance. *Denver & S. Pac. Ry. v. City of Englewood*, 62 Colo. 229, 161 P. 151 (1916).

A town organized under the general law is not empowered by this section to prescribe the rates which a street railway company occu-

pying the street under a franchise of the town may exact for its service. *Denver & S. Pac. Ry. v. City of Englewood*, 62 Colo. 229, 161 P. 151 (1916).

Applied in *Inland Util. Co. v. Schell*, 87 Colo. 73, 285 P. 771 (1930).

31-32-102. Notice of application - publication. Any person desiring to secure a franchise or license for any of the purposes named in section 31-32-101 shall cause a notice of its intention to apply to the governing body of the city or town for the passage of an ordinance granting such franchise or license. Notice shall be published, in a newspaper of general circulation published in such city or town, once a week for three successive weeks immediately prior to the next regular meeting of the governing body at which it is intended to apply for the passage of the ordinance granting or giving such franchise or license. Such notice shall specify the regular meeting of the governing body at which it is intended to apply for such franchise or license, the name of the applicant therefor, a general description of the rights and privileges to be applied for, and the time for and terms upon which such

franchise or license is desired. If there is no newspaper of general circulation published within the city or town, such notice may be published by posting copies thereof in six public places for the same length of time.

Source: L. 75: Entire title R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-102 as it existed prior to 1975.

31-32-103. Ordinance read twice - publication before passage. Every such ordinance shall be read at least twice in full, once at the time of its introduction and again before the question of its passage is voted upon. No governing body of any city or town shall permit any such ordinance to be introduced or read for the first time at any meeting other than the regular meeting specified in such notice nor unless proof of compliance by the applicant with section 31-32-102 is first presented to such governing body in the form of a publisher's affidavit of publication or a certificate of the clerk of the posting of such notice. When such ordinance has been introduced and read for the first time, the governing body, if it desires to further consider the granting of the rights or privileges sought for thereby, shall order the same to be published daily in a paper of general circulation published in such city or town for a period of not less than two weeks prior to the time such ordinance is again read and put upon its passage. If there is no paper of general circulation published daily in such city or town, such publication shall be made in a paper of general circulation published weekly in such city or town. If there is no such paper published daily or weekly, such publication shall be made by posting copies of such proposed ordinance in at least six public places in such municipality for the same period of time. No such ordinance shall be adopted or passed by the governing body of any city or town unless the same has been previously introduced and read and publication first made as provided for in this section. Such previous introduction and reading of such ordinance and the fact of its publication in a newspaper or by posting shall appear in the certificate and the attestation of the clerk on such ordinance after its adoption.

Source: L. 75: Entire title R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-103 as it existed prior to 1975.

31-32-104. Majority vote required for passage. Every such ordinance shall require for its passage or adoption the concurrence of a majority of all the members of the governing body of the city or town.

Source: L. 75: Entire title R&RE, p. 1244, § 1, effective July 1. L. 81: Entire section amended, p. 1496, § 11, effective May 28.

Editor's note: This section is similar to former § 31-32-104 as it existed prior to 1975.

31-32-105. Cities or towns may erect utilities. Nothing in this part 1 shall be construed as in any way modifying or restricting the right of cities or towns to purchase or erect electric light works, heating and cooling works and distribution systems for the distribution of heat and cooling obtained from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat, or gasworks in the manner provided for by law.

Source: L. 75: Entire title R&RE, p. 1244, § 1, effective July 1. L. 81: Entire section amended, p. 1457, § 5, effective May 27.

Editor's note: This section is similar to former § 31-32-105 as it existed prior to 1975.

PART 2

PUBLIC UTILITIES - ACQUISITION - METHOD

31-32-201. Financing acquisition of utilities. (1) In any municipality possessed of authority to acquire public utilities operating under general law or under article XX of the state constitution, unless otherwise provided by the charter of such municipality, no public utility shall be acquired until the plan for such acquisition has been adopted by ordinance and such ordinance has been approved at a regular or special election in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1) (d). Nothing in this subsection (1) shall prevent the institution of condemnation proceedings as may be provided by law or require an election with respect to water facilities or sewerage facilities.

(2) Such ordinance shall describe the property to be acquired, the full purchase price to be paid by such municipality therefor, and the method of payment thereof as well as the total obligations to be incurred by such municipality in making such acquisition, whether by way of general obligation bonds of such municipality issued under the provisions of section 6 of article XI of the state constitution or by way of obligations chargeable solely or in part against the income of such utility, or both. In the event of the issuance of obligations payable solely out of income, all operating and other costs shall be met solely out of income of the utility acquired.

(3) Said ordinance may provide for the payment into such income fund for service to be rendered for municipal purposes, but such payments shall at all times be reasonable.

Source: L. 75: Entire title R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-201 as it existed prior to 1975.

ANNOTATION

This section in exact language provides for what must be included in a utilities plan ordinance. *Citizens Util. Co. v. City of Rocky Ford*, 132 Colo. 427, 289 P.2d 165 (1955).

And by its mandatory provisions discloses that a plan under a plan ordinance must give an accurate description of the property to be acquired. *Citizens Util. Co. v. City of Rocky Ford*, 132 Colo. 427, 289 P.2d 165 (1955).

Also, the plan ordinance must specify the exact amount to be paid, or the exact amount of the total obligation to be incurred, or the exact amount of the interest the obligations were to bear or fall far short of the statutory requirement. *Citizens Util. Co. v. City of Rocky Ford*, 132 Colo. 427, 289 P.2d 165 (1955).

Under this section, it is sufficient if the ordinance is adopted by a majority of the qualified electors voting and it is not necessary that it be adopted by a majority of all the qualified electors in the city. *Weybright v. Klein*, 104 Colo. 590, 92 P.2d 734 (1939).

Courts generally are hesitant to interfere with a will of the people as expressed in an election. *Citizens Util. Co. v. City of Rocky Ford*, 132 Colo. 427, 289 P.2d 165 (1955).

Courts should, and do, attempt to protect the people against incurring indebtedness where it appears that such is incurred without a full understanding of the true import of the indebtedness proposed. *Citizens Util. Co. v.*

City of Rocky Ford, 132 Colo. 427, 289 P.2d 165 (1955).

This section recognizes the power of home rule cities to provide by charter the methods for acquiring or constructing light and power plants. It lays down the plan to be followed even by home rule cities "unless otherwise provided by the charter of such city or town". A recognition of the fact that they may so provide is an acknowledgment that they possess the power to do so. *Cook v. City of Delta*, 100 Colo. 7, 64 P.2d 1257 (1937).

This section does not apply to bonds issued for extension of municipally owned lighting system. The provisions of this section, providing that no public utility shall be acquired by a municipality until the ordinance therefor shall have been approved by the electors, has no application to the issuance of bonds for extension and improvement of a municipally owned electric lighting system. *Searle v. Town of Haxtun*, 84 Colo. 494, 271 P. 629 (1928).

But does apply where method of payment is by so-called revenue bonds. This section provides that no public utility shall be acquired by any city until the plan for such acquisition shall have been adopted by ordinance, approved by a majority of the qualified property electors. The ordinance shall describe the property to be acquired, the full purchase price to be paid, the method of payment, and the total obligation to

be incurred, whether by way of general obligation bonds or by way of obligations chargeable solely or in part against the income of such utility. It would seem that the general assembly intended this section to apply to a situation where so-called revenue bonds are provided for. Colo. Cent. Power Co. v. Municipal Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932).

An ordinance providing alternate plans for acquiring an electric plant is not invalid.
Colo. Cent. Power Co. v. Municipal Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932).
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ARTICLE 35

Water and Sewage

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PART 1

WATER RIGHTS AND WORKS - GENERAL

31-35-101. Powers - canals - water rights - diversion - ratification of prior rights.

(1) Any municipality in this state, for the purpose of supplying said municipality and the inhabitants thereof with water, has the power under this part 1:

(a) To purchase or lease any canal or ditch constructed, with all the rights, privileges, and franchises of any person owning or having any interest in or right to the same, and to hold and operate the said canals and ditches in the same manner as the persons from which the same is purchased or leased if a majority of the registered electors of such municipality voting at any regular election vote in favor of said purchase;

(b) To repair, improve, or enlarge any canal or ditch which is leased or purchased or any flume, dam, or gate connected therewith and for such purposes to levy and collect taxes as other taxes are levied and collected by law;

(c) To purchase water and water rights in all cases where condemnation would lie to obtain the same under section 31-15-708 (1) (b);

(d) To divert the waters acquired by purchase to the amount and extent lawfully appropriated prior to said purchase;

(e) To purchase and hold the lands with which said water right is connected when deemed necessary and proper by the governing body, whether the same are within or beyond the municipal limits, or to lease or sell such lands when deemed advisable by said governing body.

(2) Any municipality making a purchase or lease of any canal or ditch shall thereby assume all obligations and other duties which by law devolve upon the owner of such ditch or canal and from whom the same may be acquired by the powers of this section.

(3) The right to hold and retain water rights, or such lands and water rights as have been purchased by any municipality in this state prior to April 2, 1891, for the purpose of providing water for the use thereof or that of its inhabitants, the right to divert the water

belonging to such rights to the use of such municipality and the inhabitants thereof, and the right to sell and dispose of such lands so purchased separate and apart from the water rights, as provided in paragraph (e) of subsection (1) of this section, are hereby given, ratified, and confirmed to such municipality.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1. L. 2010: (1)(e) amended, (SB 10-181), ch. 373, p. 1745, § 1, effective August 11.

Editor's note: This section is similar to former §§ 31-35-101 to 31-35-105 as they existed prior to 1975.

31-35-102. Ditch and canal management. The management of any ditch or canal acquired pursuant to section 31-35-101 shall be under the control of the governing body of such acquiring municipality.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-102 as it existed prior to 1975.

31-35-103. Trustees of waterworks - duties. The registered electors of any city or town may elect at a special election held for that purpose three trustees to constitute a board to have the care, operation, management, and control of waterworks owned or acquired by the city or town, subject to the conditions of sections 31-35-104 to 31-35-111.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-106 as it existed prior to 1975.

31-35-104. First election of trustees. If, at the election provided in section 31-35-111, the majority of votes cast are for the board of trustees, the mayor shall issue a call for a special election of such board of trustees, to be conducted by the clerk in accordance with the provisions of section 31-35-106 and the "Colorado Municipal Election Code of 1965" insofar as practicable. If the entire city or town is included within the jurisdiction of such board of trustees, the election may be held in conjunction with the regular election.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-107 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-35-105. Trustees - qualifications. No person not a resident and owner of realty within the city or town for the period of at least one year next preceding his election and residing in that part or district of the city or town for which the board of trustees is to be elected shall be eligible for election as a trustee of said board.

Source: L. 75: Entire title R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-108 as it existed prior to 1975.

31-35-106. Regular election of trustees. The regular election for electing trustees under the provisions of this part 1, after the first election to be called by the mayor, shall be held biennially on the first Tuesday in June; but if the entire city or town is included within the jurisdiction of such board of trustees, the election may be held in conjunction with the regular election. The election shall be conducted by the clerk in accordance with the provisions of the "Colorado Municipal Election Code of 1965" insofar as practicable.

Only registered electors who reside in that part of the city or town within the jurisdiction of such board of trustees shall be permitted to vote in such election. Likewise only registered electors residing in such part of the city or town shall be permitted to vote on any proposition to create or contract a debt or loan for the purpose of acquiring, constructing, or extending waterworks.

Source: L. 75: Entire title R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-109 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-35-107. Trustees - quorum - existing boards - secretary. (1) The first board of trustees elected pursuant to this part 1 shall be elected as follows: One for the period of two years, one for the period of four years, and one for the period of six years; and, at the end of each term, a board member shall be elected for a term of six years. The ballot at the first election shall designate the term for which the candidate is to be elected.

(2) Said board shall constitute a body corporate to be known as the "trustees of waterworks", the name of the city or town to be inserted in said title, and shall be a party to all suits, proceedings, and contracts, the same as are municipalities in this state. Said board shall have control of all real estate owned, controlled, or acquired on or after April 15, 1903, by the city or town or any board of trustees or other body used in connection with said waterworks in operating waterworks constructed, including mains, pipes, reservoirs, buildings, machinery, lands, leases, water, water rights and privileges of every kind belonging thereto, and property of every kind and description, and the title to the same shall vest in said board of trustees, and their successors in office, as trustees for the use and benefit of the city or town or part or district of the city or town and the inhabitants and property therein supplied from said waterworks.

(3) As soon as said board of trustees organizes, it shall have all the power to manage, repair, control, and extend and have all other powers in and about and over said property to acquire, purchase, and develop water and water rights and to exchange and extinguish the indebtedness growing out of the same or existing as of April 15, 1903, against waterworks possessed by any such city or town on said date. A majority of the trustees shall be a quorum and competent to bind the whole number by act and deed.

(4) The question of contracting a bonded debt or for funding or floating bonded indebtedness shall be submitted to the registered electors of the city or town or part or district of the city or town at a special election to be called for voting upon such proposition; except that when the registered electors of any said city or town, prior to the establishment of a board of trustees under this part 1, have authorized by election the acquisition, construction, and operation of a municipal waterworks system and the incurring of indebtedness therefor and indebtedness for such purpose exists after creation of the board, no further election shall be necessary to permit the contracting of additional bonded debt or for funding or floating additional bonded indebtedness for the purpose of carrying out the powers granted under this title to cities or towns regarding waterworks, water rights, and property and the management, maintenance, development, and expansion thereof.

(5) The provisions of this part 1 regarding indebtedness and limitations thereon in connection with water and waterworks shall apply to indebtedness created by the board of trustees elected under this part 1 as shall the provisions of other sections of the statutes of this state relating to bonded indebtedness for said purposes.

(6) The board of trustees may employ a secretary.

Source: L. 75: Entire title R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-110 as it existed prior to 1975.

31-35-108. Acts of board - meetings - vacancies - compensation and bond. No members of the board of trustees shall have any authority to act on behalf of the board

except in pursuance of an order regularly made at a meeting of the board. No action of the board shall be binding unless authorized by a majority of the trustees at a regular meeting or a duly called special meeting. Meetings of the board of trustees shall be held at the office of the waterworks and shall be open to the public. A record of the meetings shall be kept by the secretary in a book provided for that purpose, which book, together with all contracts, maps, plans, and documents relating to the management and operation of the waterworks, shall be open to public inspection at reasonable hours. No member of said board shall be interested, directly or indirectly, in any contract relating to the waterworks or in any contract providing for the expenditure of any moneys in relation thereto. Any such trustee shall be considered as vacating his office in the event of his violating this section or accepting the nomination or becoming a candidate for any other public office. In the event of a vacancy by death, resignation, or otherwise, the board shall fill said vacancy by electing some qualified person to fill the vacancy until the next election at which time the vacancy shall be filled for the balance of the unexpired term. Trustees under this part 1 shall receive five hundred dollars per year for their services, and each of said trustees shall enter into a bond of two thousand dollars to the people of the district for the faithful performance of their duties and the proper accounting of all moneys that may come into their hands as trustees.

Source: L. 75: Entire title R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-111 as it existed prior to 1975.

31-35-109. Semiannual statement of condition. The board of trustees shall make, twice a year, on June 1 and December 1, a full and complete statement in detail of all moneys collected and expended by it during the preceding six months and of the condition of the waterworks under its control. The statement shall be published at least one time in a daily newspaper published in the county in which said waterworks are located.

Source: L. 75: Entire title R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-112 as it existed prior to 1975.

31-35-110. Annual statement of estimate. The board of trustees shall render each year, before the making by the governing body of its annual appropriations, a statement to the governing body of the estimated amount, to be raised by taxation, required by such board for the proper maintenance and care of said waterworks during the next succeeding fiscal year, which amount shall be included in the levy fixed by the governing body upon the property in that part or district of the city or town supplied by said waterworks.

Source: L. 75: Entire title R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-113 as it existed prior to 1975.

31-35-111. Election. Before the people of any city or town or part or district of any city or town can avail themselves of the provisions of this section and of sections 31-35-104 to 31-35-110, the question to determine their wishes shall first be submitted to the registered electors of said city or town or part or district of the city or town at a special election to be called by the mayor of said city or town upon petition presented to him signed by at least one hundred taxpaying electors who reside in the city or town or that part or district of the city or town for which the board of trustees may be asked. If the entire city or town is proposed to be included within the jurisdiction of such board of trustees, such election may be held in conjunction with the regular election. At said election the ballot or voting machine tabs shall be "For the Board of Trustees" and "Against the Board of Trustees". The election shall be conducted by the clerk in accordance with the provisions of the "Colorado Municipal Election Code of 1965" insofar as practicable. If the majority of votes

cast is against the creation of the board of trustees, no further action may be taken under this section and sections 31-35-104 to 31-35-110 for a period of one year from such election and then only on petition as provided in said sections.

Source: L. 75: Entire title R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-114 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

PART 2

LEASING WATER RIGHTS - CITIES OF OVER 200,000

31-35-201. Leasing of water - no rights vested. In the event any municipal appropriator of water, having a population in excess of two hundred thousand, leases, after May 12, 1931, water not needed by it for immediate use, no rights shall become vested to a continued leasing or to a continuance of the conditions concerning any return water arising therefrom so as to defeat or impair the right to terminate the leases or change the place of use. Any leasing shall not injuriously affect rights vested in other appropriators prior to said date. Nothing in this section shall authorize an appropriator to recapture water for a second use after it has once been used by it.

Source: L. 75: Entire title R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-201 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Legal Problems in City Water Supply", see 22 Rocky Mt. L. Rev. 356 (1950). For article, "Foreign Water in Colorado — The City's Right to Recapture and Re-Use Its Transmountain Diversion", see 42 Den. L. Ctr. J. 116 (1965). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

Municipality may divert water from its natural stream. It is the general rule that when an appropriator of water has no present need for

it for irrigating his lands he must not divert it from the natural stream. This rule, however, does not apply to decreed water needed for municipal purposes, and the distinction has received legislative recognition in the enactment of this section. *City & County of Denver v. Sheriff*, 105 Colo. 193, 96 P.2d 836 (1939).

Even if there is no immediate need. The city of Denver having perfected a valid appropriation, any water to which it is entitled thereunder for which there may at any given time in the future be no immediate need, may be temporarily leased by the city in accordance with this section. *City & County of Denver v. Sheriff*, 105 Colo. 193, 96 P.2d 836 (1939).

PART 3

WATER MAINS AND OTHER IMPROVEMENTS - CITIES AND TOWNS

31-35-301. Construction of water mains. When any city or town is the owner of a municipal water plant with water mains in operation throughout the greater portion of said city or town and is unable to extend the same so as to cover the entire area contained within the municipal limits of said city or town, the citizens and resident taxpayers of any area containing four blocks or more situated in said city or town not having water mains therein may agree among themselves or a majority of the owners of the lots therein for the construction of the same. Upon application to the governing body by a majority of such owners, the governing body shall have authority to enter into a contract with said owners of said four blocks or more or with the majority thereof to allow them to construct such water mains in such territory and to connect the same with the supply of water of said city

or town. The governing body has authority to enter into a contract with such citizens to allow all the proceeds derived from water rentals going to such addition through such water mains and collected as rental therefor to be applied to the payment of such water pipes, the cost thereof to be limited by the city or town to not more than the actual cost thereof upon any basis by which the city or town itself could secure the construction of the same. Said payments shall be made without interest and upon such terms not exceeding ten years as may be agreed upon by contract between the parties thereto.

Source: L. 75: Entire title R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-301 as it existed prior to 1975.

31-35-302. Petition - plans - contract. (1) For the purpose of carrying the provisions of this section and section 31-35-301 into effect, the owners of four blocks or more situated in any city or town in this state owning its own municipal water plant which has not been supplied with water mains shall present a petition to the governing body, offering therein to construct such water mains and pipes in the streets and alleys of said city or town in such manner and at such places and of such sizes as the said governing body may require and at a cost to said city or town as low as the same could be constructed by said city or town.

(2) Upon receipt of such petition, the governing body shall prepare plans and specifications for the supplying of said territory with water mains and pipes, and the petitioners, upon the inspection of said plans and specifications, shall state their willingness to construct the same at a certain price to be paid for out of the revenues derived from water running through said pipes in said district, the same to be charged at no higher rate than the remainder of said city or town is paying. If such proposition is satisfactory to the governing body, it has the right to enter into a contract with said petitioners upon behalf of said city or town for the construction of such water mains and pipes according to said plans and specifications and for the price agreed upon, not more than that specified, and within a time to be set by said governing body.

(3) Upon the completion of said works by said petitioners, the city or town shall inspect and, if satisfactory, accept the same and issue certificates of indebtedness therefor stating therein how the same is to be paid out of the proceeds from such water rentals collected from the territory in which said extensions are made, unless otherwise sooner arranged for by said city or town, and proceed to operate and maintain the same and collect the revenues therefrom and to apply the same to the payment of the indebtedness created for the construction of said pipes without interest until the same is paid for or until said city or town makes payment therefor in some other manner. Said rentals shall be paid upon said certificates from time to time when the amount of one hundred dollars is received from said rentals for that purpose, and said rentals shall be set apart and kept as a separate fund and used for the purposes provided in this subsection (3) only until the entire indebtedness is paid.

Source: L. 75: Entire title R&RE, p. 1249, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-302 as it existed prior to 1975.

31-35-303. Necessity declared by ordinance. When, in the opinion of the governing body, it is necessary to make any public improvement, including the establishment, extending, widening, grading, or improving of any street or alley, or the establishment, construction, extending, enlarging, or completing of any sewer, sidewalk, bridge, or viaduct, or removing any irrigating ditch, it is lawful for said body to declare by ordinance the necessity for such improvement.

Source: L. 75: Entire title R&RE, p. 1249, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-303 as it existed prior to 1975.

31-35-304. Streets and alleys - eminent domain. In case such proposed improvements consist of the establishment, opening, extending, or widening of any street or alley in such city or town and it is necessary to take private property to make such improvement, said ordinance shall declare such necessity, specifying and describing the property to be taken. Thereupon such city or town, by its governing body and its duly authorized officers, may exercise the right of eminent domain and may condemn, take, or damage any private property that may be necessarily condemned, taken, or damaged in the making of such improvement. The manner of proceeding in such cases shall be as prescribed by the laws of this state for the condemnation of lands in other cases.

Source: L. 75: Entire title R&RE, p. 1249, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-304 as it existed prior to 1975.

Cross references: For proceedings under eminent domain, see article 1 of title 38.

31-35-305. Sidewalks - assessment - hearing - lien. In case such proposed improvement consists of the establishment, construction, extending, or completing of any sidewalk in said city or town, the ordinance shall specify the property in front of which the sidewalk is to be constructed, extended, or completed; the names of the owners of said property; and the length, width, grade, and material of which the sidewalk is to be constructed. The governing body, as soon thereafter as the cost of said improvements can be definitely ascertained, shall assess the cost thereof upon the lots respectively in front of which said sidewalk is to be constructed. Such assessment, when completed, shall be subject to inspection by any interested person. Notice of the making and completion of the assessment shall be given by the publication of a notice to the effect that said assessment has been made upon said lots and is ready for inspection. The notice shall be published at least once a week for four successive weeks in some newspaper published or of general circulation in said city or town and shall designate a day upon which the governing body shall sit for the purpose of hearing objections thereto and making corrections therein. Upon the day designated, the governing body shall sit for said purpose and hear any objections that may be made and shall thereupon make any such changes in said assessments as may in their judgment be necessary, equitable, or just and shall thereupon finally determine such assessments. Such assessments, when so finally determined, shall be a lien upon the property so assessed for the purpose of making said improvement. An appeal shall lie to any court of competent jurisdiction from any decision of such governing body.

Source: L. 75: Entire title R&RE, p. 1250, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-305 as it existed prior to 1975.

31-35-306. Other laws not affected. Nothing in this part 3 shall abridge or otherwise affect the right to make public improvements by virtue of any other laws of this state.

Source: L. 75: Entire title R&RE, p. 1250, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-306 as it existed prior to 1975.

PART 4

SEWER AND WATER SYSTEMS

31-35-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Consumer" means any public or private user of water facilities or sewerage facilities or both.

(2) "Governing body" means the body which is in charge of the municipality's water or sanitation facilities, whether or not the same is a "governing body" as defined in part 1 of article 1 of this title.

(3) "Joint system" or "joint water and sewer system" means water facilities and sewerage facilities combined, operated, and maintained as a single public utility and income-producing project.

(4) "Municipality" means a municipality as defined in part 1 of article 1 of this title and includes any quasi-municipal corporation formed principally to acquire, operate, and maintain water facilities or sewerage facilities or both.

(5) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities. "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(6) "Sewerage facilities" means any one or more of the various devices used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature or storm, flood, or surface drainage waters, including all inlets; collection, drainage, or disposal lines; intercepting sewers; joint storm and sanitary sewers; sewage disposal plants; outfall sewers; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such sewerage facilities.

(7) "Water facilities" means any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements; but, no municipality shall construct or acquire facilities for the sale of electric energy or power, except hydroelectric energy or power for sale at wholesale only, without complying with the provisions of section 31-15-707.

Source: L. 75: Entire title R&RE, p. 1250, § 1, effective July 1. L. 81: (7) amended, p. 1540, § 1, effective May 18.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Purpose. The general assembly enacted this statute to provide for the issuance of revenue bonds to finance a sewer district and sewerage facilities. *Town of Sheridan v. Valley San. Dist.*, 137 Colo. 315, 324 P.2d 1038 (1958).

The term municipality is defined in this section to include a sanitation district. *Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker*

Metro. & San. Dist., 140 Colo. 371, 344 P.2d 685 (1959).

The term "consumer" includes the state and its subdivisions for purposes of assessment of service fees under § 31-35-402 (1)(f). *City of Littleton v. State*, 855 P.2d 448 (Colo. 1993).

Applied in *City of Arvada v. City & County of Denver*, 663 P.2d 611 (Colo. 1983).

31-35-402. Powers. (1) In addition to the powers which it may now have, any municipality, without any election of the qualified electors thereof, has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities or both, wholly within or wholly without the municipality or partially within and partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities or both for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality, but no water service or sewerage service or combination of them shall be furnished in any other municipality unless the approval of such other municipality is obtained as to the territory in which the service is to be rendered;

(c) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities or sewerage facilities or both;

(d) To accept loans or grants or both from the United States under any federal law in force for the construction of necessary water facilities or sewerage facilities or both;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities or sewerage facilities or both, whether acquired or constructed by the municipality or consumer, and to accept grants and contributions from consumers for the construction of water facilities or sewerage facilities or both. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term but in no event exceeding fifty years, with any consumer for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by a consumer and the payment periodically by the consumer to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such consumer.

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from such water facilities or sewerage facilities or both, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, including but not necessarily limited to interest on delinquencies from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorneys' fees, and other costs of collection without any modification, supervision, or regulation of any such rates, fees, tolls, or charges by any board, agency, bureau, commission, or official other than the governing body collecting them; and in anticipation of the collection of the revenues of such water facilities or sewerage facilities, or joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the water facilities or sewerage facilities, or both; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or sewerage facilities or both, including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired, as well as the revenues of existing water facilities or sewerage facilities or both;

(h) To enter into and perform contracts and agreements with other municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities or both and the maintenance and operation thereof. Pursuant to any such contracts or agreements, such municipalities may obligate themselves to make

payments in amounts which shall be sufficient to enable any municipality which finances such water facilities or sewerage facilities or both to meet its expenses, the interest and principal payments for its bonds, its reasonable reserves for debt service, operation and maintenance, and renewals and replacements, and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, ordinance, or other security instrument. Such contracts or agreements may contain such other terms and conditions as the municipalities may determine, including but not limited to provisions whereby a municipality is obligated to pay for the output, capacity, or use of any project irrespective of whether such output, capacity, or use is produced or delivered to the municipality or whether any project contemplated by any such agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output, use, or service of such project. Subject to local charter and state constitutional limitations, such contracts or agreements may also provide that if one or more of the municipalities default in the payment of its obligations under any such contract or agreement, the remaining municipalities which also have such agreements shall be required to accept and pay for, and shall be entitled proportionately to use or otherwise dispose of, the output, capacity, or use of the project contracted for by the defaulting municipalities. The obligations of a municipality under such contracts or agreements shall either constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its water facilities, sewerage facilities, or both, and shall be treated as expenses of operating such facilities or, in the discretion of such municipality and subject to satisfaction of any requirements of law governing or limiting the incurrence of debt by such municipality, shall constitute a general obligation of such municipality. Notwithstanding the provisions of section 6 (3) of article XI of the state constitution, where such contract or agreement is to constitute a general obligation of such municipality and where such contract or agreement provides that the municipality shall be required to accept and pay for the output, capacity, or use of the project contracted for by a defaulting municipality, such contract or agreement shall not be entered into unless the question of incurring a general obligation for such project has been submitted to and approved at an election conducted by such municipality in accordance with the election laws applicable to such municipality. Any such municipalities so contracting may also provide in any contract or agreement for a board, commission, or such other body as they deem proper for the supervision and general management of the water facilities or sewerage facilities or both and for the operation thereof and may prescribe its powers and duties, including the power to issue revenue bonds pursuant to this part 4, and fix the compensation of the members thereof. For the purposes of this paragraph (h), "municipality" means a municipality as defined in part 1 of article 1 of this title and any other political subdivision of this state, including any entity formed pursuant to intergovernmental contract or agreement, authorized by any law of this state to acquire, operate, and maintain the facilities which are the subject of such contract or agreement.

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the municipality is created thereby, and if no property, other than money, of the municipality is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the municipality is thereby incurred in any manner for any purpose; and

(j) To issue water or sewer or joint water and sewer refunding revenue bonds to refund, pay, or discharge all or any part of its outstanding water or sewer or joint water and sewer revenue bonds issued under this part 4 or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or in the related utility rates to be charged, effecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water facilities or sewerage facilities, or both, as provided in section 31-35-412.

Source: L. 75: Entire title R&RE, p. 1251, § 1, effective July 1. L. 83: (1)(j) amended, p. 508, § 3, effective April 22. L. 86: (1)(h) amended, p. 1064, § 1, effective April 29.

Editor's note: This section is similar to former § 31-35-402 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

A non-reciprocal provision for awarding attorneys' fees to the district is not a violation of equal protection. Crested Butte South Metro. Dist. v. Hoffman, 790 P.2d 327 (Colo. 1990).

The general assembly has empowered municipalities to operate and maintain water facilities for the benefit of users within and without their territorial boundaries. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Municipal utilities are not subject to PUC regulation for the provision of water service to users inside and outside municipalities. Bd. of County Comm'rs v. Denver Bd. of Water Comm'rs, 718 P.2d 235 (Colo. 1986).

However, a quasi-municipality is not obligated to furnish services to persons outside its district boundaries, but it may do so by contracts. Brownbriar Enters., Inc. v. City & County of Denver, 177 Colo. 198, 493 P.2d 352 (1972).

And municipalities are authorized to construct, operate, and maintain a sewerage system and to prescribe reasonable rates for the use of such facility. City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

As well as sell water. The general assembly has specifically defined selling water by a municipality both within and without its territorial boundaries to be a proper exercise of its powers. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Express statutory authority permits a quasi-municipality to collect in advance charges for the direct or indirect connection with its facilities. Brownbriar Enters., Inc. v. City & County of Denver, 177 Colo. 198, 493 P.2d 352 (1972); Durango W. Metro. D. 1 v. HKS J. Venture, 793 P.2d 661 (Colo. App. 1990).

For services furnished. The power to impose fees under this statute presupposes the construction and operation of a sewerage facility, as the fees are for "services furnished". City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

Municipalities are not limited to the use of revenue bonds to finance future acquisitions and construction relating to their water systems, but may accumulate funds for future development through the imposition of connection

fees. City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983); Durango W. Metro. D. 1 v. HKS J. Venture, 793 P.2d 661 (Colo. App. 1990).

One-time development fee permitted. The charging of a one-time development fee on all persons connecting into a municipality's water system is within the general authorization of subsection (1)(f). City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983).

The charging of a one-time sewer charge when they were connected to city's sanitary sewer system permissible even though fee charged for multiple dwelling units was more than a single family residence. Loup-Miller Const. Co. v. City & County of Denver, 676 P.2d 1170 (Colo. 1984).

Rates must not be per se unreasonable or excessive. A city operating its water system in its proprietary capacity may establish rates or charges not per se excessive or unreasonable for service within the municipality, including the expense of connections to its trunk lines. Western Heights Land Corp. v. City of Fort Collins, 146 Colo. 464, 362 P.2d 155 (1961).

Rate charges cannot be considered taxes. The rates adopted by city ordinance with reference to its water and sewer service cannot be considered as taxes even though imposed and collected by the city, such ordinance not being a revenue measure, but designed to defray expense of operating a utility directed against those using the services. Western Heights Land Corp. v. City of Fort Collins, 146 Colo. 464, 362 P.2d 155 (1961).

Municipal fee for flood control was not a "special assessment" but instead was a service fee reasonably related and essential to the provision of flood control services benefiting all property within the municipal flood control district, including school lands. Therefore, imposition of the fee against the State Land Board did not contravene constitutional limitations on the board's authority to expend state funds. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

Subsection (1)(f) expressly authorizes collection of service fees from the State Community Colleges Board. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

List of enumerated charges in subsection (1)(f) is not exclusive. Some charges, while not specifically authorized, may nonetheless be within the general contemplation of the statute. City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983); City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

The term "consumer" includes the state and its subdivisions for purposes of assessment

of service fees under subsection (1)(f) of this section. *City of Littleton v. State*, 855 P.2d 448 (Colo. 1993).

The veto power of a municipality is limited to a reasonable exercise thereof consistent with the police power in the protection of the health, safety, and welfare of the inhabitants of the municipality. *Town of Sheridan v. Valley San. Dist.*, 137 Colo. 315, 324 P.2d 1038 (1958); *S. Fork Water v. Town of S. Fork*, 252 P.3d 465 (Colo. 2011).

A municipality cannot unreasonably withhold its approval for water service in an overlapping territorial area when it is not capable of furnishing that service and the other municipality is. *S. Fork Water v. Town of S. Fork*, 252 P.3d 465 (Colo. 2011).

The veto power section addresses service in overlapping shared territory as well as extra-territorial service. Because water and sewerage infrastructure is expensive to build and requires routine maintenance, the general assembly designed subsection (1)(b) to avoid inefficient duplication of facilities and increased costs in overlapping territorial areas. *S. Fork Water v. Town of S. Fork*, 252 P.3d 465 (Colo. 2011).

Despite a change to the statutory language since the decision, the rationale in *Town of Sheridan v. Valley San. Dist.*, 137 Colo. 315, 324 P.2d 1038 (1958), governs the contours of the municipality's approval authority over another municipality's provision of water or sewerage service in the overlapping territory. *S. Fork Water v. Town of S. Fork*, 252 P.3d 465 (Colo. 2011).

A municipality does not have the absolute veto power over a project of a bordering sanitation district. The general assembly did not intend to authorize sewer districts and provide for their management, operation, control, and financing on the one hand, and on the other give a municipality bordering on the district through which the facilities must of necessity be extended, either extensively or slightly, the absolute right of veto over a project. If such a right were vested in any municipality it could prevent the development of any area on the four sides of its boundaries. *Town of Sheridan v. Valley San. Dist.* 137 Colo. 315, 324 P.2d 1038 (1958).

This section cannot limit Denver's constitutional authority. The authority of the city and

county of Denver being by constitutional grant, this section, if construed as limiting such power, would be of doubtful validity. *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958).

Thus under § 1 of art. XX, Colo. Const., the city and county of Denver is not required to obtain the consent of an incorporated town before acquiring title and possession of rights-of-way through such town by condemnation proceedings, but may be required to comply with reasonable construction standards lawfully established by such town. *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958).

However, Denver cannot, with impunity and without regard to local ordinances of a traversed municipality, construct its sewer lines in its streets irrespective of water lines, waterworks, sewers, or wells in line of or in the vicinity of the proposed construction. At the point where the public health and safety become involved, a municipality traversed can withhold its consent unless proper, safe, and healthful construction methods are followed. Denver may be bound and may be required to comply with reasonable construction standards lawfully established by a municipality traversed. *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958).

Judicial review of the reasonableness of extraterritorial water service charges imposed by a municipality constitutes a prohibited regulation of that service pursuant to subsection (1)(f). *Southgate Water District v. City & County of Denver*, 862 P.2d 949 (Colo. App. 1992). *Bennett Bear Creek Water & San. v. Denver*, 907 P.2d 648 (Colo. App. 1995), *aff'd in part and rev'd in part* on other grounds, 928 P.2d 1254 (Colo. 1996).

The general assembly has provided in subsection (1)(f) that utility rate-making is a legislative function. *Bennett Bear Creek Water Dist. v. Denver*, 928 P.2d 1254 (Colo. 1996).

Rates and charges rationally related to the governmental utility purpose are within the authority of subsection (1)(f). *City of Arvada v. City & County of Denver*, 663 P.2d 611 (Colo. 1983); *Bennett Bear Creek Water Dist. v. Denver*, 928 P.2d 1254 (Colo. 1996).

31-35-403. Authorization of facilities and bonds. (1) The acquisition, construction, reconstruction, lease, improvement, betterment, or extension of any water facilities or sewerage facilities or both and the issuance, in anticipation of the collection of revenues of such facilities, of bonds to provide funds to pay the cost thereof may be authorized under this part 4 by action of the governing body of the municipality taken at a regular or special meeting by a vote of a majority of the members of the governing body.

(2) The governing body, in determining such cost, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; interest which it is estimated will accrue during the construction or other acquisition period and for a period of not exceeding one year thereafter on money borrowed or which it is

estimated will be borrowed pursuant to this part 4; any discount on the sale of the bonds; costs of financial, professional, and other estimates and advice; contingencies; any administrative, operating, and other expenses of the municipality prior to and during such acquisition period and for a period of not exceeding one year thereafter, as may be determined by the governing body; all such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of any water or sewerage facilities, joint water and sewer system, or part thereof, and the placing of the same in operation; such provision or reserves for working capital, operation, maintenance, or replacement expenses or for payment or security of principal of or interest on any bonds during or after such an acquisition or improvement and equipment as the governing body may determine; and also reimbursements to the federal government or any agency, instrumentality, or corporation thereof of any moneys theretofore expended for or in connection with any such water or sewerage facilities or both.

Source: L. 75: Entire title R&RE, p. 1253, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-403 as it existed prior to 1975.

31-35-404. Bond provisions. (1) Revenue bonds issued under this part 4 shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the municipality; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The resolution authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued in one or more series, may bear such date, may mature at such time not exceeding the estimated life of the water facilities or sewerage facilities or both, to be acquired with the bond proceeds, as determined by the governing body, but in no event beyond forty years from their respective dates, may be in such denomination, may be payable in such medium of payment, at such place within or without the state, including but not limited to the office of any county treasurer in which the municipality is located wholly or in part, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by the governing body.

(2) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to be issued under this part 4 to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) Said bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) Said bonds may be sold at public or private sale upon such terms and conditions as the governing body shall determine; except that, if said bonds are sold at public sale, notice of such sale shall be published once at least five days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in either Denver, Colorado; San Francisco, California; Chicago, Illinois; or New York, New York.

(3) Bonds may be issued with privileges for conversion or registration or both, for payment as to principal or interest or both, and where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon; and the bonds generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details as may be provided by the governing body, except as otherwise provided in this part 4.

(4) Subject to the payment provisions specifically provided in this part 4, said bonds, any interest coupons thereto attached, and any temporary bonds shall be fully negotiable

within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds under this part 4:

(a) May provide for the initial issuance of one or more bonds, referred to in this subsection (5) as "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond; and

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest, or both.

(6) If lost or completely destroyed, any security authorized in this part 4 may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the governing body: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(7) Any officer authorized to execute any bond, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any bond authorized in this part 4 if such a filing is not a condition of execution with a facsimile signature of any interest coupon and if at least one signature required or permitted to be placed on each such bond, excluding any interest coupon, is manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

(8) The clerk of the municipality may cause the seal of the municipality to be printed, engraved, stamped, or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(9) The ordinance or resolution authorizing any bonds or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds, including, without limiting the generality of the foregoing, covenants designated in section 31-35-407.

Source: L. 75: Entire title R&RE, p. 1253, § 1, effective July 1; (4) amended, p. 219, § 62, effective July 16. L. 81: (2)(c) amended, p. 1541, § 1, effective March 4.

Editor's note: This section is similar to former § 31-35-404 as it existed prior to 1975.

31-35-405. Signatures on bonds. (1) The bonds and any coupons bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the municipality, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the municipality issuing the same.

(2) Any officer authorized or permitted to sign any bond or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the bond or coupons appertaining thereto or upon both the bond and such coupons.

Source: L. 75: Entire title R&RE, p. 1255, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-405 as it existed prior to 1975.

31-35-406. Tax exemption. The bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 75: Entire title R&RE, p. 1256, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-406 as it existed prior to 1975.

31-35-407. Covenants in bond ordinance. (1) Any ordinance or resolution authorizing the issuance of bonds under this part 4 or trust indenture or other instrument appertaining thereto to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of water facilities or sewerage facilities or both may contain covenants as to:

(a) The rates, fees, tolls, or charges or combination thereof to be charged for the services, facilities, and commodities of said water facilities or sewerage facilities or both, and the use and disposition thereof, including but not limited to the foreclosure of liens for and collection of delinquencies; the discontinuance of services, facilities, or commodities or use of any water system, any sewer system, or any joint system; prohibition against free service; the collection of penalties and collection costs, including disconnection and reconnection fees; and the use and disposition of any revenues of the municipality derived or to be derived from any water facilities or sewerage facilities or both;

(b) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof to secure the payment of the principal of and interest on any bonds or of operation and maintenance expenses of any water system, sewer system, or joint system or part thereof; the determination or definition of revenues from any water system, sewer system, or joint system and of the expenses of operation and maintenance of such system; and the source, custody, security, use, and disposition of any such reserves or sinking funds, including but not limited to the powers and duties of any trustee with regard thereto;

(c) A fair and reasonable payment by the municipality to the account of said water facilities or sewerage facilities or both for the services, commodities, or facilities furnished said municipality or any of its departments by said water facilities or sewerage facilities or both;

(d) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of such water facilities or sewerage facilities or both; the payment of the principal of and interest on any bonds and the sources and methods thereof, the rank or priority of any bonds as to any lien or security for payment, or the acceleration of any maturity of any bonds, or the issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and encumbrances thereagainst and limitations thereon; and the purpose to which the proceeds of the sale of bonds may be applied and the custody, security, use, expenditure, application, and disposition thereof;

(e) Books of account, the inspection and audit thereof, and other records appertaining to a water system, sewer system, or joint system; the insurance to be carried by the municipality and use and disposition of insurance moneys; the acquisition of completion or surety bonds appertaining to any project, funds, or personnel and the use and disposition of any proceeds of such bonds; the assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of a water system, sewer system, or joint system, or any securities having or which may have a lien on any part of any revenues of such system; and limitations on the powers of the municipality to acquire or operate or permit the acquisition or operation of any plants, structures, facilities, or properties which may compete or tend to compete with the water system, sewer system, or joint system;

(f) The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations; defining events of default; the payment of costs or expenses incident to the enforcement of the bonds or of the provisions of the ordinance or resolution authorizing the bonds or any trust indenture or other instrument appertaining thereto or of any covenant or contract with the holders of the bonds; the procedure, if any, by which the terms of any covenant or contract with or duty to the holders of bonds, the bond ordinance or resolution, or any trust indenture or other instrument may be amended or abrogated, the amount of bonds the holders of which, or any trustee, must consent to, and the manner in which such consent may be given or evidenced; and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(g) The terms and conditions upon which the holders of the bonds or any portion or percentage of them may enforce any covenants or provisions made under this part 4 or duties imposed thereby; and

(h) All such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the discretion of the governing body of the municipality, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this part 4, it being the intention of this part 4 to give a municipality power to do all things in the issuance of bonds and for their security consistent with continued public ownership of the sewerage facilities or water facilities or both.

Source: L. 75: Entire title R&RE, p. 1256, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-407 as it existed prior to 1975.

31-35-408. No municipal liability on bonds. Revenue bonds issued under this part 4 shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitations. Each bond issued under this part 4 shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitations.

Source: L. 75: Entire title R&RE, p. 1257, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-408 as it existed prior to 1975.

31-35-409. Remedies of bondholders. (1) Subject to any contractual limitations binding upon the holders of any issue of bonds or the trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds or trustee therefor has the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) To enforce his rights against the municipality and its governing body and any of its officers, agents, and employees by an action in the nature of mandamus or other suit, action, or proceeding at law or in equity and to require and compel such municipalities or such governing body or any such officers, agents, or employees to perform and carry out their duties and obligations under this part 4 and their covenants and agreements with the bondholders;

(b) To require the municipality and the governing body thereof to account as if they were the trustee of an express trust by action or suit in equity;

(c) To enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders by action or suit in equity; and

(d) To bring suit upon the bonds.

(2) No right or remedy conferred by this part 4 upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy, but each such right or

remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 4 or by any other law.

Source: L. 75: Entire title R&RE, p. 1257, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-409 as it existed prior to 1975.

31-35-410. Construction of part 4. The powers conferred by this part 4 are in addition and supplemental to and not in substitution for, and the limitations imposed by this part 4 shall not affect, the powers conferred by any other law. Bonds may be issued under this part 4 without regard to the provisions of any other law. The water facilities or sewerage facilities or both may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this part 4 for said purposes, notwithstanding that any law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including, but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this part 4 are inconsistent with the provisions of any other law, the provisions of this part 4 shall be controlling.

Source: L. 75: Entire title R&RE, p. 1258, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-410 as it existed prior to 1975.

ANNOTATION

Powers in relation to other laws. The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect the powers conferred by any other law.

Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Applied in City of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965).

31-35-411. Pledge of other utility revenues. Any municipality having surplus and unpledged revenues of any municipal utility has the power to pledge such revenues for and deposit them in the fund created to pay the interest on and principal of revenue bonds issued pursuant to this part 4.

Source: L. 75: Entire title R&RE, p. 1258, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-411 as it existed prior to 1975.

31-35-412. Refunding bonds. (1) Any bonds issued for any refunding purpose authorized in section 31-35-402 (1) (j) may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided for in section 31-35-404.

(2) No bonds may be refunded under this part 4 unless they either mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding bonds or unless the holders thereof voluntarily surrender them for exchange or payment. The final maturity of the bonds refunded may not be extended over fifteen years. The rates of interest on such refunding bonds shall be determined by the governing body. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds by such amount or amounts as are useful to effect the refunding if the aggregate principal and interest costs of the refunding bonds for the period ending on the scheduled final maturity date of the bonds refunded, without regard to any redemptions that

may be made prior to such scheduled maturity date, do not exceed such unaccrued costs of the bonds refunded for the same time period, excluding from the computation of the aggregate principal and interest cost of the refunding bonds the amount of the principal of any refunding bonds issued to pay any interest in arrears or about to become due on the bonds refunded and to pay any interest on the refunding bonds.

(3) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation therefor. Any escrowed proceeds, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient to pay the bonds refunded as they become due at their respective maturities or due at prior redemption dates, as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom.

(4) Refunding revenue bonds may be made payable from any revenues derived from the operation of any water facilities or sewerage facilities or of both water facilities and sewerage facilities comprising a joint water and sewer system, notwithstanding that the pledge of any such revenues for the payment of the outstanding bonds issued by the municipality which are to be refunded is thereby modified.

(5) Bonds for refunding and bonds for any other purpose authorized in this part 4 may be issued separately or issued in combination in one series or more.

(6) Except as expressly provided or necessarily implied in this section and in section 31-35-402 (1) (j), the relevant provisions in this part 4 pertaining to revenue bonds not issued for refunding purposes shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the bond ordinance or resolution, rates, fees, tolls, service charges, and other aspects of the bonds; except that the governing body may include, in determining the amount of the refunding bonds, an amount sufficient to pay interest, which is estimated will accrue on the refunding bonds for a period not exceeding five years from the date of the refunding bonds, and the governing body may pay such interest on the refunding bonds from the proceeds of the refunding bonds.

(7) The determination of the governing body that the limitations under this part 4 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: **L. 75:** Entire title R&RE, p. 1258, § 1, effective July 1. **L. 83:** (2) and (6) amended, p. 508, § 4, effective April 22. **L. 89:** (3) amended, p. 1116, § 30, effective July 1.

Editor's note: This section is similar to former § 31-35-412 as it existed prior to 1975.

31-35-413. Incontestable recital in bonds. Any ordinance or resolution authorizing or any trust indenture or other instrument appertaining to any bonds under this part 4 may provide that each bond therein authorized shall recite that it is issued under authority of this part 4. Such recital shall conclusively impart full compliance with all of the provisions of this part 4, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: **L. 75:** Entire title R&RE, p. 1259, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-413 as it existed prior to 1975.

31-35-414. Application of bond proceeds. (1) All moneys received from the issuance of any bonds authorized in this part 4 shall be used solely for the purpose for which issued and the cost of any project thereby delineated.

(2) Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the bonds or both interest and principal or shall be deposited in a reserve therefor, as the governing body may determine.

(3) Any unexpended balance of such bond proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the bonds and the proceedings authorizing or otherwise appertaining to their issuance, or into a reserve therefor.

(4) The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the bonds are issued.

(5) The purchaser of the bonds shall in no manner be held responsible for the application of the proceeds of the bonds by the municipality or any of its officers, agents, and employees.

Source: L. 75: Entire title R&RE, p. 1259, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-414 as it existed prior to 1975.

31-35-415. Continuing rights of bondholders. The failure of any holder of any bond or coupon issued under this part 4 to proceed as provided in section 31-35-409 or in any proceedings appertaining to the issuance of such bond or coupon shall not relieve the municipality, its governing body, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

Source: L. 75: Entire title R&RE, p. 1260, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-415 as it existed prior to 1975.

31-35-416. Validation. All revenue bonds and any coupons appertaining thereto relating to a water system, sewer system, or joint water and sewer system issued or purportedly issued prior to March 13, 1962, and all acts and proceedings had or taken or purportedly had or taken prior to said date by or on behalf of municipalities, under law or under color of law, preliminary to and in the authorization, execution, sale, and issuance of all water revenue bonds, sewer revenue bonds, and joint water and sewer revenue bonds, including any coupons appertaining thereto, the authorization and execution of all other contracts, and the exercise of other powers in this part 4 are validated, ratified, approved, and confirmed by this section except as provided in section 31-35-417, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such securities, acts, and proceedings, in such authorization, execution, sale, and issuance, and in such exercise of powers; and such securities and other contracts are and shall be binding, legal, valid, and enforceable obligations of such municipality to which they appertain in accordance with their terms and their authorization proceedings.

Source: L. 75: Entire title R&RE, p. 1260, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-416 as it existed prior to 1975.

31-35-417. Effect of and limitations upon validation. This part 4 shall operate to supply such legislative authority as may be necessary to validate any such securities issued and other contracts executed prior to March 13, 1962, of such municipalities and any acts and proceedings taken appertaining to the issuance of such securities or execution of other contracts by such municipalities or otherwise prior to said date which the general assembly could have supplied or provided for in the law under which such securities were issued or such other contracts were executed and such acts or proceedings were taken; but this part 4 shall be limited to the validation of such securities, other contracts, acts, and proceedings

to the extent to which the same can be effectuated under the state and federal constitutions. This part 4 shall not operate to validate, ratify, approve, confirm, or legalize any bond or coupon, other contract, act, proceeding, or other matter, the legality of which is being contested, or inquired into in any legal proceeding now pending and undetermined and shall not operate to confirm, validate, or legalize any bond or coupon, other contract, act, proceeding, or other matter which, prior to March 13, 1962, has been determined in any legal proceeding to be illegal, void, or ineffective.

Source: L. 75: Entire title R&RE, p. 1260, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-417 as it existed prior to 1975.

PART 5

MUNICIPAL WATER AND SEWER BOARDS

31-35-501. Creation of board. (1) The governing body of any city or town, organized under a special act or home rule charter or under the general laws of the state, has the power to create, by ordinance, a nonpolitical local legislative body designated as a board of commissioners, referred to in this part 5 as the "board", to have complete charge and control of the sewerage facilities or water facilities or joint water and sewer system of such city or town, as designated in such ordinance, in which board are vested all powers, rights, privileges, and duties vested in the city or town creating the board and pertaining to the type of facilities or system designated in such ordinance.

(2) The exercise of any and all executive, administrative, and ministerial powers may be delegated and redelegated by the board to officials and employees of the city or town employed by the board.

(3) The board shall indicate the capacity in which the city or town is acting when such actions are taken by the board, e.g., "the city (town) of, acting by and through its board of water and sewer commissioners".

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-418 as it existed prior to 1975.

31-35-502. Board - appointments - removal - bonds - meetings. The municipality shall by ordinance prescribe the number of commissioners, their qualifications, their terms of office, methods for their election or appointment or removal, the amount and nature of any fidelity bond required to be given, the number of meetings required to be held, their compensation, if any, the selection and term of office of its officers, and such other matters concerning the board as are not in conflict with this part 5.

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-419 as it existed prior to 1975.

31-35-503. Oath - officers. Each commissioner, before assuming the duties of his office, shall take and subscribe an oath or affirmation before an officer authorized to administer oaths that he will support the constitutions and laws of the United States and of this state and that he will faithfully and impartially discharge the duties of his office to the best of his ability. Such oath or affirmation shall be filed in the office of the clerk or secretary of the municipality.

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-420 as it existed prior to 1975.

31-35-504. Board's administrative powers. (1) The board, on behalf and in the name of the municipality, has the following powers:

(a) To fix the time and place at which its regular meetings shall be held within the municipality and to provide for the calling and holding of special meetings;

(b) To adopt and amend or otherwise modify bylaws and rules for procedure;

(c) To prescribe by resolution a system of business administration, to create any and all necessary offices, and to establish and reestablish the powers, duties, and compensation of all officers, agents, and employees and other persons contracting with the board, subject to the provisions of any ordinance adopted pursuant to section 31-35-502; but, except as may be otherwise therein provided, such compensation shall be established at prevailing rates of pay for equivalent services.

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-421 as it existed prior to 1975.

31-35-505. Meetings of board. (1) All meetings of the board shall be held within the municipality and shall be open to the public.

(2) No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present.

(3) Any action of the board shall require the affirmative vote of a majority of the directors present and voting thereon.

(4) A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide by resolution or by law.

Source: L. 75: Entire title R&RE, p. 1262, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-422 as it existed prior to 1975.

31-35-506. Additional administrative powers. (1) The board, on behalf and in the name of the municipality, also has the following powers:

(a) To require and fix the amount of all official fidelity and completion bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the municipality under the jurisdiction of the board, subject to the provisions of any ordinance adopted pursuant to section 31-35-502 regarding fidelity bonds for commissioners;

(b) To prescribe a method of auditing and allowing or rejecting claims and demands subject to the provisions of section 31-35-507;

(c) To provide a method for the letting of contracts on a fair and competitive basis for the construction of works, the facilities, or any project or any interest therein or the performance or furnishing of labor, materials, or supplies as required in part 4 of this article and this part 5 and to require a contractor's bond in the manner required of a governing body and a municipality in sections 38-26-105 to 38-26-107, C.R.S.;

(d) To designate an official newspaper published in the municipality or, if none, of general circulation therein and to publish any notice or other instrument in any additional newspaper where the board deems that it is necessary or advisable to do so; and

(e) To make and pass resolutions and orders on behalf of the municipality not repugnant to the provisions of part 4 of this article and this part 5 which are necessary or proper for the government and management of the affairs of the municipality, for the execution of the powers vested in the municipality, and for carrying into effect the provisions of part 4 of this article and this part 5 in connection with the facilities or joint system designated in the ordinance creating the board.

Source: L. 75: Entire title R&RE, p. 1262, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-423 as it existed prior to 1975.

31-35-507. Budgets, accounts, and audits. The board, in connection with the facilities or joint system under the board's jurisdiction, shall adopt a budget for each fiscal year of the municipality, shall maintain accounts, and shall cause an annual audit to be made pertaining to the financial affairs of the board as provided in parts 1, 5, and 6 of article 1 of title 29, C.R.S., except as otherwise provided in part 4 of this article and this part 5.

Source: L. 75: Entire title R&RE, p. 1262, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-424 as it existed prior to 1975.

31-35-508. Records of board. (1) On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the board and the secretary or secretary pro tem.

(2) Every legislative act of the board of a general or permanent nature shall be by resolution.

(3) The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the municipality under the board's jurisdiction, and all corporate acts, which record shall also be a public record.

(4) The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the board in a permanent record, which also shall be a public record.

(5) Any permanent record of the municipality under the board's jurisdiction shall be open for inspection by any elector thereof, by any other interested person, or by any representative of the federal government, the state, or any other public body.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-425 as it existed prior to 1975.

31-35-509. Conflicts in interest prohibited. No commissioner nor officer, employee, or agent of the municipality under the board's jurisdiction shall be interested in any contract or transaction with the municipality except in his official representative capacity or as is provided in his contract of employment with the municipality, subject to the provisions of any ordinance adopted pursuant to section 31-35-502.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-426 as it existed prior to 1975.

31-35-510. Authorization of facilities. The municipality, acting by and through the board, may acquire, improve, equip, relocate, maintain, and operate the facilities or joint system under the board's jurisdiction, any project, or any part thereof for the benefit of the municipality and the inhabitants thereof after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries thereto.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-427 as it existed prior to 1975.

31-35-511. Implementing powers. The board, in connection with the facilities or joint system of the municipality under the board's jurisdiction and any project pertaining thereto,

may from time to time condemn, otherwise acquire, improve, equip, operate, maintain, and dispose of property within or without or both within and without the municipality.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-428 as it existed prior to 1975.

31-35-512. Additional powers of municipality. (1) The municipality, acting by and through the board, has the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities pertaining to a body corporate and politic and constituting a municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety, and general welfare;

(b) To have perpetual existence and succession;

(c) To adopt, have, and use a corporate seal and to alter the same at pleasure;

(d) To sue and to be sued and to be a party to suits, actions, and proceedings;

(e) To commence, maintain, intervene in, defend, comprise, terminate by settlement or otherwise, otherwise participate in, and assume the cost and expense of any and all actions and proceedings pertaining to the municipality, its board, its officers, agents, or employees, or any of the municipality's powers, duties, privileges, immunities, rights, liabilities, and disabilities, the facilities or joint system, or any project pertaining thereto or any property of the municipality;

(f) To enter into contracts and agreements, including but not limited to contracts with the federal government, the state, and any other public body; and

(g) To trade, exchange, purchase, condemn, or otherwise acquire, operate, maintain, and dispose of real property and personal property, including interest therein, either within or without or both within and without the territorial limits of the municipality.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-429 as it existed prior to 1975.

31-35-513. Financial powers of municipality. (1) The municipality, acting by and through the board, also has the following powers:

(a) To borrow money and to issue municipal securities evidencing any loan to or amount due by the municipality, to provide for and secure the payment of any municipal securities and the rights of the holders thereof, and to purchase, hold, and dispose of municipal securities; and

(b) To fund or refund any loan or obligation of the municipality and to issue funding or refunding securities to evidence such loan or obligation without any election.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-430 as it existed prior to 1975.

31-35-514. Other powers of board. The delineation of powers in this part 5 which may be exercised by the board does not by implication deny any other powers which are otherwise granted to the municipality by law.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-431 as it existed prior to 1975.

PART 6

SEWER CONNECTIONS - COMPULSORY

31-35-601. Owner to be notified. In addition to the powers already had by municipalities, they have the following powers: When the governing body of a municipality having a public sewerage system deems it necessary for the protection of public health that owners of one or more premises connect their premises with the public sewer, thirty days' notice in writing shall be given to said owners, by registered mail, notifying them to connect their premises with the sewer, the date of the notice to begin as of the date of registering the same for mailing. If the work of making the connection is not begun within thirty days, the mayor shall notify the municipal engineer to prepare plans and specifications for making the connection with the public sewer, including water and service pipe for flushing purposes, if the owner has given notice and proof to the governing body or mayor of his financial inability to make the connection himself and if it is only for the necessary connection of a water closet or a privy in an outhouse or both.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-501 as it existed prior to 1975.

31-35-602. Resolution adopted. The plans or specifications shall be filed in the clerk's or engineer's office, and a resolution shall be adopted by the governing body ordering or prescribing in general terms the contemplated sewerage connections, giving location of the premises and the name of the owner, and authorizing the clerk to advertise for bids. The advertisement for bids shall be the same as is now provided for in other cases in which municipalities receive bids. The governing body shall let the contract to the lowest responsible bidder who furnishes satisfactory security, but it has the right to reject all bids.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-502 as it existed prior to 1975.

31-35-603. Cost of connection ascertained. The entire costs of all sewerage and water connections, closets, equipment pipe, sewer pipe, labor, and necessary engineering, legal, and publication expenses shall be ascertained by the governing body, including an additional amount of six percent for costs of inspection, collections, and other incidentals. The cost to each owner shall be determined according to the material used and work done under the contract in connecting such property to the public sewer and water main. The engineering, legal, and publication expenses shall be charged in such proportion as each connection bears to the whole.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-503 as it existed prior to 1975.

31-35-604. Work accepted - assessment - certified copy filed - lien. Upon the final completion of the work, the governing body shall accept the same by ordinance and provide for an assessment against the properties connected according to the rules of apportionment as provided in section 31-35-603. Each assessment shall be separately numbered. Thirty days after the last publication of said ordinance, a certified copy of it shall be filed with the county treasurer of the county in which the property is situated and when so filed shall operate as a perpetual tax lien in favor of the municipality and shall be superior to all other liens except general tax liens.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-504 as it existed prior to 1975.

31-35-605. Appropriation from general fund. The governing body may make adequate appropriations from the general fund to defray such costs until such time as the taxes are received, and when received, the general fund shall be reimbursed to the amount of any such appropriation.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-505 as it existed prior to 1975.

31-35-606. Assessments payable - proviso. The assessment shall be due and payable within thirty days after final publication of the assessing ordinance without demand; except that all assessments, at the election of the owner, may be paid in installments, as provided in section 31-35-608.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-506 as it existed prior to 1975.

31-35-607. Payment in installments optional. Failure to pay the whole assessment within said thirty days shall be conclusively considered and held to be an election on the part of the persons interested, whether under disability or not, to pay in such installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to said improvements, and such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the municipality to construct the improvement, the quality of the work, the regularity or sufficiency of the proceedings, or the validity or the correctness of the assessments or the validity of the lien thereof.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-507 as it existed prior to 1975.

31-35-608. Installment payments - due date - interest. In case of such election to pay in such installments, the assessment shall be payable in two or more equal annual installments of principal, the first of which installments shall be payable as prescribed by the governing body in not more than one year, with interest in all cases on the unpaid principal, payable semiannually, at a rate not exceeding six percent per annum. The number of installments, the period of payment, and the rate of interest shall be determined by the governing body and set forth in the assessing ordinance.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-508 as it existed prior to 1975.

31-35-609. Default in payment - penalty. Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a month until the date of sale, as provided in section 31-35-611. At any time prior to the date of sale, the owner may pay the amount of all unpaid installments, with interest at one percent per month or fraction of a month, and all penalties accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may at any time pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-509 as it existed prior to 1975.

31-35-610. Discount for cash payment. Payments may be made to the municipal treasurer at any time within thirty days of the final publication of the assessing ordinance, and an allowance of five percent shall be allowed on all payments made during such period, but not thereafter. At the expiration of the thirty-day period, the municipal treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon with the date of each payment.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-510 as it existed prior to 1975.

31-35-611. Payment of assessments - default - sale. The county treasurer shall receive payment of all assessments on the assessment roll, with interest, and, in the case of default in the payment of any installment of principal or interest when due, shall advertise and sell any and all property concerning which such default is suffered for the payment of the whole of the unpaid assessments thereon. The advertisements and sales shall be at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as is provided by general law for sales of real property in default of payment of general and special taxes.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-511 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-35-612. Owner of interest may pay his share. The owner of any divided or undivided interest in the property assessed may pay his share of any assessment upon producing evidence of the extent of his interest which is satisfactory to the treasurer having the roll in charge.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-512 as it existed prior to 1975.

31-35-613. When collections paid to municipality. All collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the municipal treasurer on or before the tenth day of the next month, with separate statements for all such collections for each improvement.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-513 as it existed prior to 1975.

31-35-614. Construction of part 6. Nothing in this part 6 shall be considered as amending or repealing any other power the municipalities may have, but this part 6 confers additional powers of which the municipality may take advantage.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-514 as it existed prior to 1975.

31-35-615. Governing body to fix rates and charges. The governing body of any municipality or incorporated sewer or sanitary district may by ordinance fix such rates and charges for the connections with and use of the sewer or sewerage systems of said municipalities or districts as may be just, reasonable, and necessary, and it may provide the manner of levying and collecting such rates and charges.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-515 as it existed prior to 1975.

31-35-616. Revenue kept in separate fund. (1) The revenue derived from the connections with said sewer or sewerage systems shall be placed in the treasury of the municipality or district and may be kept in a separate fund. If the revenue is placed in a separate fund, it shall not be paid out or distributed except for the purpose of operating, renewing, improving, or extending the sewerage system and the payment of the salaries of the employees engaged in operating said sewerage system. At any time there is a surplus of such funds, it shall be semiannually placed in a sinking fund for the purposes of acquiring, renewing, or extending such sewerage system or making renewals or extensions thereto or for retiring the bonded indebtedness upon said sewerage system; but if said surplus fund is used to retire outstanding sewer bonds, the same shall be in addition to the money derived by taxation for such retirement of sewer bonds as is provided by law.

(2) Any municipality or incorporated sewer or sanitary district which is being provided with services by the governing body fixing such rates and charges is subject to the same charges and rates established as provided in this part 6 or to charges and rates established in harmony therewith for service rendered such municipality or incorporated sewer or sanitary district and shall pay such rates or charges when due, and the same shall be deemed to be a part of the revenues of the works and shall be applied as provided in this section for the application of such revenues.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-516 as it existed prior to 1975.

31-35-617. Failure to pay rates and charges - lien. In the event any user of said sewerage system neglects, fails, or refuses to pay the rates and charges fixed by said governing body for the connection with and use of said sewer, said user shall not be disconnected from said sewerage system or refused the use of said sewer unless the user is outside the municipal limits, but the rates and charges due therefor may be certified by the clerk or the proper authority of the district to the board of county commissioners of the county in which said delinquent user's property is located and shall become a lien upon the real property so served by said sewer connection. The amount due shall be collected in the manner as though they were part of the taxes.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-517 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-35-618. Prior rates and charges declared valid. Any such rates and charges for the connections with and use of the sewer or sewerage systems of any municipality or incorporated sewer or sanitary district declared or established by ordinance of said governing body on or before May 1, 1957, are declared to be valid and are hereby ratified.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-518 as it existed prior to 1975.

31-35-619. Surplus revenue diverted to general fund. The municipality may by ordinance divert to the general fund any surplus moneys in excess of the amounts reasonably required for the purpose of operating, renewing, improving, or extending the sewer system of any municipality.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-519 as it existed prior to 1975.

PART 7

SEWER RATES - AREA OUTSIDE CITIES OR TOWNS

31-35-701. Cities or towns may provide service outside boundaries. Any city or town owning an established sewerage system may, by ordinance, fix just, reasonable, and necessary rates for the connection with and use of the sewerage system, directly or indirectly, by owners of property situated in unincorporated territory without the boundaries of said city or town.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-601 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Utility Services in Subdivisions Outside Municipal Boundaries", see 28 Rocky Mt. L. Rev. 483 (1956).

31-35-702. Governing body agency of state. The governing body of such city or town is declared and determined to be an agency of the state of Colorado for the sole purpose of securing to owners of property situated in unincorporated territory without the boundaries of such city or town adequate sewerage service at just and reasonable rates and for the performance of the duties and functions set forth by this part 7.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-602 as it existed prior to 1975.

31-35-703. Publication of ordinance. Notice of such rates shall be given by publication of the ordinance fixing the same, to which publication there shall be appended a special notice to owners of property in unincorporated territory without the boundaries of said city or town and using the sewerage system especially directing attention to said ordinance.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-603 as it existed prior to 1975.

31-35-704. Contents of ordinance. Such ordinance and notice shall be published in conformity to law with reference to the times and publication of ordinances of such city or town. The ordinance shall contain a description of the property, the names of the owners thereof, as near as may be, and the annual rate charged to each such property for sewerage service. No error in the name of any property owner shall affect the validity of said ordinance.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-604 as it existed prior to 1975.

Cross references: For requirements for passage of an ordinance, see part 1 of article 16 of this title.

31-35-705. Protest - board of adjustment. Any owner of property affected by the terms of said ordinance may protest in writing to the governing body of such city or town as to the amount of the rate affecting such property at any time within two weeks after the first publication of said ordinance and notice. The governing body shall sit as a board of adjustment, pursuant to the authority of this part 7, and shall hear and determine all such protests and determine the fairness of said rates. If the rates prescribed in the proposed ordinance are determined to be unreasonable, the governing body shall amend such ordinance before final passage to conform to its findings in the premises. The final determination of the governing body shall be conclusive in the premises.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-605 as it existed prior to 1975.

31-35-706. Continuing annual charges. The rates and charges so established shall be annual charges and shall be continuing annual charges from year to year until such ordinance is amended or repealed. The use of said sewerage system on or after the passage of said ordinance shall be conclusive evidence of the assent of the owner of the property to the provisions of said ordinance and of the acceptance of such service on the conditions and terms imposed thereby not in conflict with this part 7.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-606 as it existed prior to 1975.

31-35-707. Date and place of payment. Such ordinance shall provide, among other things, that the rates so established per annum may be paid before October 1 of each year, at the offices of the municipal treasurer, and after said day payment thereof shall be delinquent.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-607 as it existed prior to 1975.

31-35-708. Nonpayment - penalty - lien. In the event any person using said sewerage system neglects, fails, or refuses to pay when due the rates and charges as fixed by said ordinance, the property of such delinquent person shall not be disconnected from said sewerage system or denied the use thereof, but the rates and charges due and unpaid therefor shall be certified by the clerk to the board of county commissioners of the county in which said delinquent user's property is located on or before November 1 of each year and thereupon and until paid shall be a lien upon the real property so served by said sewerage connections. The lien shall be levied, certified, received, or collected by sale, annually from year to year by the proper county officials, as are county taxes, and the proceeds thereof shall be remitted each month to such city or town.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-608 as it existed prior to 1975.

31-35-709. Voluntary discontinuance by owner. Nothing in this part 7 shall deny any property owner affected by such ordinance voluntary discontinuance of the service of such sewerage system. Such discontinuance of service shall be evidenced by disconnection of said property from said sewer system and not otherwise. In the event of such discontinuance, it is the duty of the governing body to abate all rates or charges accruing thereafter by the terms of such ordinance, and thereafter no such charge shall be certified for collection.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-609 as it existed prior to 1975.

31-35-710. Duty to maintain system. Nothing in this part 7 shall impose upon any such city or town the duty of maintaining sewers or a sewerage system not owned by it or required for the use of its inhabitants. Such city or town shall maintain, during the life of the ordinance provided for in section 31-35-701, its own sewerage system for the adequate use and benefit of property owners in unincorporated territory without the boundaries thereof whose property has been made subject to such ordinance.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-610 as it existed prior to 1975.

31-35-711. Rates may be collected by action. Rates imposed upon property which by reason of its ownership, character, or use is not subject to taxation or lien under the state constitution and laws of this state may be collected by any appropriate legal action begun in the district court in the county in which such property is located.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-611 as it existed prior to 1975.

31-35-712. Owner to obtain permit - penalty. Any person making or causing to be made a connection of sewers serving property in any unincorporated territory, directly or indirectly, with a sewerage system of any city or town without a permit from said city or town and after the passage of the ordinance provided for in section 31-35-701 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than twenty days nor more than ninety days, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-612 as it existed prior to 1975.

TITLE 32
SPECIAL DISTRICTS

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TITLE 32

SPECIAL DISTRICTS

SPECIAL DISTRICT ACT

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SPECIAL DISTRICT ACT

ARTICLE 1

Special District Provisions

Editor's note: This article was numbered as articles 8-10, 16-18, 22, and 26 of chapter 89, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the

Cross references: For foreclosure proceedings for a special district, see part 11 of article 25 of title 31.

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PART 1

GENERAL PROVISIONS

32-1-101. Short title. This article shall be known and may be cited as the "Special District Act".

Source: L. 81: Entire article R&RE, p. 1542, § 1, effective July 1.

ANNOTATION

Law reviews. For article, “1985 Special District Legislation”, see 14 Colo. Law. 2178 (1985). For article, “Colorado Special Districts and Chapter 9 — Parts I and II”, see 20 Colo. Law. 2475 (1991) and 21 Colo. Law. 1 (1992).

Special district act not applicable to special districts organized under law preceding the 1965 Special District Control Act. *Senior Corp. v. Bd.*

of Assessment Appeals, 702 P.2d 732 (Colo. 1985).

General assembly has plenary power to create quasi-municipal corporations, whether by creating such districts directly or making the creation of such districts contingent upon future and uncertain events. *State Farm v. City of Lakewood*, 788 P.2d 808 (Colo. 1990).

32-1-102. Legislative declaration. (1) The general assembly hereby declares that the organization of special districts providing the services and having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.

(2) The general assembly further declares that the procedures contained in part 2 of this article are necessary for the coordinated and orderly creation of special districts and for the logical extension of special district services throughout the state. It is the purpose of part 2 of this article to prevent unnecessary proliferation and fragmentation of local government and to avoid excessive diffusion of local tax sources.

(3) The general assembly further declares that the purpose of part 5 of this article is to facilitate the elimination of the overlapping of services provided by local governments and the double taxation which may occur because of annexation or otherwise when all or part of the taxable property of an area lies within the boundaries of both a municipality and a special district.

(4) The general assembly further declares that it is the policy of this state to provide for and encourage the consolidation of special districts and to provide the means therefor by simple procedures in order to prevent or reduce duplication, overlapping, and fragmentation of the functions and facilities of special districts; that such consolidation will better serve the people of this state; and that consolidated districts will result in reduced costs and increased efficiency of operation.

(5) The general assembly further declares that the purpose of part 7 of this article is to facilitate dissolution of special districts in order to reduce the proliferation, fragmentation, and overlapping of local governments and to encourage assumption of services by other governmental entities.

Source: L. 81: Entire article R&RE, p. 1542, § 1, effective July 1.

Editor’s note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Applied in *Groditsky v. Pinckney*, 661 P.2d 279 (Colo. 1983).

32-1-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Ambulance district” means a special district which provides emergency medical services and the transportation of sick, disabled, or injured persons by motor vehicle, aircraft, or other form of transportation to and from facilities providing medical services. For the purpose of this subsection (1), “emergency medical services” means services engaged in providing initial emergency medical assistance, including, but not limited to, the treatment of trauma and burns and respiratory, circulatory, and obstetrical emergencies.

(1.5) “Board” means the board of directors of a special district.

(2) “Court” means the district court in any county in which the petition for organiza-

tion of the special district was originally filed and which entered the order organizing said district or the district court to which the file pertaining to the special district has been transferred pursuant to section 32-1-303 (1) (b).

(2.5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, shares, certificates, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type that a national bank is permitted to exercise under the authority of the comptroller of the currency and that is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(3) "Director" means a member of the board.

(4) "Division" means the division of local government in the department of local affairs.

(5) (a) "Eligible elector" means a person who, at the designated time or event, is registered to vote pursuant to the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., and:

(I) Who has been a resident of the special district or the area to be included in the special district for not less than thirty days; or

(II) Who, or whose spouse, owns taxable real or personal property situated within the boundaries of the special district or the area to be included in the special district, whether said person resides within the special district or not.

(b) A person who is obligated to pay taxes under a contract to purchase taxable property situated within the boundaries of the special district or the area to be included within the special district shall be considered an owner within the meaning of this subsection (5).

(c) Repealed.

(d) For all elections and petitions that require ownership of real property or land, a mobile home as defined in section 38-12-201.5 (2) or 5-1-301 (29), C.R.S., or a manufactured home as defined in section 42-1-102 (106) (b), C.R.S., shall be deemed sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(e) In the event that the board, by resolution, ends business personal property taxation by the district pursuant to subsection (8) (b) of section 20 of article X of the state constitution, persons owning such property and spouses thereof shall not be eligible electors of the district on the basis of ownership of such property.

(6) Repealed.

(6.5) "Financial institution or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Company Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consists of investing, purchasing, selling, or trading in securities of more than one issuer and

not of its own issue and that has total assets in excess of five million dollars as of the end of its last fiscal year; and

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958".

(7) "Fire protection district" means a special district which provides protection against fire by any available means and which may supply ambulance and emergency medical and rescue services.

(7.5) "Forest improvement district" means a special district created pursuant to article 18 of this title that protects communities from wildfires and improves the condition of forests in the district.

(8) "Governing body" means a city council or board of trustees and includes a body or board where the operation and management of service is under the control of a municipal body or board other than a city council or board of trustees.

(8.5) "Health assurance district" means a special district that is created to organize, operate, control, direct, manage, contract for, furnish, or provide, directly or indirectly, health care services to residents of the district and family members of such residents who are in need of such services.

(9) "Health service district" means a special district that may establish, maintain, or operate, directly or indirectly through lease to or from other parties or other arrangement, public hospitals, convalescent centers, nursing care facilities, intermediate care facilities, emergency facilities, community clinics, or other facilities licensed or certified pursuant to section 25-1.5-103 (1) (a), C.R.S., providing health and personal care services and may organize, own, operate, control, direct, manage, contract for, or furnish ambulance service.

(9.3) "Inactive special district" means a special district in a predevelopment stage that has no residents other than those who lived within the district boundaries prior to the formation of the district, no business or commercial ventures or facilities within its boundaries, has not issued any general obligation or revenue debt and does not have any financial obligations outstanding or contracts in effect that require performance by the district during the time the district is inactive, has not imposed a mill levy for tax collection in that fiscal year, anticipates no receipt of revenue and has no planned expenditures, except for statutory compliance, in that fiscal year, has no operation or maintenance responsibility for any facilities, has initially filed a notice of inactive status pursuant to section 32-1-104 (3), and, each year thereafter, has filed a notice of continuing inactive status pursuant to section 32-1-104 (4).

(9.5) "Mental health care service district" means a special district created pursuant to this article to provide, directly or indirectly, mental health care services to residents of the district who are in need of mental health care services and to family members of such residents.

(10) "Metropolitan district" means a special district that provides for the inhabitants thereof any two or more of the following services:

- (a) Fire protection;
- (b) Mosquito control;
- (c) Parks and recreation;
- (d) Safety protection;
- (e) Sanitation;
- (f) Solid waste disposal facilities or collection and transportation of solid waste;
- (g) Street improvement;
- (h) Television relay and translation;
- (i) Transportation;
- (j) Water.

(11) "Municipality" means a municipality as defined in section 31-1-101 (6), C.R.S.

(12) "Net effective interest rate" means the net interest cost of securities issued by a public body divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(13) "Net interest cost" means the total amount of interest to accrue on securities issued by a public body from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said securities are being or have been sold. In all cases net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(14) "Park and recreation district" means a special district which provides parks or recreational facilities or programs within said district.

(14.5) "Property owners' list" means the list furnished by the county assessor in accordance with section 1-5-304, C.R.S., showing each property owner within the district, as shown on a deed or contract of record.

(15) "Publication" means printing one time, in one newspaper of general circulation in the special district or proposed special district if there is such a newspaper, and, if not, then in a newspaper in the county in which the special district or proposed special district is located. For a special district with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the special district, then one publication is required in a newspaper in each county in which the special district is located and in which the special district also has fifty or more eligible electors.

(16) "Quorum" means more than one-half of the number of directors serving on the board of a special district.

(17) "Regular special district election" means the election on the Tuesday succeeding the first Monday of May in every even-numbered year, held for the purpose of electing members to the boards of special districts and for submission of other public questions, if any.

(17.5) (Deleted by amendment, L. 92, p. 874, § 105, effective January 1, 1993.)

(18) "Sanitation district" means a special district that provides for storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facilities, or solid waste disposal facilities or waste services, and all necessary or proper equipment and appurtenances incident thereto.

(19) "Secretary" means the secretary of the board.

(19.5) "Solid waste" shall have the same definition as specified in section 30-20-101 (6), C.R.S.

(20) "Special district" means any quasi-municipal corporation and political subdivision organized or acting pursuant to the provisions of this article. "Special district" does not include any entity organized or acting pursuant to the provisions of article 8 of title 29, article 20 of title 30, article 25 of title 31, or articles 41 to 50 of title 37, C.R.S.

(21) "Special election" means any election called by the board for submission of public questions and other matters. The election shall be held on the first Tuesday after the first Monday in February, May, October, or December, in November of even-numbered years or on the first Tuesday in November of odd-numbered years. Any special district may petition a district court judge who has jurisdiction in such district for permission to hold a special election on a day other than those specified in this subsection (21). The district court judge may grant permission only upon a finding that an election on the days specified would be impossible or impracticable or upon a finding that an unforeseeable emergency would require an election on a day other than those specified.

(22) "Taxable property" means real or personal property subject to general ad valorem taxes. "Taxable property" does not include the ownership of property on which a specific ownership tax is paid pursuant to law.

(23) (a) "Taxpaying elector" means an eligible elector of a special district who, or whose spouse, owns taxable real or personal property within the special district or the area to be included in or excluded from the special district, whether the person resides within the special district or not.

(b) A person who is obligated to pay taxes under a contract to purchase taxable property within the special district shall be considered an owner within the meaning of this subsection (23).

(c) For all elections and petitions that require ownership of real property or land, a mobile home as defined in section 38-12-201.5 (2) or 5-1-301 (29), C.R.S., or a manufac-

tured home as defined in section 42-1-102 (106) (b), C.R.S., shall be deemed sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(23.2) “Tunnel” means one or more holes under or through the ground, mountains, rock formations, or other natural or man-made material, including roads, railroads, pipelines, and other means of transporting vehicles, people, or goods through any such tunnel, whether located in the tunnel or, to the extent the same connects the tunnel to other similar facilities, located outside the tunnel. “Tunnel” also means any ventilation, drainage, and support facilities, toll collection facilities, administrative facilities, and other facilities necessary or convenient to the acquisition, construction, improvement, equipping, operation, or maintenance of the tunnel or to the operation of the tunnel district, whether located within or without the tunnel.

(23.5) “Tunnel district” means a special district which provides a tunnel.

(24) “Water and sanitation district” means a special district which provides both water district and sanitation district services.

(25) “Water district” means a special district which supplies water for domestic and other public and private purposes by any available means and provides all necessary or proper reservoirs, treatment works and facilities, equipment, and appurtenances incident thereto.

Source: **L. 81:** Entire article R&RE, p. 1543, § 1, effective July 1. **L. 82:** (5)(d) and (23)(c) added, p. 546, §§ 5, 6, effective April 15. **L. 83:** (1) R&RE and (1.5) added, p. 412, §§ 2, 3, effective June 1. **L. 85:** (20) amended, p. 1097, § 1, effective April 30; (21) amended, p. 1027, § 4, effective July 1; IP(5)(a) and (5)(a)(I) amended and (14.5) and (17.5) added, p. 1083, § 1, effective July 1, 1986. **L. 86:** (5)(c) repealed and (21) amended, pp. 1068, 814, §§ 3, 6, effective July 1. **L. 87:** (23.2) and (23.5) added, p. 1232, § 1, effective May 13; IP(5)(a), (5)(a)(I), (5)(b), and (14.5) amended, p. 333, § 100, effective July 1. **L. 89:** (6) repealed, p. 1135, § 85, effective July 1. **L. 90:** (5)(d) amended, p. 1848, § 46, effective May 31. **L. 91:** (2.5) and (6.5) added, p. 780, § 2, effective June 4. **L. 92:** IP(5)(a), (17), (17.5), (21), and (23)(a) amended, p. 874, § 105, effective January 1, 1993. **L. 93:** (5)(a)(I) and (21) amended, p. 1438, § 133, effective July 1. **L. 94:** (5)(d) and (23)(c) amended, p. 706, § 10, effective April 19; (14.5) and (15) amended, p. 1194, § 97, effective July 1; (5)(a)(I) amended, p. 1775, § 45, effective January 1, 1995; (5)(d) and (23)(c) amended, p. 2565, § 79, effective January 1, 1995. **L. 96:** (5)(e) added and (9) and (14.5) amended, pp. 1771, 470, §§ 72, 1, 73, effective July 1. **L. 98:** (10) and (18) amended and (19.5) added, p. 1069, § 1, effective June 1. **L. 2001:** (5)(d) and (23)(c) amended, p. 1276, § 42, effective June 5. **L. 2003:** (9) amended, p. 715, § 58, effective July 1. **L. 2005:** (9.5) added, p. 1035, § 1, effective June 2. **L. 2007:** (7.5) added, p. 425, § 1, effective April 9; (8.5) added, p. 1186, § 1, effective July 1. **L. 2009:** (20) amended, (SB 09-292), ch. 369, p. 1979, § 109, effective August 5. **L. 2010:** (9.3) added, (HB 10-1362), ch. 360, p. 1710, § 1, effective August 11.

Editor’s note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to subsection (5)(d) by Senate Bill 94-092 and Senate Bill 94-001 were harmonized. Amendments to subsection (23)(c) by Senate Bill 94-092 and Senate Bill 94-001 were harmonized.

ANNOTATION

Constitutional challenge to subsection (5) of this section on grounds that denying corporate entities the right to vote on the formation of a special district violates the equal protection

clause was premature when no petition for organization was pending before district court. *State Farm v. City of Lakewood*, 788 P.2d 808 (Colo. 1990).

32-1-104. Establishment of a special districts file. (1) The division shall promptly establish and maintain on a current basis, as a public record, a file listing by name all special

districts, listing the names and addresses of all the members of the boards of the special districts, and recording all changes in the boundaries of the special districts. The file shall also list the names of the officers of each special district and a business address, a telephone number, and the name of a contact person for each district. Annually, the division shall compile and maintain a current and revised list of special districts for public inspection. Each special district shall register its business address, its telephone number, and the name of a contact person with the division when certifying the results of a district election pursuant to section 1-11-103, C.R.S.

(2) On or before January 15 of each year, a special district shall notify the board of county commissioners, the county assessor, the county treasurer, and the county clerk and recorder of each county in which the special district is located, the governing body of any municipality in which the special district is located, and the division of the name of the chairman of the board, the contact person, the telephone number, and the business address of the special district. If such persons and address are not located within the special district, the special district shall notify each such county clerk and recorder and municipality's governing body of the name, address, and telephone number of a contact person located within the special district, if such person is available.

(3) (a) The board of directors of an inactive special district may adopt a resolution that describes and affirms its qualifications for its inactive status and may direct that a notice of inactive status be filed with the board of county commissioners and the city council of each county and city that approved its service plan pursuant to section 32-1-204 or 32-1-204.5; the treasurer, assessor, and the clerk and recorder of the county or counties in which the inactive special district is located; the district court having jurisdiction over the formation of the special district; the state auditor; and the division of local government. The notice of inactive status shall be filed on or before December 15 of the year in which the board adopts a resolution of inactive status. At the time of filing the notice of inactive status, the district shall be in compliance with each of the requirements specified in subsection (5) of this section.

(b) When the board of directors of a district on inactive status determines that the district shall return to active status, the board shall adopt a resolution that declares the district's return to active status and authorizes the filing of a notice of the district's determination to return to active status with the same such entities that received the notice of inactive status under paragraph (a) of this subsection (3). The district's board of directors shall cause the district to be brought into compliance for the remainder of the fiscal year in which the district returns to active status with all legal requirements specified in this section for which the district has otherwise been exempt while on inactive status. The district shall be in compliance with such requirements within ninety days of delivery of notice of the board's determination to return to active status pursuant to this paragraph (b). The notices delivered pursuant to this subsection (3) shall be by certified mail, return receipt requested, except where electronic filing is required by the receiving entity.

(c) The notice of inactive status, notice of continuing inactive status, and notice of return to active status shall be standard forms developed by the division and shall be made available on the division's web site.

(4) The special district shall be on inactive status during the period commencing with the filing of its notice of inactive status pursuant to paragraph (a) of subsection (3) of this section until such time as it has issued a notice of its determination to return to active status pursuant to paragraph (b) of subsection (3) of this section. During the period that a district is on inactive status, it shall not issue any debt, impose a mill levy, or conduct any other official business other than to conduct elections and to undertake procedures necessary to implement the district's intention to return to active status. Inactive special districts shall file with the state auditor and the division on or before December 15 of each year in which the district is on inactive status a notice that it is continuing in such status for the next fiscal year.

(5) Notwithstanding any other provision of law, inactive special districts shall be exempt from compliance with the provisions of subsection (2) of this section; sections 32-1-306, 32-1-809, and 32-1-903; parts 1, 2, and 6 of article 1 of title 29, C.R.S.; and part 1 of article 1 and part 1 of article 5 of title 39, C.R.S.

Source: **L. 81:** Entire article R&RE, p. 1545, § 1, effective July 1. **L. 85:** Entire section amended, p. 1020, § 5, effective July 1. **L. 92:** (1) amended, p. 875, § 106, effective January 1, 1993. **L. 93:** (1) amended, p. 1790, § 77, effective June 6. **L. 94:** (1) amended, p. 1194, § 98, effective July 1. **L. 2010:** (3), (4), and (5) added, (HB 10-1362), ch. 360, p. 1710, § 2, effective August 11.

Editor's note: This section is similar to former § 32-1-103 as it existed prior to 1981.

32-1-104.5. Audit and budget requirements - election results - description on state web sites. (1) The division shall post on its official web site in a form that is readily accessible to the public:

(a) A general description in plain, nontechnical language of the requirements for a special district to have an annual audit of the district's financial statements prepared in accordance with the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, C.R.S., and information about where a copy of the audit report is available for public inspection; and

(b) A general description in plain, nontechnical language of the process and requirements for a special district to adopt an annual budget in accordance with the "Local Government Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S., and information about where a copy of the budget is available for public inspection.

(2) The division shall notify the secretary of state of the election results certified to the division pursuant to section 1-11-103 (3), C.R.S., and the secretary of state shall post the same on the official web site of the department of state. The general assembly shall appropriate moneys in the department of state cash fund created in section 24-21-104 (3) (b), C.R.S., to the secretary of state for such purpose.

Source: **L. 2009:** Entire section added, (SB 09-087), ch. 325, p. 1731, § 1, effective September 1.

32-1-105. Notice of organization, dissolution, or boundary change. No organization, dissolution, or change in the boundaries of any special district shall be effective until the decree or order confirming such action, together with a description of the area concerned, is recorded by the county clerk and recorder of the county in which the organization, dissolution, or change in the boundaries took place. The county clerk and recorder shall notify the county assessor of any such action. A certified copy of such notice shall also be filed with the division by the county clerk and recorder.

Source: **L. 81:** Entire article R&RE, p. 1546, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 32-1-104 as it existed prior to 1981.

(2) This section was amended in House Bill 81-1312. Those amendments were superseded by the repeal and reenactment of the entire article in House Bill 81-1320.

Cross references: For notice required prior to the levy of a tax by a special district, see § 39-1-110.

32-1-106. Repetitioning of elections - time limits. (1) If, after any election for the organization or dissolution of any special district or for the inclusion of territory into a special district pursuant to section 32-1-401 (2) or for the exclusion of property within a municipality from a special district pursuant to section 32-1-502, it appears that the proposal was defeated, no new petition for the organization or dissolution, as the case may be, of such a special district embracing the same or substantially the same area and no new petition for inclusion or exclusion, as the case may be, of territory pursuant to sections 32-1-401 (2) and 32-1-502 shall be submitted again until the expiration of eight months after the date of the election at which the proposal was defeated.

(2) If, after any election submitting to the electors of any special district the proposition of creating any indebtedness of the special district, it appears that the proposition was

defeated, no new proposition for creating such indebtedness of the special district shall be submitted until the expiration of five months after the date of the election at which the proposal was defeated.

Source: **L. 81:** Entire article R&RE, p. 1546, § 1, effective July 1. **L. 94:** Entire section amended, p. 1195, § 99, effective July 1.

Editor's note: This section is similar to former § 32-1-105 as it existed prior to 1981.

32-1-107. Service area of special districts. (1) A special district may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and a special district may consist of noncontiguous tracts or parcels of property.

(2) Except as provided in subsection (3) of this section, no special district may be organized wholly or partly within an existing special district providing the same service. Nothing in this subsection (2) shall prevent a special district providing different services from organizing wholly or partly within an existing special district. Except as provided in subsection (3) of this section, a metropolitan district may be organized wholly or partly within an existing special district, but a metropolitan district shall not provide the same service as the existing special district.

(3) (a) For purposes of this subsection (3), "overlapping special district" means a new or existing special or metropolitan district located wholly or partly within an existing special or metropolitan district.

(b) An overlapping special district may be authorized to provide the same service as the existing special or metropolitan district that the overlapping special district overlaps or will overlap if:

(I) Where the service plan of such overlapping special district is subject to approval by the board of county commissioners, the board of county commissioners of the county or counties in which the overlapping territory is located approves by resolution the inclusion of such service as part of the service plan of said overlapping special district; and

(II) Where the service plan of such overlapping special district is subject to the approval of the governing body of a municipality, the governing body of any municipality that has adopted a resolution of approval of the overlapping special district pursuant to section 32-1-204.5 (1) (a) or 32-1-204.7 approves by resolution the inclusion of such service as part of the service plan of said overlapping special district; and

(III) The improvements or facilities to be financed, established, or operated by the overlapping special district for the provision of the same service as the existing special or metropolitan district do not duplicate or interfere with any other improvements or facilities already constructed or planned to be constructed within the portion of the existing special or metropolitan district that the overlapping special district overlaps or will overlap; and

(IV) The board of directors of any special district or metropolitan district authorized to provide a service within the boundaries of the overlapping area consents to the overlapping special district providing the same service.

(c) Nothing in this subsection (3) shall be construed to encourage the unnecessary proliferation, duplication, overlapping, or fragmentation of special or metropolitan districts.

Source: **L. 81:** Entire article R&RE, p. 1546, § 1, effective July 1. **L. 97:** (2) amended and (3) added, p. 1415, § 1, effective June 3. **L. 2003:** (3)(b)(II) amended, p. 1315, § 1, effective August 6.

Editor's note: This section is similar to former § 32-3-103 (1) and (2) as it existed prior to 1981.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Agricultural property previously excluded from a recreational district may be reincluded within that district when the prop-

erty use changes to residential and upon proper notice to property owners as required in this section, notwithstanding the fact that the change in use occurred seven years earlier and the prop-

erty could have been reincluded in the district at that time. *Front Range Partners v. Hyland Hills Metro.*, 706 P.2d 1279 (Colo. 1985).

32-1-108. Correction of faulty notices. In any case where a notice is provided for in this article, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated; but the court, in that case, shall order due notice to be given and shall continue the hearing until such time as notice has been properly given, and thereupon it shall proceed as though notice had been properly given in the first instance.

Source: L. 81: Entire article R&RE, p. 1546, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-109. Early hearings. All cases in which there arises a question of the validity of the organization of a special district or a question of the validity of any proceeding under this article shall be advanced as a matter of immediate public interest and concern and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this article.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-110. Construction of other laws. If any provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former § 32-4-131 as it existed prior to 1981.

32-1-111. Validation of special districts - bonds. The organization pursuant to law of any special district, by decree of a court of competent jurisdiction entered prior to July 1, 1981, and the obligations incurred by and the bonds of such districts issued prior to July 1, 1981, and the proceedings related thereto, are hereby validated.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-112. Validation of boundaries of metropolitan districts. All changes or purported changes to the corporate boundaries of existing metropolitan districts, which changes were initiated prior to March 1, 1981, and are completed prior to July 1, 1981, are hereby validated notwithstanding any lack of power or authority, other than constitutional. Such boundary changes shall be the valid boundaries of the respective districts in accordance with their terms and authorization proceedings. This section shall not operate to validate any

boundary change which was determined in any legal proceedings to be illegal, void, or ineffective prior to March 1, 1981, or any boundary change the validity of which is the subject of a legal proceeding instituted prior to March 1, 1981.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

32-1-113. Liberal construction. This article, being necessary to secure the public health, safety, convenience, and welfare, shall be liberally construed to effect its purposes.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former §§ 32-1-111 and 32-4-130 as they existed prior to 1981.

PART 2

CONTROL ACT

Law reviews: For article, "Metropolitan District Service Plans: An Overview of Municipal Review", see 33 Colo. Law. 63 (April 2004).

32-1-201. Applicability. This part 2 shall be applicable to any petition for the organization of any proposed special district filed in any district court of competent jurisdiction, except where a petition for the organization of a special district confined exclusively within the boundaries of any existing municipality has been approved by a resolution of the governing body of the municipality.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-203 as it existed prior to 1981.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

32-1-202. Filing of service plan required - report of filing - contents - fee. (1) (a) Persons proposing the organization of a special district, except for a special district that is contained entirely within the boundaries of a municipality and subject to the provisions of section 32-1-204.5, shall submit a service plan to the board of county commissioners of each county that has territory included within the boundaries of the proposed special district prior to filing a petition for the organization of the proposed special district in any district court. The service plan shall be filed with the county clerk and recorder for the board of county commissioners at least ten days prior to a regular meeting of the board of county commissioners, the division, and the state auditor. Within five days after the filing of any service plan, the county clerk and recorder, on behalf of the board of county commissioners, shall report to the division on forms furnished by the division the name and type of the proposed special district for which the service plan has been filed. If required by county policy adopted pursuant to the procedure provided in section 30-28-112, C.R.S., the service plan shall be referred to the planning commission which shall consider and make a recommendation on the service plan to the board of county commissioners within thirty days after the plan was filed with the county clerk and recorder. At the next regular meeting of the board of county commissioners that is held at least ten days after the final planning commission action on the service plan, the board of county commissioners shall set a date within thirty days of the meeting for a public hearing on the service plan of the proposed special district. The board of county commissioners shall provide written

notice of the date, time, and location of the hearing to the division. The board of county commissioners may continue the hearing for a period not to exceed thirty days unless the proponents of the special district and the board agree to continue the hearing for a longer period.

(b) Notwithstanding the requirements of paragraph (a) of this subsection (1), the service plan of a proposed health service district or health assurance district shall not be referred to the county planning commission for consideration or recommendations. At the next regular meeting of the board of county commissioners that is held at least ten days after the filing of the service plan with the county clerk and recorder, the board of county commissioners shall set a date within thirty days of such filing for a public hearing on the service plan of the proposed district. The board of county commissioners shall provide written notice of the meeting pursuant to paragraph (a) of this subsection (1).

(2) The service plan shall contain the following:

(a) A description of the proposed services;

(b) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.

(c) A preliminary engineering or architectural survey showing how the proposed services are to be provided;

(d) A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;

(e) A general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located, and of municipalities and special districts which are interested parties pursuant to section 32-1-204 (1);

(f) A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;

(g) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;

(h) Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met;

(i) Such additional information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203;

(j) For a mental health care service district, any additional information required by section 32-17-107 (2) that is not otherwise required by paragraphs (a) to (i) of this subsection (2);

(k) For a health assurance district, any additional information required by section 32-19-106 (2) that is not otherwise required by paragraphs (a) to (i) of this subsection (2).

(2.1) No service plan shall be approved if a petition objecting to the service plan and signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property to be included in such district, is filed with the board of county commissioners no later than ten days prior to the hearing under section 32-1-204, unless such property has been excluded by the board of county commissioners under section 32-1-203 (3.5).

(3) Each service plan filed shall be accompanied by a processing fee set by the board of county commissioners not to exceed five hundred dollars, which shall be deposited into the county general fund; except that the board of county commissioners may waive such

fee. Such processing fee shall be utilized to reimburse the county for reasonable direct costs related to processing such service plan and the hearing prescribed by section 32-1-204, including the costs of notice, publication, and recording of testimony. If the board of county commissioners determines that special review of the service plan is required, the board may impose an additional fee to reimburse the county for reasonable direct costs related to such special review. If the board imposes such an additional fee, it shall not be less than five hundred dollars, and it shall not exceed one one-hundredth of one percent of the total amount of the debt to be issued by the district as indicated in the service plan or the amended service plan or ten thousand dollars, whichever is less. The board may waive all or any portion of the additional fee.

(4) In the case of a proposed health service district, submission to the board of county commissioners by the petitioners of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with subsection (2) of this section.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1. **L. 82:** (1) amended, p. 491, § 1, effective February 19. **L. 85:** (1) amended, (2) R&RE, and (4) added, pp. 1098, 1099, §§ 1-3, effective May 3; (2.1) added, p. 1104, § 1, effective July 1. **L. 86:** (2)(b) amended, p. 1030, § 13, effective January 1, 1987. **L. 90:** (3) amended, p. 1452, § 10, effective July 1. **L. 91:** (1), (2)(b), and (3) amended, p. 781, § 3, effective July 1. **L. 94:** (4) amended, p. 2802, § 566, effective July 1. **L. 96:** (4) amended, p. 473, § 8, effective July 1. **L. 2005:** (2)(j) added, p. 1035, § 2, effective June 2. **L. 2007:** (1) amended and (2) (k) added, pp. 1186, 1187, §§ 2, 3, effective July 1.

Editor's note: This section is similar to former § 32-1-204 as it existed prior to 1981.

32-1-203. Action on service plan - criteria. (1) The board of county commissioners of each county which has territory included within the proposed special district, other than a proposed special district which is contained entirely within the boundaries of a municipality, shall constitute the approving authority under this part 2 and shall review any service plan filed by the petitioners of any proposed special district. With reference to the review of any service plan, the board of county commissioners has the following authority:

- (a) To approve without condition or modification the service plan submitted;
- (b) To disapprove the service plan submitted;
- (c) To conditionally approve the service plan subject to the submission of additional information relating to or the modification of the proposed service plan.
- (2) The board of county commissioners shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented:
 - (a) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
 - (b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.
 - (c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.
 - (d) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

(2.5) The board of county commissioners may disapprove the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

- (a) Adequate service is not, or will not be, available to the area through the county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.
- (b) The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204 (1).

(c) The proposal is in substantial compliance with a master plan adopted pursuant to section 30-28-106, C.R.S.

(d) The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

(e) The creation of the proposed special district will be in the best interests of the area proposed to be served.

(3) The board of county commissioners may conditionally approve the service plan of a proposed special district upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in subsection (2) of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the board of county commissioners.

(3.5) (a) The board of county commissioners may exclude territory from a proposed special district prior to approval of the service plan submitted by the petitioners of a proposed special district. The petitioners shall have the burden of proving that the exclusion of the property is not in the best interests of the proposed special district. Any person owning property in the proposed special district who requests that his or her property be excluded from the special district prior to approval of the service plan shall submit the request to the board of county commissioners no later than ten days prior to the hearing held under section 32-1-204, but the board of county commissioners shall not be limited in its action with respect to exclusion of territory based upon the request. Any request for exclusion shall be acted upon before final action of the county commissioners under section 32-1-205.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.5), if the service plan submitted by the petitioners of a proposed special district is for a health service district or health assurance district, the board of county commissioners shall not accept or act upon the request of a person owning property in the proposed special district that his or her property be excluded from the special district.

(4) The findings of the board of county commissioners shall be based solely upon the service plan and evidence presented at the hearing by the petitioners, planning commission, and any interested party.

(5) In the case of a proposed health service district, submission to the board of county commissioners by the petitioners of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with subsections (2) and (2.5) of this section.

Source: **L. 81:** Entire article R&RE, p. 1548, § 1, effective July 1. **L. 85:** (1) amended, (2) R&RE, and (2.5) and (5) added, pp. 1099, 1100, §§ 4, 5, effective May 3; (3.5) added, p. 1104, § 2, effective July 1. **L. 94:** (5) amended, p. 2802, § 567, effective July 1. **L. 96:** (5) amended, p. 473, § 9, effective July 1. **L. 2007:** (3.5) amended, p. 1187, § 4, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-204. Public hearing on service plan - procedures - decision. (1) The board of county commissioners shall provide written notice of the date, time, and location of the hearing to the petitioners and the governing body of any existing municipality or special district that has levied an ad valorem tax within the next preceding tax year and that has boundaries within a radius of three miles of the proposed special district boundaries, which governmental units shall be interested parties for the purposes of this part 2. The board of county commissioners shall make publication of the date, time, location, and purpose of the hearing, the first of which shall be at least twenty days prior to the hearing date. The board of county commissioners shall include in the notice a general description of the land contained within the boundaries of the proposed special district and information outlining

methods and procedures pursuant to section 32-1-203 (3.5) concerning the filing of a petition for exclusion of territory; except that, if the hearing is to review a service plan for a health service district or health assurance district, the notice shall not include information regarding filing a petition for exclusion of territory. The publications shall constitute constructive notice to the residents and property owners within the proposed special district who shall also be interested parties at the hearing.

(1.5) Not more than thirty days nor less than twenty days prior to the hearing held pursuant to this section, the petitioners for the organization of the special district shall send letter notification of the hearing to the property owners within the proposed special district as listed on the records of the county assessor on the date requested unless the petitioners represent one hundred percent of the property owners. The notification shall indicate that it is a notice of a hearing for the organization of a special district and shall indicate the date, time, location, and purpose of such hearing, a reference to the type of special district, the maximum mill levy, if any, or stating that there is no maximum that may be imposed by the proposed special district, and procedures for the filing of a petition for exclusion pursuant to section 32-1-203 (3.5). Except when no mailing is required, the mailing of the letter notification to all addresses or post office box addresses within the proposed special district shall constitute a good-faith effort to comply with this subsection (1.5), and failure to notify all electors thereby shall not provide grounds for a challenge to the hearing being held.

(2) (a) If there is a county planning commission or a regional planning commission in lieu thereof, the service plan submitted by the petitioners for the organization of the proposed special district shall be delivered by the county clerk and recorder to such planning commission. The county planning commission or regional planning commission shall study such service plan and present its recommendations consistent with this part 2 to the board of county commissioners within thirty days following the filing of the service plan with the county clerk and recorder.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), the service plan of a proposed health service district or health assurance district shall not be delivered to the planning commission for study or recommendations unless specifically requested by the petitioners. If the petitioners do not request that the service plan be delivered to the planning commission, the clerk and recorder shall deliver the service plan to the board of county commissioners and the planning commission shall not be required to study the service plan or to present recommendations to the board of county commissioners pursuant to paragraph (a) of this subsection (2).

(3) The hearing held by the board of county commissioners shall be open to the public, and a record of the proceedings shall be made. All interested parties as defined in this section shall be afforded an opportunity to be heard under such rules of procedure as may be established by the board of county commissioners. Any testimony or evidence which in the discretion of the board of county commissioners is relevant to the organization of the proposed special district shall be considered.

(4) Within twenty days after the completion of the hearing, the board of county commissioners shall advise the petitioners for the organization of the proposed special district in writing of its action on the service plan. If the service plan is approved as submitted, a resolution of approval shall be issued to the petitioners. If the service plan is disapproved, the specific detailed reasons for such disapproval shall be set forth in writing. If the service plan is conditionally approved, the changes or modifications to be made in, or additional information relating to, the service plan, together with the reasons for such changes, modifications, or additional information, shall also be set forth in writing, and the proceeding shall be continued until such changes, modifications, or additional information is incorporated in the service plan. Upon the incorporation of such changes, modifications, or additional information in the service plan of the proposed special district, the board of county commissioners shall issue a resolution of approval to the petitioners.

Source: L. 81: Entire article R&RE, p. 1549, § 1, effective July 1. L. 85: (1.5) added, p. 1106, § 1, effective January 1, 1986. L. 91: (1), (1.5), and (2) amended, p. 782, § 4, effective June 4. L. 96: (1.5) amended, p. 309, § 7, effective April 15. L. 2007: (1) and (2) amended, p. 1188, § 5, effective July 1.

Editor's note: This section is similar to former § 32-1-208 as it existed prior to 1981.

32-1-204.5. Approval by municipality. (1) No special district shall be organized if its boundaries are wholly contained within the boundaries of a municipality or municipalities, except upon adoption of a resolution of approval by the governing body of each municipality. The information required and criteria applicable to such approval shall be the information required and criteria set forth in sections 32-1-202 (2) and 32-1-203 (2). With reference to the review of any service plan, the governing body of each municipality has the following authority:

- (a) To approve without condition or modification, the service plan submitted;
- (b) To disapprove the service plan submitted;
- (c) To conditionally approve the service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan or by agreement with the proponents of the proposed service plan.

(2) In the case of a proposed health service district, submission to the governing body of the municipality of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with the requirements of sections 32-1-202 (2) and 32-1-203 (2) and (2.5) as required by subsection (1) of this section.

Source: **L. 85:** Entire section added, p. 1101, § 6, effective May 3. **L. 94:** (2) amended, p. 2802, § 568, effective July 1. **L. 96:** (2) amended, p. 473, § 10, effective July 1.

32-1-204.7. Approval by an annexing municipality. (1) If a special district that was originally approved by a board of county commissioners becomes wholly contained within the boundaries of a municipality or municipalities by annexation or boundary adjustment, the governing body of the special district may petition the governing body of any such municipality to accept a designation as the approving authority for the special district. The municipality may accept the designation through the adoption of a resolution of approval by the governing body of the municipality.

(2) Upon the adoption of the resolution by the governing body of any municipality pursuant to subsection (1) of this section, all powers and authorities vested in the board of county commissioners pursuant to this article shall be transferred to the governing body of the municipality, which shall constitute the approving authority for the special district for all purposes under this article.

Source: **L. 2003:** Entire section added, p. 1315, § 2, effective August 6.

32-1-205. Resolution of approval required. (1) A petition for the organization of a special district filed in any district court of competent jurisdiction pursuant to the provisions of section 32-1-301 shall be accompanied by a resolution approving the service plan of the proposed special district by the board of county commissioners of each county where the territory of the proposed special district lies or, where required pursuant to section 32-1-204.5, by a resolution of approval by the governing body of each municipality. If the boundaries of a proposed special district include territory within two or more counties, a resolution approving the service plan for such special district shall be required from the board of county commissioners of each county which has territory included in the proposed special district; but the board of county commissioners of each of the respective counties, in their discretion, may hold a joint hearing on the proposed special district in accordance with section 32-1-204.

(2) Except as provided in section 32-1-206, no petition for the organization of a special district shall be considered by any court in this state without the resolution of approval and the service plan required by this part 2. The approved service plan and the resolution of approval required by this part 2 shall be incorporated by reference in and appended to the order establishing the special district after all other legal procedures for the organization of the proposed special district have been complied with.

Source: **L. 81:** Entire article R&RE, p. 1550, § 1, effective July 1. **L. 85:** (1) amended, p. 1101, § 7, effective May 3. **L. 91:** (1) amended, p. 783, § 5, effective June 4.

Editor's note: This section is similar to former §§ 32-1-206 and 32-1-209 (1) as they existed prior to 1981.

ANNOTATION

Change from sanitation district to metropolitan district is organization of a new and different special district, not just a mechanical name change. Therefore, approval of the service plan for new district is required by the boards of county commissioners of all counties within the district's boundaries. In re Org. of Upper Bear Creek, 682 P.2d 61 (Colo. App. 1983), aff'd on other grounds, 715 P.2d 799 (Colo. 1986).

Authority of city council to approve initial petition for formation of quasi-municipal cor-

poration does not constitute unconstitutional delegation of power because such authority constitutes an exercise of city's police power, which includes implied standard of "reasonableness", and additional procedural steps exist pursuant to this act before such district may be formed. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990) (decided under law in effect prior to 1985 amendment).

32-1-206. Judicial review. (1) If the petitioners for the organization of a proposed special district fail to secure such resolution of approval in the first instance or on remand from any board of county commissioners or, where required pursuant to section 32-1-204.5, from the governing body of any municipality, the petitioners may request the court to review such action. If the court determines such action to be arbitrary, capricious, or unreasonable, the court shall remand the matter back to the board of county commissioners or to the governing board of the municipality for further action with specific direction as necessary to avoid the arbitrary, capricious, or unreasonable result. Another public hearing shall be held with notice to interested parties as defined in section 32-1-204 (1).

(2) If the service plan is approved by the board of county commissioners, any interested party as defined in section 32-1-204 (1), if such party had appeared and presented its objections before the board of county commissioners, shall be given notice and have the right to appear and be heard at the hearing on the court petition for the organization of the special district, and the court may dismiss the court petition upon a determination that the decision of the board of county commissioners was arbitrary, capricious, or unreasonable.

Source: L. 81: Entire article R&RE, p. 1550, § 1, effective July 1. L. 91: (1) amended, p. 783, § 6, effective June 4.

Editor's note: This section is similar to former § 32-1-209 (1) as it existed prior to 1981.

32-1-207. Compliance - modification - enforcement. (1) Upon final approval by the court for the organization of the special district, the facilities, services, and financial arrangements of the special district shall conform so far as practicable to the approved service plan.

(2) (a) After the organization of a special district pursuant to the provisions of this part 2 and part 3 of this article, material modifications of the service plan as originally approved may be made by the governing body of such special district only by petition to and approval by the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 in substantially the same manner as is provided for the approval of an original service plan; but the processing fee for such modification procedure shall not exceed two hundred fifty dollars. Such approval of modifications shall be required only with regard to changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area. Approval for modification shall not be required for changes necessary only for the execution of the original service plan or for changes in the boundary of the special district; except that the inclusion of property that is located in a county or municipality with

no other territory within the special district may constitute a material modification of the service plan or the statement of purposes of the special district as set forth in section 32-1-208. In the event that a special district changes its boundaries to include territory located in a county or municipality with no other territory within the special district, the special district shall notify the board of county commissioners of such county or the governing body of the municipality of such inclusion. The board of county commissioners or the governing body of the municipality may review such inclusion and, if it determines that the inclusion constitutes a material modification, may require the governing body of such special district to file a modification of its service plan in accordance with the provisions of this subsection (2).

(b) Except as otherwise described in paragraph (d) of this subsection (2), a special district shall not furnish domestic water or sanitary sewer service directly to residents and property owners in unincorporated territory located in a county that has not approved the special district's service plan unless the special district notifies the board of county commissioners of the county of its plan to furnish domestic water or sanitary sewer service directly to residents and property owners in the county and receives approval from the board to do so. Within forty-five days of receiving the notification, the board may review the special district's planned action and may, in its own discretion and following notice by the board, require a public hearing prior to giving approval of the planned action, prior to which hearing the governing body of the special district shall provide such information and data as the board reasonably requests. Failure to provide information as requested by the board is grounds for the board to delay the public hearing until the board receives the information. The board shall either approve or deny the proposed action within one hundred twenty days of the public hearing.

(c) Before approving a planned special district action described in paragraph (b) of this subsection (2), the board of county commissioners of a county shall, not less than forty-five days prior to the first meeting of the board at which the approval specified in paragraph (b) of this subsection (2) may be given, provide public notice in the manner that the county requires of the possible approval within the newly described area to be served. The notice is required to include specific notification that any property owner wishing to have his or her property excluded from the proposed area to be served shall, not later than forty days from the first public notice, request that his or her property be excluded from the proposed area to be served by the special district. The board is not limited in its action with respect to exclusion of territory based on the request. A request for exclusion shall include a legal description of the property subject to the request, and the board shall act upon the request before taking final action on the request for approval pursuant to paragraph (b) of this subsection (2).

(d) The requirements detailed in paragraphs (b) and (c) of this subsection (2) do not apply in the following circumstances:

(I) A special district provides domestic water or sanitary sewer service only to private property owners pursuant to written agreement between the special district and the property owners;

(II) A special district provides domestic water or sanitary sewer service within the boundaries of another governmental entity, including, without limitation, a city, a municipality, or another special district, pursuant to an intergovernmental agreement;

(III) A special district provides any storm drainage or storm sewer services or facilities within the county; or

(IV) Domestic water service and sanitary sewer service is being provided, or a water or sanitary sewer service area extension has been approved by the county into which the service area is to be expanded, within unincorporated territory located in the county as of May 11, 2012.

(3) (a) Any material departure from the service plan as originally approved or, if the same has been modified, from the service plan as modified, which constitutes a material modification thereof as set forth in subsection (2) of this section, may be enjoined by the court approving the organization of such special district upon its own motion, upon the motion of the board of county commissioners or governing body of a municipality from

which a resolution of approval is required by this part 2, or upon the motion of any interested party as defined in section 32-1-204 (1).

(b) No action may be brought to enjoin the construction of any facility, the issuance of bonds or other financial obligations, the levy of taxes, the imposition of rates, fees, tolls and charges, or any other proposed activity of the special district unless such action is commenced within forty-five days after the special district has published notice of its intention to undertake such activity. Such notice shall describe the activity proposed to be undertaken by the special district and provide that any action to enjoin such activity as a material departure from the service plan must be brought within forty-five days from publication of the notice. The notice shall be published one time in a newspaper of general circulation in the district. The district shall also provide notice to the district court. On or before the date of publication of the notice, the district shall also mail notice to the board of county commissioners or governing body of a municipality from which a resolution is required by this part 2.

(c) A board of county commissioners may request any special district located wholly or partially within the county's unincorporated area, and the governing body of any municipality may request any special district located wholly or partially within the municipality's boundaries, to file, not more than once a year, a special district annual report. The annual report shall be filed with the board of county commissioners, any municipality in which the special district is wholly or partially located, the division, and the state auditor, and such report shall be deposited with the county clerk and recorder for public inspection, and a copy of the report shall be made available by the special district to any interested party pursuant to section 32-1-204 (1). If a special district files an annual report pursuant to this paragraph (c), such report shall include but shall not be limited to information on the progress of the special district in the implementation of the service plan. The board of county commissioners or the governing body of the municipality may review the annual reports in a regularly scheduled public meeting, and such review shall be included as an agenda item in the public notice for such meeting.

(d) Any special district created on or after July 1, 1991, shall annually file the report specified in paragraph (c) of this subsection (3) with the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 for five years after its organization and for succeeding annual periods, if so requested by the board of county commissioners or the governing body of the municipality. The annual report shall also be filed with the division and with the state auditor. The state auditor shall review the annual report and report any apparent decrease in the financial ability of the district to discharge its existing or proposed indebtedness in accordance with the service plan to the division. In such event, the division shall confer with the board of the special district and the board of county commissioners or the governing body of the municipality regarding such condition. The division may establish a standard form for the annual report that the board of a special district may elect to use.

(4) In the case of a health service district, a change in service by the district shall not be deemed material unless the change affects the license or certificate of compliance issued by the department of public health and environment. A health service district shall be exempt from paragraphs (b) and (c) of subsection (3) of this section.

Source: L. 81: Entire article R&RE, p. 1551, § 1, effective July 1. L. 85: (3) amended and (4) added, p. 1102, §§ 8, 9, effective May 3. L. 90: (2) amended, p. 1452, § 11, effective July 1. L. 91: (2) and (3)(c) amended and (3)(d) added, p. 784, § 7, effective June 4. L. 94: (4) amended, p. 2803, § 569, effective July 1. L. 96: (4) amended, p. 473, § 11, effective July 1. L. 2003: (2) and (3)(d) amended, p. 1316, § 3, effective August 6. L. 2009: (3)(d) amended, (SB 09-087), ch. 325, p. 1732, § 2, effective September 1. L. 2012: (2) amended, (HB 12-1239), ch. 175, p. 628, § 1, effective May 11.

Editor's note: This section is similar to former § 32-1-209 as it existed prior to 1981. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Statute not applicable to special districts organized under law preceding the 1965 Special District Control Act. *Senior Corp. v. Bd. of Assessment Appeals*, 702 P.2d 732 (Colo. 1985).

This section contains no procedure for “re-organization”, and in the absence of any legislatively created procedure for such, the court will not superimpose a judicially crafted “re-organization” procedure. *Upper Bear Creek v. Bd. of County Comm’rs*, 715 P.2d 799 (Colo. 1986).

It is a material modification of a service plan when a special district expands its sanitation service authority to include water service and thus, pursuant to subsection (2), approval by the boards of county commissioners of the counties in which the special district is located is required. *Upper Bear Creek v. Bd. of County Comm’rs*, 715 P.2d 799 (Colo. 1986).

A service plan providing that the special district “will” build specified recreation facilities obligates the special district to build those facilities unless the special district can demonstrate that plan compliance is no longer practicable. *Plains Metro. Dist. v. Ken-Caryl Ranch*, 250 P.3d 697 (Colo. App. 2010).

Special district’s violation of its service plan can be remedied under subsection (3)(a). Although the claims alleging that the special district did not comply with its duty did not specifically allege a statutory cause of action or cite provisions governing “compliance” with and judicial “enforcement” of service plans, the substance of the requested relief was clear and consistent with the statute. *Plains Metro. Dist. v. Ken-Caryl Ranch*, 250 P.3d 697 (Colo. App. 2010).

32-1-208. Statement of purposes - districts without service plans. (1) On or before July 1, 1986, any special district which does not have a service plan approved pursuant to this part 2 shall file a statement of purposes in the form set forth in subsection (2) of this section with the board of county commissioners of each county and governing body of each municipality which has territory included within the boundaries of the special district and with the division. The statement of purposes shall be accepted by such board of county commissioners and by such governing body of each municipality without any requirement for hearing thereon. The following documents shall be deemed to be the statement of purposes required by this section for any special district which does not have a service plan approved pursuant to this part 2 because it was at the time of organization confined exclusively within the boundaries of a municipality, and no new statement of purposes need be filed by the special district except as required by subsection (3) of this section:

- (a) The petition for organization;
- (b) The resolution or ordinance of the governing body of the municipality approving the special district;
- (c) Any agreements between the municipality and the district; and
- (d) Any plans filed with the municipality describing the services to be provided by the special district.

(2) The statement of purposes required under this section shall describe the purposes for which the special district was organized, the services and facilities provided or to be provided by the special district, and the areas served or to be served by the special district.

(3) Any statement of purposes filed by a special district pursuant to this section shall be subject to the requirements of and may be modified in the manner provided in section 32-1-207. The board shall notify the board of county commissioners or the governing body of any municipality in which the special district is wholly or partially located of any proposed increase in the indebtedness of the district.

- (4) The provisions of this section shall not apply to health service districts.

Source: **L. 85:** Entire section added, p. 1103, § 10, effective May 3. **L. 91:** (3) amended, p. 786, § 8, effective June 4. **L. 96:** (4) amended, p. 474, § 12, effective July 1.

32-1-209. Submission of information. If a special district fails either to file a special district annual report pursuant to section 32-1-207 (3) (c) or to provide any information required to be submitted pursuant to section 32-1-104 (2) within nine months of the date of the request for such information, the board of county commissioners of any county or the governing body of any municipality in which the special district is located, after notice to

the affected special district, may notify any county treasurer holding moneys of the special district and authorize the county treasurer to prohibit release of any such moneys until the special district complies with such requirements.

Source: L. 91: Entire section added, p. 786, § 9, effective June 4.

PART 3

ORGANIZATION

32-1-301. Petition for organization. (1) After approval of the service plan pursuant to section 32-1-205 or 32-1-206 or after approval of the petition by the governing body of a municipality pursuant to section 32-1-205, the persons proposing the organization of a special district may file a petition for organization in the district court vested with jurisdiction of the county in which all or part of the real property in the proposed special district is situated. The petition shall be signed by not less than thirty percent or two hundred of the taxpaying electors of the proposed special district, whichever number is the smaller.

(2) The petition shall set forth:

(a) The type of service to be provided by the proposed special district and the name of the proposed special district, consisting of a chosen name preceding one of the following phrases:

(I) Ambulance district;

(I.1) Fire protection district;

(II) Health service district;

(III) Metropolitan district;

(IV) Park and recreation district;

(V) Sanitation district;

(VI) Water and sanitation district;

(VII) Water district;

(VIII) Tunnel district;

(IX) Mental health care service district;

(X) Health assurance district.

(b) A general description of the facilities and improvements, if any, to be constructed, installed, or purchased for the special district;

(c) A statement as to whether the proposed special district lies wholly or partly within another special district or municipality;

(d) The estimated cost of the proposed facilities and improvements;

(d.1) The estimated property tax revenues for the district's first budget year;

(e) A general description of the boundaries of the special district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his property is within the special district;

(f) If selected by the petitioners, a general description of the boundaries of director districts which shall have, as nearly as possible, the same number of eligible electors, which shall be as contiguous and compact as possible, and which shall be represented on the board by a director who is an eligible elector within the boundaries of the respective director district;

(g) A request for the organization of the special district;

(h) A request for the submission to the electors of the special district at the organizational election of any questions permitted to be submitted at such election pursuant to section 32-1-803.5.

(3) The petition shall be accompanied by a resolution approving the service plan as provided in section 32-1-205, unless the service plan has been approved by the court as provided in section 32-1-206 or unless such special district is confined exclusively within the boundaries of any existing municipality, and the governing body of the municipality has approved the petition for organization by resolution which shall be attached to the petition.

Source: **L. 81:** Entire article R&RE, p. 1551, § 1, effective July 1. **L. 83:** (2)(a)(I) R&RE and (2)(a)(I.1) added, p. 412, §§ 4, 5, effective June 1. **L. 85:** (1) amended, p. 1108, § 1, effective March 1; (2)(f) amended, p. 1083, § 2, effective July 1, 1986. **L. 86:** (2)(d.1) added, p. 1030, § 14, effective January 1, 1987. **L. 87:** (2)(a)(VIII) added, p. 1232, § 2, effective May 13. **L. 91:** (1) amended, p. 786, § 10, effective June 4. **L. 92:** (2)(f) amended, p. 875, § 107, effective January 1, 1993. **L. 93:** (2)(h) added, p. 1439, § 134, effective July 1. **L. 96:** (2)(a)(II) amended, p. 470, § 2, effective July 1. **L. 2005:** (2)(a)(IX) added, p. 1035, § 3, effective June 2. **L. 2007:** (2)(a)(X) added, p. 1189, § 6, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Authority of city council to approve initial petition for formation of quasi-municipal corporation does not constitute unconstitutional delegation of power because such authority constitutes an exercise of city's police power, which includes implied standard of "reasonableness",

and additional procedural steps exist pursuant to this act before such district may be formed. *State Farm v. City of Lakewood*, 788 P.2d 808 (Colo. 1990) (decided under law in effect prior to 1985 amendment).

32-1-302. Bond of petitioners. At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, or a cash deposit made sufficient to pay all expenses connected with the proceedings in case the organization of the special district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioner to execute or deposit the same, the petition shall be dismissed.

Source: **L. 81:** Entire article R&RE, p. 1552, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-303. Court jurisdiction - transfer of file - judge not disqualified. (1) (a) The district court sitting in or for any county in this state is vested with the jurisdiction to organize special districts which may be entirely within or partly within and partly without the judicial district in which said court is located. The court in and for the county in which the petition for the organization of a special district has been filed, for all purposes of this part 3 except as otherwise provided, shall thereafter maintain and have original and exclusive jurisdiction, coextensive with the boundaries of the special district and of the property proposed to be included in said special district or affected by said special district, without regard to the usual limits of its jurisdiction.

(b) If any special district by any reason whatsoever subsequently becomes situated entirely without a judicial district, the court on its motion or upon motion of the board shall transfer the entire file pertaining to the special district to the district court of the judicial district in which the major portion of the special district is then located, and said district court then shall have full jurisdiction over the special district in accordance with this article as if the proceedings had originally been filed there.

(2) No judge of the court wherein such petition is filed shall be disqualified to perform any duty imposed by this part 3 by reason of ownership of property within any proposed special district.

Source: **L. 81:** Entire article R&RE, p. 1552, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-304. Notice of court hearing. Except as otherwise provided in section 32-1-304.5, immediately after the filing of a petition, the court wherein the petition is filed, by order, shall fix a place and time, not less than twenty days nor more than forty days after the petition is filed, for hearing thereon. Thereupon the clerk of the court shall cause notice by publication to be made of the pendency of the petition, the purposes and boundaries of the special district, and the time and place of hearing thereon. The clerk of the court shall also forthwith cause a copy of the notice to be mailed by United States registered mail to the board of county commissioners of each of the several counties and to each party entitled to notice pursuant to section 32-1-206 (2). The notice shall include a general description of the land contained within the boundaries of the proposed special district and information explaining methods and procedures for the filing of a petition for exclusion of territory pursuant to section 32-1-305 (3).

Source: **L. 81:** Entire article R&RE, p. 1553, § 1, effective July 1. **L. 91:** Entire section amended, p. 786, § 11, effective June 4. **L. 2007:** Entire section amended, p. 1189, § 7, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For requirements for notice by publication, see part 1 of article 70 of title 24.

32-1-304.5. Court hearing not required - health service district - health assurance district. (1) If the petition for organization filed with the court pursuant to section 32-1-301 is for a health service district or health assurance district, the court shall not hold a hearing or provide notice pursuant to section 32-1-304. In lieu of holding a hearing, the court shall review the petition for a health service district or health assurance district and the additional information submitted to the court pursuant to section 32-1-301. In addition, the court shall review the findings of the board of county commissioners pursuant to section 32-1-205 or the findings of the court pursuant to section 32-1-206, as applicable.

(2) The court shall complete the review of information required pursuant to subsection (1) of this section within thirty calendar days of receipt of the petition for a health service district or health assurance district. Within such period, the court shall determine whether the persons proposing the petition have complied with all of the statutory requirements for proposing a special district and that the required number of taxpaying electors of the proposed special district have signed the petition.

(3) If the court finds that the petition has not been signed and presented in conformity with this part 3, the court shall either dismiss said proceedings and adjudge the costs against the signers of the petition in the proportion it deems just and equitable or allow the petitioners an opportunity to correct any technical defects in the petition and refile the petition with the court. No appeal or other remedy shall lie from an order dismissing said proceedings. Nothing in this subsection (3) shall be construed to prevent the filing of a subsequent petition for similar improvements or for a similar special district, and the right to renew such proceedings is hereby expressly granted and authorized.

(4) The court shall not accept or act upon petitions filed by an owner of any real property within a proposed health service district or health assurance district stating reasons why the property should not be included therein and requesting that the property be excluded therefrom.

(5) If the court concludes that a petition for the organization of a health service district or health assurance district has been signed and presented in conformity with this part 3 and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the organization of the special district be submitted at an election

to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S. In such event, the provisions of section 32-1-305 (5), (6), and (7) shall apply to the election.

Source: L. 2007: Entire section added, p. 1189, § 8, effective July 1.

32-1-305. Court hearing - election - declaration of organization. (1) Except as otherwise provided in section 32-1-304.5, on the day fixed for the hearing provided in section 32-1-304 or at an adjournment thereof, the court shall first ascertain, from such evidence which may be adduced, that the required number of taxpaying electors of the proposed special district have signed the petition.

(2) Except as otherwise provided in section 32-1-304.5, upon said hearing, if the court finds that the petition has not been signed and presented in conformity with this part 3, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in the proportion it deems just and equitable. No appeal or other remedy shall lie from an order dismissing said proceedings. Nothing in this subsection (2) shall be construed to prevent the filing of a subsequent petition for similar improvements or for a similar special district, and the right so to renew such proceedings is hereby expressly granted and authorized.

(3) Except as otherwise provided in section 32-1-304.5, anytime after the filing of the petition for the organization of a special district but no later than ten days before the day fixed for the hearing thereon, the owner of any real property within the proposed special district may file a petition with the court stating reasons why said property should not be included therein and requesting that said real property be excluded therefrom. The petition shall be duly verified and shall describe the property sought to be excluded. The court shall hear the petition and all objections thereto at the time of the hearing on the petition for organization and shall determine whether, in the best public interest, the property should be excluded or included in the proposed special district. The court shall exclude property located in any home rule municipality in respect to which a petition for exclusion has been filed by the municipality.

(4) Except as otherwise provided in section 32-1-304.5, upon the hearing, if it appears that a petition for the organization of a special district has been signed and presented in conformity with this part 3 and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the organization of the special district be submitted at an election to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S.

(5) At such election the voter shall vote for or against the organization of the special district and for five electors of the district who shall constitute the board of the special district, if organized.

(6) If a majority of the votes cast at said election are in favor of the organization and the court determines the election was held in accordance with articles 1 to 13 of title 1, C.R.S., the court shall declare the special district organized and give the special district the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, and designate the first board elected. Thereupon the special district shall be a quasi-municipal corporation and a political subdivision of the state of Colorado with all the powers thereof.

(7) If an order is entered declaring the special district organized, such order shall be deemed final, and no appeal or other remedy shall lie therefrom. The entry of such order shall finally and conclusively establish the regular organization of the special district against all persons except the state of Colorado in an action in the nature of quo warranto commenced by the attorney general within thirty-five days after entry of such order declaring such special district organized and not otherwise. The organization of said special district shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (7).

Source: L. 81: Entire article R&RE, p. 1553, § 1, effective July 1. **L. 92:** (4) amended, p. 876, § 108, effective January 1, 1993. **L. 94:** (6) amended, p. 1642, § 65, effective May

31. L. 2007: (1), (2), (3), and (4) amended, p. 1190, § 9, effective July 1. **L. 2012:** (7) amended, (SB 12-175), ch. 208, p. 881, § 146, effective July 1.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (7) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Quo warranto action in subsection (7) is exclusive means of attacking an order declaring a special district organized if an organizational election is used. In re Org. of Upper Bear Creek, 682 P.2d 61 (Colo. App. 1983), aff'd, 715 P.2d 799 (Colo. 1986).

Provision relating to quo warranto action is inapposite where county is an interested and aggrieved party pursuant to §§ 32-1-203, 32-1-206, 32-1-207, and 32-1-1201. County had standing under such sections to attack court's

decree. In re Org. of Upper Bear Creek, 682 P.2d 61 (Colo. App. 1983), aff'd, 715 P.2d 799 (Colo. 1986).

Constitutional challenge to subsections (4) through (6) of this section on grounds that denying corporate entities the right to vote on the formation of a special district violates the equal protection clause was premature as no petition for organization was pending before district court. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

32-1-305.5. Organizational election - new special district - first directors. (1) In the order authorizing the election, the court shall name either the clerk and recorder of the county in which the district is to be or another eligible elector as the designated election official responsible for the conducting of the election.

(2) At the election, the eligible electors shall vote for or against the organization of the special district and for the members of the board who will serve if the special district is organized. The terms of office of the first directors shall be as follows:

(a) In the case of a five-member board, two directors shall serve until they or their successors are elected and qualified at the next regular special district election occurring in any year following that in which the special district was organized, and three shall serve until they or their successors are elected and qualified at the second regular special district election after organization.

(b) In the case of a seven-member board, three directors shall serve until they or their successors are elected and qualified at the next regular special district election occurring in any year following that in which the special district was organized, and four shall serve until they or their successors are elected and qualified at the second regular special district election after organization.

(3) The basic term of office for directors, after the original terms provided in subsection (2) of this section, shall be four years.

(4) A nomination for director to serve for either term may be made by self-nomination and acceptance form or letter, as provided in section 32-1-804.3, with the time and manner of filing such form or letter as directed in the order of the district court authorizing the election.

(5) If, after the results of the election are certified, the court finds that a majority of the votes cast at the election are in favor of organization, the court shall proceed with the order establishing the special district and shall issue certificates of election for the directors elected.

Source: **L. 92:** Entire section added, p. 876, § 109, effective January 1, 1993. **L. 99:** (4) amended, p. 448, § 1, effective August 4.

32-1-306. Filing decree. Within thirty days after the special district has been declared organized by the court, the special district shall transmit to the county clerk and recorder in each of the counties in which the special district or a part thereof extends certified copies

of the findings and the order of the court organizing said special district. The same shall be recorded by the county clerk and recorder in each county as provided in section 32-1-105. A copy of the approved service plan of the district shall be delivered to each such county clerk and recorder, who shall retain the service plan as a public record for public inspection. In addition, a copy of the service plan, together with a copy of the court's findings and order, shall be filed with the division as provided in section 32-1-105, and a map of the special district shall be filed with the county assessor in each county in which the special district or a part thereof extends and with the division according to the standards of the division. On or before January 1, 2010, a special district shall file a current, accurate map of its boundaries with the county clerk and recorder in each of the counties in which the special district or a part thereof extends. A special district shall maintain a current, accurate map of its boundaries and shall provide for such map to be on file with the county assessor, the clerk and recorder, and the division on or before January 1 of each year.

Source: **L. 81:** Entire article R&RE, p. 1554, § 1, effective July 1. **L. 85:** Entire section amended, p. 1020, § 6, effective July 1. **L. 2009:** Entire section amended, (SB 09-087), ch. 325, p. 1732, § 3, effective September 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For provisions concerning public records, see article 72 of title 24.

32-1-307. Park and recreation districts - exclusion proviso. (1) Any provision of this part 3 to the contrary notwithstanding, no tract of land of forty acres or more used primarily and zoned for agricultural uses shall be included in any park and recreation district organized under this part 3 without the written consent of the owners thereof. No personal property which is situated upon real estate not included in such district shall be included within any park and recreation district. If, contrary to the provisions of this section, any such tract, parcel, or personal property is included in any park and recreation district, the owners thereof, on petition to the court, shall be entitled to have such property excluded from such district free and clear of any contract, obligation, lien, or charge to which it may be liable as a part of such district.

(2) If the use or zoning of any tract of land of forty acres or more lying within the boundaries of any park and recreation district organized under the provisions of this part 3 has been or is changed from agricultural use or zoning to any other use or zoning designation, such lands and the personal property thereon shall no longer be excluded from said district and shall be subject to all obligations, liens, or charges of such district on and after January 1 of the year following such change in use or zoning.

(3) When there is a change of use or zoning to any other use or zoning designation and the assessor of the county in which such lands are located is notified of a change, he shall give notification of such change to the secretary of the district. The district shall mail a notice of such action to the owner of the property at the address shown for such owner in the records of the county assessor's office.

(4) The district shall petition the appropriate district court for an order including the subject lands within the district, and the court, upon examining the proof of change of such use or zoning and finding that it complies with this section, shall enter an order including said lands within the district. The district shall have a certified copy of said order recorded by the county clerk and recorder and shall file a copy with the county assessor.

Source: **L. 81:** Entire article R&RE, p. 1554, § 1, effective July 1.

Editor's note: This section is similar to former § 32-2-108 as it existed prior to 1981.

ANNOTATION

Mining or mineral uses are not included in exclusion for land zoned for agricultural uses for purposes of taxation. *Fort Lupton Park & Recreation Dist. v. Amoco Prod. Co.*, 800 P.2d 1324 (Colo. App. 1990).

Subsection (2) applies to districts created before the adoption of the subsection. *Jefferson Center Metro. Dist. No. 1 v. North Jeffco Metro. Recreation & Park Dist.*, 844 P.2d 1321 (Colo. App. 1992).

Subsection (2) does not apply only to lands already included within the district. It applies also to lands that were included within the original description but were later excluded from the

district by court order. *Jefferson Center Metro. Dist. No. 1 v. North Jeffco Metro. Recreation and Park Dist.*, 844 P.2d 1321 (Colo. App. 1992).

Subsection (2) does not restrict the authority of a district to seek inclusion of rezoned agricultural land. It does prohibit the creation of a new district within an overlapping geographical area that is served by an existing district rendering similar services. *Jefferson Center Metro. Dist. No. 1 v. North Jeffco Metro. Recreation and Park Dist.*, 844 P.2d 1321 (Colo. App. 1992).

32-1-308. Applicability of article to existing districts and validation - districts being organized. (1) The provisions of this article which become effective July 1, 1981, shall apply to all special districts existing on June 30, 1981, or organized thereafter; except that any such existing district need not obtain a name change to conform to this article and that any district may continue to operate for the purpose or purposes for which it was organized.

(2) Any proceedings for the organization of a special district which were commenced prior to July 1, 1981, may continue pursuant to the laws in effect at the time such organization was commenced until the district court has declared the district organized. Thereafter, the special district shall be subject to the provisions of this article. Any such organizational proceedings which are dismissed by the board of county commissioners or by the district court and which are recommenced after July 1, 1981, shall be governed by the provisions of this article.

Source: L. 81: Entire article R&RE, p. 1555, § 1, effective July 1.

PART 4

INCLUSION OF TERRITORY

32-1-401. Inclusion of territory - procedure. (1) (a) The boundaries of a special district may be altered by the inclusion of additional real property by the fee owner or owners of one hundred percent of any real property capable of being served with facilities of the special district filing with the board a petition in writing requesting that such property be included in the special district. The petition shall set forth a legal description of the property, shall state that assent to the inclusion of such property in the special district is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for conveyance of land.

(b) The board shall hear the petition at a public meeting after publication of notice of the filing of such petition, the place, time, and date of such meeting, the names and addresses of the petitioners, and notice that all persons interested shall appear at such time and place and show cause in writing why the petition should not be granted. The board may continue such hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any municipality or county which may be able to provide service to the real property therein described or of any person in the existing special district to file a written objection shall be taken as an assent to the inclusion of the area described in the notice.

(c) (1) The board shall grant or deny the petition, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive, except as provided in subparagraph (II) of this paragraph (c). If a municipality or county has filed a written objection to such inclusion, the board shall not grant the petition as to any of the real

property to which adequate service is, or will be, available from such municipality or county within a reasonable time and on a comparable basis. If a petition is granted as to all or any of the real property therein described, the board shall make an order to that effect and file the same with the clerk of the court, and the court shall thereupon order the property to be included in the special district.

(II) A municipality or county which has filed a written objection to such inclusion and which can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the court, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious, or unreasonable.

(2) (a) In addition to the procedure specified in subsection (1) of this section, the boundaries of a special district may be altered by the inclusion of additional real property by:

(I) Not less than twenty percent or two hundred, whichever number is smaller, of the taxpaying electors of an area which contains twenty-five thousand or more square feet of land filing a petition with the board in writing requesting that such area be included within the special district; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in any special district without the consent of the owner thereof; the petition shall set forth a legal and a general description of the area to be included and shall be acknowledged in the same manner as required for conveyance of land; or

(II) The board adopting a resolution proposing the inclusion of a specifically described area; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in any special district without the consent of the owner thereof.

(b) The board shall hear the petition or resolution at a public meeting after publication of notice of the filing of such petition or adoption of such resolution, the place, time, and date of such meeting, the names and addresses of the petitioners, if applicable, the description of the area proposed for inclusion, and notice that all persons interested and a municipality or county which may be able to provide service to the real property therein described shall appear at the time and place stated and show cause in writing why the petition should not be granted or the resolution not finally adopted. The board may continue such hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing special district to file a written objection shall be taken as an assent on his part to the inclusion of the area described in the notice.

(c) The board shall grant or deny the petition or finally adopt the resolution, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive, except as provided in paragraph (d) of this subsection (2). If a municipality or county has filed a written objection to such inclusion, the board shall not grant the petition as to any of the real property to which adequate service is, or will be, available from such municipality or county within a reasonable time and on a comparable basis.

(d) If the petition is granted or the resolution finally adopted, the board shall make an order to that effect and file the same with the clerk of the court. A municipality or county which has filed a written objection to the inclusion and which can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the court, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious, or unreasonable. The court shall direct that the question of inclusion of the area within the special district be submitted to the eligible electors of the area to be included and shall order the secretary to give published notice, as provided in part 2 of article 5 of title 1, C.R.S., of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed inclusion. The election shall be held within the area sought to be included and shall be held and conducted, and the results thereof determined, in the manner provided in title 1, C.R.S. The ballot shall be prepared by the designated election official and shall contain the following words:

“Shall the following described area become a part of the district upon the following conditions, if any?

(Insert description of area)

(Insert accurate summary of conditions)

For inclusion

Against inclusion

(e) If a majority of the votes cast at the election are in favor of inclusion and the court determines the election was held in accordance with title 1, C.R.S., the court shall enter an order including any conditions so prescribed and making the area a part of the special district. The validity of the inclusion may not be questioned directly or indirectly in any suit, action, or proceeding, except as provided in article 11 of title 1, C.R.S.

(f) Nothing in this part 4 shall permit the inclusion in a district of any property which could not be included in the district at the time of its organization without the written consent of the owners thereof, unless the owners of such property shall consent in writing to the inclusion of such property in the district as prayed for in said petition or unless such property is no longer excludable pursuant to the provisions of section 32-1-307 (2).

(g) Nothing in this part 4 shall permit the inclusion in a special district of any property if a petition objecting to the inclusion and signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property to be included, is filed with the board no later than ten days prior to the public meeting held under paragraph (b) of this subsection (2).

(3) Not more than thirty days nor less than twenty days prior to a meeting of the board held pursuant to paragraph (b) of subsection (1) of this section or paragraph (b) of subsection (2) of this section, the secretary of the special district shall send letter notification of the meeting to the property owners within the area proposed to be included within the special district as listed on the records of the county assessor on the date requested unless the petitioners represent one hundred percent of the property owners. The notification shall indicate that it is a notice of a meeting for consideration of the inclusion of real property within a special district and shall indicate the date, time, location, and purpose of the meeting, a reference to the type of special district proposed for inclusion, the maximum mill levy, if any, or stating that there is no maximum that may be imposed if the proposed area is included within the special district, and procedures for the filing of a petition for exclusion pursuant to section 32-1-203 (3.5). Except as provided in this subsection (3), the mailing of the letter notification to all addresses or post office box addresses within the area proposed to be included within the special district shall constitute a good-faith effort to comply with this section, and failure to notify all electors thereby shall not provide grounds for a challenge to the meeting being held.

(4) Nothing in this part 4 shall be construed to permit the inclusion in a special district of any real property located in a city and county unless the governing body of such city and county has adopted a resolution of approval authorizing such inclusion pursuant to section 32-1-204.5 or waives its right to require such resolution in its sole discretion. Any resolution of approval so adopted or waiver so given shall be appended to any petition filed pursuant to paragraph (a) of subsection (1) of this section or subparagraph (I) of paragraph (a) of subsection (2) of this section.

Source: **L. 81:** Entire article R&RE, p. 1555, § 1, effective July 1. **L. 85:** (2)(a)(I) amended, p. 1108, § 2, effective March 1; (2)(g) added, p. 1105, § 3, effective July 1; (3) added, p. 1106, § 2, effective January 1, 1986. **L. 91:** (3) amended, p. 787, § 12, effective June 4. **L. 92:** (2)(d) and (2)(e) amended, p. 877, § 110, effective January 1, 1993. **L. 93:** (3) amended, p. 1790, § 78, effective June 6. **L. 96:** (3) amended, p. 309, § 8, effective April 15. **L. 97:** (4) added, p. 322, § 1, effective April 14.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Enactment of new statute could not include railroad property in special park and recreation district without consent in writing by owners because the property could not be included in the district at the time of its formation without such consent and no change had occurred with respect to railroad property. *Hyland Hills Park v. Denver R. Co.*, 850 P.2d 155 (Colo. App. 1992), *aff'd*, 864 P.2d 569 (Colo. 1993).

Subsection (2)(f) of this section sets forth only two ways in which previously excluded property can later be included in a district. Inclusion without consent is permitted if the property has changed from agricultural use to a different use or if the property has been rezoned; for all other property, consent of the owners is required. *Hyland Hills Park & Rec. District v. D. & R.G.W.R. Co.*, 864 P.2d 569 (Colo. 1993).

32-1-401.5. Fire protection districts - inclusion of personalty. (1) An owner of taxable personal property, situate on real property excluded from a fire protection district, capable of being served with facilities of the special district may file with the board a petition in writing requesting that such property be included in the special district. The petition shall set forth an accurate description of the taxable personal property owned by the petitioner to be included and shall state that assent to the inclusion of such property in the special district is given by the signer, being the owner of such property. The petition shall be acknowledged in the same manner as required for conveyance of land.

(2) The board shall hear the petition at a public meeting after publication of notice of the filing of such petition, the place, time, and date of such meeting, the names and addresses of the petitioners, and that all persons interested shall appear at such time and place and show cause in writing why the petition should not be granted. The board may continue such hearing to a subsequent meeting. There shall be no withdrawal from a petition after consideration by the board, nor shall further objections be filed except in case of fraud or misrepresentation.

(3) The board shall grant or deny the petition, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive. If the petition is granted as to all or any of the property therein described, the board shall make an order to that effect and file the same with the clerk of the court, and the court shall thereupon order the property to be included in the special district.

Source: L. 82: Entire section added, p. 493, § 1, effective March 17.

32-1-402. Effect of inclusion order. (1) The following shall be applicable to any proceeding for inclusion accomplished pursuant to this part 4:

(a) Nothing in this part 4 shall affect the validity of any area or property included or excluded from a special district by virtue of prior laws.

(b) After the date of its inclusion in a special district, such property shall be subject to all of the taxes and charges imposed by the special district and shall be liable for its proportionate share of existing bonded indebtedness of the special district; but it shall not be liable for any taxes or charges levied or assessed prior to its inclusion in the special district, nor shall its entry into the special district be made subject to or contingent upon the payment or assumption of any tax, rate, fee, toll, or charge, other than the taxes, rates, fees, tolls, and charges which are uniformly made, assessed, or levied for the entire special district, without the prior consent of the fee owners or approval of the electors of the area to be included.

(c) In any special district, the included property shall be liable for its proportionate share of annual operation and maintenance charges and the cost of facilities of the special district and taxes, rates, fees, tolls, or charges shall be certified and levied or assessed therefor. Nothing in this section shall prevent an agreement between a board and the owners of property sought to be included in a special district with respect to the fees, charges, terms, and conditions on which such property may be included.

(d) The change of boundaries of the special district shall not impair nor affect its organization, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

(e) The court order of any inclusion of territory accomplished pursuant to this part 4 shall be filed in accordance with the provisions of section 32-1-105.

(f) The special district's facility and service standards which are applied within the included area shall be compatible with the facility and service standards of adjacent municipalities.

Source: L. 81: Entire article R&RE, p. 1558, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

PART 5

EXCLUSION OF TERRITORY

32-1-501. Exclusion of property by fee owners or board - procedure. (1) The boundaries of a special district, except health service districts, may be altered by the exclusion of real property by the fee owner or owners of one hundred percent of any real property situate in the special district filing with the board a petition requesting that such real property of the fee owner or owners be excluded and taken from the special district. The petition shall set forth a legal description of the property, shall state that assent to the exclusion of the property from the special district is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for conveyance of land. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings.

(1.5) (a) In addition to the procedure specified in subsection (1) of this section, the board, through adoption of a resolution, may alter the boundaries of a fire protection district through the exclusion of real property from the district if the property to be excluded will be provided with the same service by another fire protection district or by a county fire improvement district and the board or governing body of that district has agreed by resolution to include the property into the district immediately after the effective date of the exclusion order.

(b) (I) Not more than forty-five days nor less than thirty days prior to a meeting of the board to consider final adoption of a resolution proposing property to be excluded, the secretary of the fire protection district shall send letter notification to the fee owner or owners of one hundred percent of all proposed real property to be excluded from the district as listed on the records of the county assessor on the date requested.

(II) The letter notification shall indicate that it is a notice of a meeting required to be held pursuant to subsection (2) of this section concerning the exclusion of the property from the district, shall indicate the date, time, and location of the meeting, and shall contain both a reference to the fire protection district or county fire improvement district proposed for inclusion and the current mill levy of the district, if any.

(III) The mailing of the letter notification to all addresses or post office box addresses within the area proposed to be excluded from the district shall constitute a good-faith effort to comply with this section, and failure to so notify all fee owners shall not provide grounds for a challenge to the meeting being held.

(2) The board shall hear the petition or resolution at a public meeting after publication of notice of the filing of the petition or preliminary adoption of the resolution, the place, time, and date of the meeting, the names and addresses of the petitioners, if applicable, a general description of the area proposed for exclusion, and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted or the resolution should not be finally adopted. The board may continue the hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing special district to file a written objection shall be taken as an assent on his or her part to the exclusion of the area described in the notice.

(3) The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition or to finally adopt the resolution or any portion thereof:

(a) The best interests of all of the following:

(I) The property to be excluded;

(II) The special district from which the exclusion is proposed;

(III) The county or counties in which the special district is located;

(b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;

(d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area or by the fire protection district or county fire improvement district that has agreed to include the property to be excluded from the special district;

(e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;

(f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;

(g) Whether an economically feasible alternative service may be available; and

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

(4) (a) (I) Except as provided in subparagraph (II) of this paragraph (a) and if the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition or resolution or some portion thereof should be excluded from the special district, it shall order that the petition be granted or that the resolution be finally adopted, in whole or in part.

(II) (A) If the property to be excluded from the special district will be served by a special district not yet organized, the board shall not order that the petition be granted or that the resolution be finally adopted until the special district has been organized pursuant to part 3 of this article.

(B) If the property to be excluded from the special district will be served by a fire protection district or county fire improvement district as provided in subsection (1.5) of this section, the board shall not order that the petition be granted or that the resolution be finally adopted until the fire protection district or county fire improvement district has adopted a resolution agreeing to include the property in the district immediately after the effective date of the exclusion order and has filed the resolution with the court.

(C) Notwithstanding any other provision of this article to the contrary, the property to be excluded may be included within the boundaries of the proposed special district.

(b) Upon granting the petition or finally adopting the resolution, the board shall file a certified copy of the order of the board excluding the property from the district with the clerk of the court, and, except as provided in paragraph (c) of this subsection (4), the court shall order the property to be excluded from the special district and, if applicable, included into the fire protection district or county fire improvement district that has previously agreed to include the property as provided in subsection (1.5) of this section.

(c) (I) If the property to be excluded from the special district will be served by a fire protection district or county fire improvement district that has previously agreed to include the property as provided in subsection (1.5) of this section and that has a higher mill levy than the special district and after the certified copy of the order of the board excluding the property from the district is filed with the clerk of the court, the court shall direct the question of excluding the area from the special district and including it in the fire protection district or county fire improvement district with a higher mill levy to the eligible electors of the area sought to be excluded. The court shall order the secretary to give published notice, as provided in part 2 of article 5 of title 1, C.R.S., of the time and place of the election and of the question to be submitted, together with a summary of any conditions

attached to the proposed exclusion. The election shall be held within the area sought to be excluded and shall be held and conducted, and the results thereof determined, in the manner provided in title 1, C.R.S. The ballot shall be prepared by the designated election official and shall contain the following words:

"Shall the following described area be excluded from the _____ district, which has a current mill levy of _____, and become a part of the _____ district, which has a current mill levy of _____, and upon the following conditions, if any?

(Insert general description of area)
(Insert accurate summary of conditions)

For exclusion from _____ district and inclusion
in _____ district _____
Against exclusion from _____ district _____"

(II) If a majority of the votes cast at the election pursuant to subparagraph (I) of this paragraph (c) are in favor of exclusion to become a part of another district and the court determines the election was held in accordance with title 1, C.R.S., the court shall enter an order with any conditions so prescribed excluding the area from the special district and including it in the fire protection district or county fire improvement district with a higher mill levy. The validity of the exclusion to become a part of another district may not be questioned directly or indirectly in any suit, action, or proceeding, except as provided in article 11 of title 1, C.R.S.

(d) The order of exclusion entered pursuant to paragraph (b) or (c) of this subsection (4) shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that the bonded indebtedness is then scheduled to be retired. After July 1, 1993, failure of the order for exclusion to recite the existence and scheduled retirement date of the indebtedness, when due to error or omission by the special district, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll pursuant to section 39-5-125, C.R.S.

(5) (a) If the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition or resolution should not be excluded from the special district, it shall order that the petition be denied or that the resolution be rescinded.

(b) (I) Any petition that is denied or resolution that is finally adopted may be appealed to the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. The appeal shall be taken no later than thirty days after the decision.

(II) Upon appeal, the board shall consider the factors set forth in subsection (3) of this section and shall make a determination whether to exclude the properties mentioned in the petition or resolution based on the record developed at the hearing before the special district board.

(c) (I) Any decision of the board of county commissioners may be appealed for review to the district court of the county which has jurisdiction of the special district pursuant to section 32-1-303 within thirty days of such board's decision.

(II) On appeal, the court shall review the record developed at the hearing before the special district board and, after considering all of the factors set forth in subsection (3) of this section, shall make a determination whether to exclude the properties mentioned in the petition or resolution.

Source: L. 81: Entire article R&RE, p. 1558, § 1, effective July 1. L. 88: (3) R&RE and (4) and (5) added, pp. 1149, 1150, §§ 1, 2, effective June 11. L. 93: (4)(b) amended, p. 83, § 1, effective March 29. L. 94: (1.5) added and (2), IP(3), (3)(a)(I), (3)(a)(II), (3)(b) to (3)(d), (3)(f), (4), (5)(a), (5)(b), and (5)(c)(II) amended, p. 1347, § 1, effective July 1. L. 96: (1) amended, p. 474, § 13, effective July 1.

Editor's note: (1) This section is similar to former § 32-2-122 as it existed prior to 1981.

(2) Section 2 of chapter 237, Session Laws of Colorado 1994, provides that, prior to the inclusion of any property into a fire district with a higher tax rate, an election pursuant to § 20 of article X of the Colorado constitution shall be held.

32-1-502. Exclusion of property within municipality - procedure. (1) (a) The governing body of any municipality wherein territory within a special district is located, the board of any special district with territory within the boundaries of any municipality, or fifty percent of the fee owners of real property in an area of any municipality in which territory within a special district is located may petition the court for exclusion of the territory described in the petition from the special district. Within ten days after the filing of any petition for exclusion, the governing body of the municipality and the board shall be notified of the exclusion proceedings. The taxpaying electors shall be notified of the exclusion proceedings by publication. The governing body of the municipality, the board, and the taxpaying electors, as a class, shall be parties to the exclusion proceedings.

(b) The provisions of this section shall not apply to health service districts.

(c) The provisions of this section shall not apply in the event that the territory described in the petition for exclusion constitutes the entire territory of the special district.

(2) Subject to the provisions of subsection (5) of this section, the court shall hold a hearing on the petition and order the territory described in the petition or any portion thereof excluded from the special district if the following conditions are met:

(a) The governing body of the municipality agrees, by resolution, to provide the service provided by the special district to the area described in the petition on and after the effective date of the exclusion order.

(b) The service to be provided by the municipality will be the service provided by the special district in the territory described in the petition for exclusion.

(c) The governing body of the municipality and the board shall each submit a plan for the disposition of assets and continuation of services to all areas of the district. Said plans shall include, if applicable, provisions for the maintenance and continuity of facilities to be utilized by the territories both within and without the municipal boundaries and of services to all territories served or previously served by the special district. If the municipality and the special district agree upon a single plan and enter into a contract incorporating its provisions, the court shall review such contract, and if it finds the contract to be fair and equitable, the court shall approve the contract and incorporate its provisions into its exclusion order. The court's review of the provisions of the contract shall include, but not be limited to, consideration of the amount of the special district's outstanding bonds, the discharge by the municipality or the territory excluded from the special district of that portion of the special district's indebtedness incurred to serve the territory proposed for exclusion, the fair market value and source of special district facilities located within the territory proposed for exclusion, the facilities to be transferred which are necessary to serve the territory proposed for exclusion, the adequacy of the facilities retained by the special district to serve the remaining territory of the special district, the availability of the facilities transferred to the municipality for use, in whole or in part, in the remaining territory of the special district, the effect which the transfer of the facilities and assumption of indebtedness will have upon the service provided by the special district in territory which is not part of the exclusion, and the extent to which the exclusion reduces the services or facilities or increases the costs to users in the remaining territory of the special district.

(d) If the municipality and the special district are unable to agree upon a single plan, the court shall review the plans of the municipality and the special district and direct each to carry out so much of their respective plans in which there is no disagreement and make such other provisions as the court finds fair and equitable, and shall make such allocation of facilities, impose such responsibilities for the discharge of indebtedness of the special district, and impose such other conditions and obligations on the special district and the municipality which the court finds necessary to permit the exclusion of territory from the special district and the transfer of facilities which are necessary to serve the territory excluded without impairing the quality of service nor imposing an additional burden or expense on the remaining territory of the special district. For the purpose of making such

determination, the criteria set forth in this paragraph (d) and paragraphs (b) and (c) of this subsection (2) shall be considered. The respective portions of the plans to be performed, the transfer of facilities, and the requirements for the discharge of indebtedness of the special district and other conditions and obligations imposed by the court shall be specifically set forth in the order excluding territory from the special district.

(3) (a) The following additional requirements shall be met before any court orders the exclusion of any area from any water, sanitation, or water and sanitation district or any metropolitan district providing water or sanitation services or both:

(I) Such district's outstanding bonds shall not exceed ten percent of the valuation for assessment of the taxable property in the remaining territory of the special district, or, as an alternative, the municipality or the territory excluded from the special district shall discharge that portion of the special district's indebtedness incurred to serve the territory proposed for exclusion or the municipality shall have entered into a contract to purchase the entire system or systems of such district at a price at least sufficient to pay in full all of the outstanding indebtedness of such district and all of the interest thereon.

(II) Provision shall be made that all areas of such district receive the service or services for which such district was organized in substantial compliance and fulfillment of the service plan of the district, if one exists, or in accordance with the petition for organization of such district if no service plan was originally adopted and approved pursuant to part 2 of this article.

(b) If an election in a water, sanitation, or water and sanitation district or a metropolitan district providing water or sanitation services or both has been held pursuant to subsection (7) of this section and the majority of votes cast favor the municipality providing the service, the municipality and such district shall enter into a contract for the municipality to assume full responsibility for the operation and maintenance of the entire system or systems of such district and to integrate said system or systems with those of the municipality to the largest extent possible. The terms and conditions of service and the rates to be charged by the municipality for said service under the contract shall be uniform with the terms, conditions, and rates for similar service provided by said municipality to other users within the municipality.

(4) If no election has been held pursuant to subsection (5) of this section, the following additional requirement shall be met before any court orders the exclusion of any area from any fire protection district: The quality of service including, but not limited to, the fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

(5) (a) After the filing of a petition for exclusion under subsection (1) of this section, ten percent or one hundred of the eligible electors of the special district territory proposed for exclusion, whichever number is less, may petition the court for a special election to be held within the special district territory proposed for exclusion on the question of exclusion of the territory described in the petition for exclusion. If a petition for a special election is filed with the court and complies with this subsection (5), the court shall order a special election to be held only after it finds the conditions of paragraphs (a), (c), and (d) of subsection (2) and, if applicable, of subsection (3) or (4) of this section are met. The election shall be held and conducted, and the results thereof determined, in the manner provided in articles 1 to 13 of title 1, C.R.S. The special district shall bear the costs of the election.

(b) If a majority of the electors voting at such election approve the question of exclusion, the court shall order the territory excluded from the special district in accordance with its findings on the conditions specified in subsection (2) and, if applicable, of subsection (3) or (4) of this section. If a majority of those voting do not approve the question, the court shall conclusively terminate the exclusion proceeding.

(6) Any order for exclusion of territory from a special district shall become effective on January 1 next following the date the order is entered by the court. The order for exclusion shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that such bonded indebtedness is then scheduled to be retired. After July 1, 1993, failure of the order for exclusion to recite the existence and scheduled retirement date of such indebtedness, when due to error or omission by the special district, shall not constitute

grounds for correction of the omission of a levy on the excluded property from the assessment roll pursuant to section 39-5-125, C.R.S.

(7) (a) After any exclusion of territory under this section, the court may order an election of the electors of the portion of the special district remaining to determine whether they desire the municipality to provide the service provided by the special district if either of the following conditions exists:

(I) More than fifty percent of the territory within the special district as it existed prior to such exclusion has been excluded; or

(II) The valuation for assessment of the area of the excluded territory is greater than the valuation for assessment of the area of the remaining territory in the special district.

(b) If a majority of the electors voting at such election approve the question requiring the municipality to provide such service, the court shall request the governing body of the municipality and the board to enter into a contract which will govern the providing of the service. The terms and conditions of the contract shall be reviewed and approved by the court, but in no event shall the terms, rates, and conditions be less equitable than for services supplied by a municipality to any other users within the municipality. The court's review of the contract or, if the municipality and the special district after good faith negotiations are unable to agree upon a contract, the court's order shall be in accordance with the criteria set forth in paragraphs (b), (c), and (d) of subsection (2) of this section. The special district shall continue in existence for the purpose of fulfilling any obligation imposed upon it by the contract with the municipality or otherwise.

(c) Any election held pursuant to this subsection (7) shall be held and conducted, and the results thereof determined, in the manner provided in articles 1 to 13 of title 1, C.R.S.

Source: **L. 81:** Entire article R&RE, p. 1559, § 1, effective July 1. **L. 85:** (2)(a) and (2)(b) amended, p. 1110, § 1, effective April 24. **L. 92:** (5)(a) and (7)(c) amended, p. 877, § 111, effective January 1, 1993. **L. 93:** (6) amended, p. 83, § 2, effective March 29. **L. 96:** (1)(b) amended, p. 474, § 14, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

This section is a remedial statute intended to facilitate the elimination of the overlapping of services provided by local governments and the double taxation which may occur because of annexation of municipal territory, when all or part of the annexed territory also lies within a special improvement district. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

It should be liberally construed so as to accomplish its purpose. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

Exclusive remedy. The entire purpose of the exclusion provisions — to eliminate the overlapping of services and double taxation — would be totally frustrated if a town were not allowed to petition for exclusion from the district. The statute provides no other remedy by which a town can avoid the necessity of paying for services which it already provides. In *Re Org.*

of N. Chaffee County Fire Prot. Dist., 190 Colo. 40, 544 P.2d 637 (1975).

Whether or not duplication of services caused. A municipality may petition for exclusion from a special service district regardless of whether annexation has caused the duplication of services. In *re Org. of N. Chaffee County Fire Prot. Dist.*, 190 Colo. 40, 544 P.2d 637 (1975).

This section controls in event of conflict. In the event of a conflict between this section and other exclusion provisions, this section is controlling. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

Remedies under this section and former § 32-5-323 are separate. The words "in addition to" contained in former § 32-1-309 are not intended to require that Denver proceed under former § 32-5-323 (since repealed), and this section sequentially. Instead, the two remedies are entirely separate. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

A town need not petition for exclusion from the district for water service that the district has

not provided and has not shown itself capable of providing. If the district were providing water service to the town in addition to the sewerage service, the town would be required to proceed through an exclusion process in order to substitute itself as the water service provider. *S. Fork Water v. Town of S. Fork*, 252 P.3d 465 (Colo. 2011).

Denver may, in the first instance, petition for the exclusion of the annexed municipal territory under this section. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

No need to first initiate petition for exclusion pursuant to former § 32-5-323. The words "in addition to" in former § 32-1-309, which provided that the procedure for filing petitions for exclusion under this section in addition to other means set forth in title 32 by which the exclusion may be accomplished, should not be construed to require Denver to initiate a petition for exclusion pursuant to former § 32-5-323 (since repealed) before proceeding under this section. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

The legislative purpose of this section is fulfilled by according Denver and other cities the right to file a petition for exclusion of municipal territory on their behalf in the first instance rather than proceeding indirectly through the property owners as would be required under former § 32-5-323 (since repealed). *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

Before a city may undertake to seek exclusion of a particular territory, it must establish itself as the governing body of that area. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

Until an annexation is finally determined to be void, the disputed territory remains a part of the annexing municipality. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

This section is not unconstitutionally vague and does not confer arbitrary and unlimited power on the trial court, but rather provides a specific statutory procedure for the exclusion of municipal territory from a special service district, as it sets forth conditions which a petitioning municipality must meet and which the trial court must find have been complied with in order to obtain exclusion from a district. *City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist.*, 181 Colo. 334, 509 P.2d 317 (1973).

Intent of section. The section is intended to ensure that the overall quality of the services provided will not be lower as a result of the exclusion of municipal territory. *City & County*

of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

City may contract with others to furnish services. This section does not require that the city itself do the furnishing of services; it merely says it shall provide them, and if a city council chooses to contract with others to provide such services, it has the right to do so. *City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist.*, 181 Colo. 334, 509 P.2d 317 (1973).

City need not prove intention to duplicate all services. While there was no evidence in the record to show that Denver could or would duplicate all of the services provided by the fire protection district, this section did not require Denver to prove its intention to do so. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

The requirement in subsection (2)(b) that the service provided by the municipality will be the service provided by the special district does not require the municipality to be able to provide the service before the exclusion occurs. *City Council v. S. Suburban Park*, 160 P.3d 376 (Colo. App. 2007).

In determining whether a plan is fair and equitable, it is not necessary to determine that the exclusion of property from a special district would result in either an impairment of the quality of service or the imposition of an additional burden or expense on the special district before considering statutory criteria, including fair market value. *City Council v. S. Suburban Park*, 160 P.3d 376 (Colo. App. 2007).

The quality of service and additional burden language in subsection (2)(d) is an outer limit on the court's power to add provisions to the exclusion plan rather than a prerequisite to considering the statutory criteria in making the exclusion fair and equitable. *City Council v. S. Suburban Park*, 160 P.3d 376 (Colo. App. 2007).

Although this section directs the trial court to make provisions in the exclusion plan as the court finds fair and equitable and references fair market value as one factor the court should consider, it does not require a trial court to order a city to reimburse a special district for the fair market value of the transferred facilities. *City Council v. S. Suburban Park*, 160 P.3d 376 (Colo. App. 2007).

Factors to be weighed. The trial court must weight the advantages and disadvantages of an exclusion to determine whether, on balance, the quality of service will not decline as a result of the exclusion. *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

Appellate court bound by trial court's determination. As to whether the services to be provided by Denver in the future would not be of lower quality than those presently provided

by the fire protection district, the appellate court is bound by the trial court's determination unless it is "clearly arbitrary and capricious". *City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist.*, 38 Colo. App. 53, 554 P.2d 714 (1976).

While the legality of annexation proceedings is being challenged in court, the disputed territory remains in the city subject to city taxes and assessments and is entitled to all city services. *City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist.*, 181 Colo. 334, 509 P.2d 317 (1973).

Property excluded from a fire protection district by a July 12, 1974 order was subject to all property taxes levied by the district for the 1974 taxable year, and for the taxable year 1975 and thereafter, the excluded territory was subject only to a levy for taxes for a pro rata share of the district's indebtedness outstanding on January 1, 1975. *City & County of Denver v. Bd. of Dirs.*, 37 Colo. App. 496, 549 P.2d 1090 (1976).

Applied in *City of Westminster v. Hyland Hills Metro. Park & Recreation Dist.*, 190 Colo. 558, 550 P.2d 337 (1976).

32-1-503. Effect of exclusion order. (1) Territory excluded from a special district pursuant to the provisions of this part 5 shall not be subject to any property tax levied by the board for the operating costs of the special district. For the purpose of retiring the special district's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the special district shall remain intact, and the excluded territory shall be obligated to the same extent as all other property within the special district but only for that proportion of such outstanding indebtedness and the interest thereon existing immediately prior to the effective date of the exclusion order. The board shall levy annually a property tax on all such excluded and remaining property sufficient, together with other funds and revenues of the special district, to pay such outstanding indebtedness and the interest thereon. The board is also empowered to establish, maintain, enforce, and, from time to time, modify such service charges, tap fees, and other rates, fees, tolls, and charges, upon residents or users in the area of the special district as it existed prior to the exclusion, as may in the discretion of the board be necessary to supplement the proceeds of said tax levies in the payment of the outstanding indebtedness and the interest thereon. In no event shall excluded territory of a special district become obligated for the payment of any bonded indebtedness created after the date of the court's exclusion order.

(2) The change of boundaries of the special district shall not impair nor affect its organization, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

(3) Notice of the court order of any exclusion accomplished pursuant to this part 5 shall be given in accordance with the provisions of section 32-1-105.

Source: L. 81: Entire article R&RE, p. 1562, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-308 as it existed prior to 1981.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section is directory to the taxing authorities. In *re Org. of S.W. Adams County Fire Prot. Dist.*, 192 Colo. 142, 556 P.2d 1215 (1976).

Property excluded from a fire protection district by a July 12, 1974 order was subject to all property taxes levied by the district for the 1974 taxable year, and for the taxable year 1975 and thereafter, the excluded territory was subject only to a levy for taxes for a pro rata share of the district's indebtedness outstanding on January 1, 1975. *City & County of Denver v. Bd. of Dirs.*, 37 Colo. App. 496, 549 P.2d 1090 (1976).

Property excluded from a special district pursuant to this section is still obligated to the same extent as all other property within the special district for purposes of retiring the special district's outstanding indebtedness existing at the time of the exclusion order. Excluded property is to be valued and assessed in the same manner, and subject to the same mill levy, as all other property in the district. In *re Black Forest Fire/Rescue Prot. Dist.*, 85 P.3d 591 (Colo. App. 2003).

"Proportion", as used in this section, refers to the relationship between a special district's outstanding indebtedness prior to the exclusion of property and its total indebtedness. Nothing in the section suggests that "pro-

portion” refers to any relationship between the assessed value of the excluded property and the assessed value of the district as a whole. In re Black Forest Fire/Rescue Prot. Dist., 85 P.3d 591 (Colo. App. 2003).

A court-ordered monetary transfer from the city to the special district upon exclusion is not double taxation for the same government service. The transfer of money to the special district was to compensate the district for its financial loss and was intended to support facilities outside of the city that will remain in the district. Taxes collected by the city and used to pay the transfer amount would serve a differ-

ent purpose from taxes used to support facilities within the city that are excluded from the district. Cherry Hills Vill. v. S. Suburban Park & Recreation Dist., 219 P.3d 421 (Colo. App. 2009).

This section cannot be construed to prohibit trial courts from ordering monetary transfers upon exclusion. Such an interpretation would be contrary to the provisions of § 32-1-502 (2)(d), which requires courts to resolve disputes in a manner that is fair and equitable. Cherry Hills Vill. v. S. Suburban Park & Recreation Dist., 219 P.3d 421 (Colo. App. 2009).

PART 6

CONSOLIDATION

Law reviews: For article, “Consolidation of Fire Protection Districts: A Case Study”, see 24 Colo. Law. 813 (1995).

32-1-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) “Concurring resolution” means a resolution passed in accordance with this part 6 by the board of any special district for the purpose of accepting the consolidation resolution.

(2) “Consolidated district” means a quasi-municipal corporation of this state resulting from the consolidation of two or more special districts; or resulting from the consolidation of one or more of the services of two or more special districts, one of which is not a metropolitan district, which consolidation of services may include the consolidation of all services of a special district with only specified services of one or more special districts; or resulting from the consolidation of one or more of the services of two or more metropolitan districts and may include the consolidation of all services of a metropolitan district with only specified services of another metropolitan district. If a district which provides a single service or water and sanitation services consolidates its service or services with another single service district, no new separate district may be formed.

(3) “Consolidation resolution” means a resolution passed in accordance with this part 6 by a board of any special district for the purpose of initiating the consolidation of two or more such special districts into a single and consolidated district, the consolidation of one or more of the services of two or more special districts, one of which is not a metropolitan district, or the consolidation of one or more of the services of two or more metropolitan districts.

Source: L. 81: Entire article R&RE, p. 1563, § 1, effective July 1. L. 85: (2) and (3) amended, p. 1111, § 1, effective July 1.

Editor’s note: This section is similar to former § 32-1-112 (2) to (4) as it existed prior to 1981.

32-1-602. Procedure for consolidation. (1) (a) Two or more special districts may be consolidated into a single consolidated district, and such consolidation may occur between or among such districts whether or not they were originally organized for the same purpose and whether or not such districts are contiguous.

(b) Two or more special districts may consolidate one or more of their services whether or not they were originally organized for the same purpose and whether or not such districts are contiguous.

(2) Consolidation may be accomplished in the following manner:

(a) The board of any special district shall pass a consolidation resolution declaring that such district and any specified special district or districts are so situated that all such districts may operate or that one or more specified services of each of the districts may be

operated effectively and economically as a consolidated district and that the public health, safety, prosperity, and general welfare of the inhabitants of the special district initiating the consolidation will be better served by the consolidation of such districts or services. The resolution shall also state the proposed name of the proposed consolidated district, the special districts or services to be included within the proposed consolidated district, whether the board of the consolidated district will have five or seven directors, any special conditions that may attach to the consolidated district, and the time limit within which the included special districts must approve the consolidation resolution in order to be included within the proposed consolidated district. Such time limit shall be not later than six months after the date of such resolution.

(b) After receipt of such consolidation resolution and prior to the time limit fixed in the consolidation resolution, the board of each of the special districts named in the resolution proposing the consolidation, other than the special district initiating the proposed consolidation, shall pass a resolution either concurring in the consolidation or rejecting the same and shall send a copy of such resolution to the special district initiating the consolidation.

(c) Each special district desiring to be included or have its service or services included within the consolidated district shall file the concurring resolution with the initiating special district. If one or more special districts sought to be included in the initiating resolution file concurring resolutions stating that such consolidated district will promote the public health, safety, prosperity, and general welfare of the inhabitants within the concurring special districts, the initiating special district, within thirty days after the date of the receipt of all concurring resolutions, shall file with the board of county commissioners of each county having territory within one or more of the districts and in the court wherein the organization petition of the initiating special district was filed a copy of such consolidation resolution and the concurring resolutions of the other special districts seeking consolidation of the districts or the specified services. Any proposed consolidated district which is subject to the provisions of part 2 of this article pursuant to section 32-1-607 (6) shall first obtain approval of the service plan in accordance with the provisions of part 2 of this article. Any special district rejecting the consolidation resolution shall not thereafter be included in any consolidation proceedings then pending.

(d) When the consolidation resolution and one or more concurring resolutions are filed in court, the court shall fix a date, not less than thirty days nor more than forty days after the date of filing, within which time a hearing shall be held to determine the legality of the proposed consolidation. Notice of the filing of the resolutions and of the date fixed for hearing objections to the proposed consolidation shall be given by publication, and written notice shall be provided to the governing body of any municipality entitled to notice pursuant to section 32-1-607 (6). No pleadings shall be filed by any special district involved, but any eligible elector of, the fee owner of any real property situated within, or any county or municipality having territory within any of the special districts involved in the proposed consolidation which desires to oppose the consolidation or the inclusion of property or territory in a consolidated district shall file a written and verified petition in the court five days prior to the hearing date and serve copies thereof upon each of the special districts desiring consolidation. The petition shall set forth clearly and concisely the objections of the petitioner, which objections shall be limited to the failure of any initiating district or concurring district to comply with this part 6, or, in a consolidation of services proceeding, duplication of service to the petitioner's property or territory by an existing municipality or special district not part of the proposed consolidated district or the provision of new and unwanted service to the petitioner's property by the proposed consolidated district. The court shall hear the petition and all objections to it at the time of the hearing on the consolidation resolution and the concurring resolutions and shall determine whether, in the general public interest and subject to the requirements of section 32-1-503, the property should be excluded or included in the proposed consolidated district.

(e) At the hearing, if the court finds that the consolidation resolution and the concurring resolutions have been properly filed and that the board of each special district desiring to be consolidated or desiring to have specified services consolidated has proceeded in accordance with this part 6, the court shall enter an order ex parte setting an election within each of the consolidating special districts for the approval of the consolidated district by the

eligible electors affected by the consolidation at the next regular special district or special election, which shall be held and conducted pursuant to the provisions of articles 1 to 13 of title 1, C.R.S. The order shall require publication of notice as required by section 1-5-207, C.R.S., specifying the name of the consolidated district; the names of the special districts to be consolidated or the name of the district into which specific services are to be consolidated and the names of the special districts presently empowered to provide the services; a summary of any special conditions that may attach to the consolidated district, including any preconsolidation agreements and the provisions included therein regarding the assumption of debt and the approval of any financial obligation, including accrued unfunded pension liability, as debt to remain payable by the taxpayers of the consolidating special district which incurred the obligation or maintained the pension plan to which the accrued unfunded liability attaches; if the consolidated district may be granted the powers of a metropolitan district, the effect of the change and the services a metropolitan district may provide, including any change in maximum mill levies set forth in section 32-1-1101 (1), or, if the mill levy is unlimited, the fact that there is no mill levy limit established by statute; and the area to be included within the consolidated district, which shall be all of the area originally contained within the organization order for each individual special district, together with all areas contained in any inclusions, the consolidated area not to include any area excluded by any special district being so consolidated or by the court pursuant to paragraph (d) of this subsection (2). If two or more districts are to be consolidated and if the consolidated district is to assume metropolitan district powers, the court shall order that the eligible electors vote separately on the question of consolidation and the question of granting the consolidated district the powers of a metropolitan district. If the eligible electors approve consolidation but reject the granting of metropolitan district powers, the consolidated district shall have only those powers granted single-purpose districts providing the same services. If all or part of the outstanding bonded indebtedness of all of the consolidating special districts is to be assumed by the consolidated district, the court shall also order that the eligible electors vote separately on the question of consolidation and the question of assuming the indebtedness at the consolidation election. If the eligible electors approve consolidation but reject the assumption of indebtedness by the consolidated district, the outstanding bonded indebtedness shall remain the obligation of the special district which incurred the bonded indebtedness and shall be paid and discharged by the taxpayers having taxable property within the boundaries of the indebted special district. If a preconsolidation agreement provides that the consolidation shall be contingent upon assumption of debt by the consolidated district, then the consolidation shall not be approved unless the assumption of indebtedness is approved by the eligible electors. If any financial obligation of one or more of the consolidating districts is to be submitted to the electors for approval as debt, the court shall also order that the electors vote separately on the question of consolidation and the question of approval of each financial obligation as debt, which issue shall be presented to the electors in accordance with the provisions of section 32-1-606.5. If the electors approve consolidation but do not approve the treatment of one or more financial obligations as debt, the financial obligations not so approved shall be assumed by the consolidated district in the same manner as other obligations of consolidating districts are assumed, unless a preconsolidation agreement providing that the consolidation shall be contingent upon the approval regarding treatment of the financial obligation as debt, in which case the consolidation shall not be approved. The area of the consolidated district after the election shall be the total area of the special districts consolidated existing as of the date of the court order. No appeal shall lie from any orders of the court.

(f) Approval by a majority of the eligible electors voting in the election within each of the consolidating special districts concerning the consolidation of the special districts or specified services shall be deemed to conclusively establish the consolidated district against all persons except the state of Colorado which, within thirty-five days after the election, may contest the consolidation or the election in an action in the nature of a writ of quo warranto. Otherwise, the consolidation of the districts or services and the organization of the consolidated district shall not directly or indirectly be questioned in any action or proceeding.

(3) Any proceeding for consolidation undertaken pursuant to this section which is not approved shall not operate as a bar to any subsequently proposed consolidation of one or more of the special districts or services named in the consolidation resolution with any other special district or with each other. The provisions of section 32-1-106 shall not apply to any subsequently proposed consolidation.

Source: **L. 81:** Entire article R&RE, p. 1563, § 1, effective July 1. **L. 85:** (1), (2)(a), (2)(c) to (2)(f), and (3) amended, p. 1112, § 2, effective July 1. **L. 92:** (2)(d) to (2)(f) amended, p. 878, § 112, effective January 1, 1993. **L. 93:** (2)(e) amended, p. 562, § 1, effective April 30. **L. 2012:** (2)(f) amended, (SB 12-175), ch. 208, p. 881, § 147, effective July 1.

Editor's note: (1) This section is similar to former § 32-1-113 as it existed prior to 1981.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (2)(f) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

32-1-602.5. Consolidation and review by administrative action. Whenever the division finds, upon its own investigation or upon the receipt of information from any source, that the consolidation, restructuring of services, or other changes in the operations of one or more special districts would be in the best interests of the residents of the special districts or will improve the quality of services or lower the costs of services, the division may review the operations and performance of such special districts and issue recommendations. The division may require one or more special district boards to hold a public meeting to discuss the operations and performance of such special districts. If such public meeting involves two special district boards and both boards agree that consolidation is appropriate, they shall commence consolidation procedures pursuant to section 32-1-602. If the public meeting involves three or more special district boards, a majority of such boards must approve consolidation before consolidation procedures are commenced.

Source: **L. 91:** Entire section added, p. 787, § 13, effective June 4.

32-1-603. Procedure after consolidation election. (1) After the election approving the consolidated district, the members of the board of each of the special districts consolidated or having services consolidated into the consolidated district shall constitute the organizational board of the consolidated district, regardless of the number of directors thereof. This organizational board shall remain as the board of the consolidated district until such time as the first board of the consolidated district is selected as provided in this section.

(2) The organizational board, within six months after the date of the consolidation election, shall:

(a) (I) If the board of the consolidated district is to have five directors, determine the terms of the directors of the first board as provided in paragraph (b) of this subsection (2); or

(II) If the board of the consolidated district is to have seven directors, divide the consolidated district into seven director districts, each of which shall have, as nearly as possible, the same number of eligible electors and which shall be as contiguous and compact as possible, and determine the terms of the directors of the first board as provided in paragraph (b) of this subsection (2). In making the division, the board shall consider existing or potential developments within the proposed director districts which when completed would, in the reasonably near future, increase or decrease the number of eligible electors within the director district. The organizational board shall then select from its members a representative of each director district, and, if possible, the representatives shall be eligible electors within the boundaries of the director district which they are selected to represent. Thereafter, directors shall be eligible electors of the director district which they represent.

(b) Determine the terms of the directors of the first board of the consolidated district. In making the determination, the organizational board shall fix the terms of the first board

as follows: The terms of two directors, if there are five directors, or three directors, if there are seven directors, of the first board having the fewest years to serve on the board to which they were originally elected shall expire at the first regular special district election after the date of order of the court as provided in subsection (4) of this section; and the terms of the remaining three directors, if there are five directors, or the remaining four directors, if there are seven directors, having the greatest number of years to serve on the board to which they were originally elected shall expire at the second regular special district election. If the terms of the directors so selected to the first board of the consolidated district expire on the same date, the terms of the directors shall be determined by the organizational board. The terms shall be determined, however, so that two or three directors, as applicable, shall have terms expiring in two years and three or four directors, as applicable, shall have terms expiring in four years. Thereafter, each board member shall have a term of four years.

(c) Determine the amount of bond for each director of the consolidated district, which amount shall not be less than one thousand dollars per director and may be an individual, schedule or blanket bond at the expense of the consolidated district, and fix the amount of the treasurer's bond in an amount not less than five thousand dollars, which bonds are conditioned upon the faithful performance of their duties.

(3) After making such determinations, the organizational board shall promptly file in the court having jurisdiction as provided in section 32-1-602 (2) (c) a petition stating the name of the consolidated district, the name and address of each member of the first board of the consolidated district, the term of each member thereof, the amount of the surety bonds fixed in accordance with this section, and a description of the director districts, if any, of the consolidated district. Such petition shall also have attached to it photocopies or duplicates of the bonds duly certified by the insurance or surety company issuing the bonds, the originals of which bonds shall be retained in the files of the consolidated district.

(4) The court, upon the filing of such petition, if satisfied that the allegations therein are true, shall enter an order ex parte stating the name of the consolidated district, the name and address of each member of the first board of the consolidated district, a description of the director districts, if any, of the consolidated district, a description of the total consolidated district, any conditions that may attach to the consolidated district if services are consolidated, a description of the specified services to be provided by such district, and the term of office of each member of the board of the consolidated district, and, at the same time, the court shall approve or disapprove the bond or bonds attached to the petition. This order shall be forthwith recorded in the office of the county clerk and recorder in each county wherein the consolidated district is organized, and notice of such action shall be given in accordance with the provisions of section 32-1-105.

(5) The members of the first board named in the order of court as provided in subsection (4) of this section, upon taking the oath of office, shall constitute the board of the consolidated district. The board shall elect one of its members as chairman of the board and president of the consolidated district, one of its members as treasurer of the board and the consolidated district, and a secretary of the board and the consolidated district who may be a member of the board. The secretary and the treasurer may be one person, but, if such is the case, he shall be a member of the board.

Source: **L. 81:** Entire article R&RE, p. 1565, § 1, effective July 1. **L. 85:** (1) and (4) amended, p. 1115, § 3, effective July 1; (2)(a)(II), (3), and (4) amended, p. 1084, § 3, effective July 1, 1986. **L. 92:** (2)(a) and (2)(b) amended, p. 880, § 113, effective January 1, 1993.

Editor's note: (1) This section is similar to former § 32-1-114 as it existed prior to 1981.

(2) Amendments to subsection (4) by House Bill 85-1009 and House Bill 85-1062 were harmonized.

32-1-604. Advisory board members. The members of the organizational board of the consolidated district not selected to act as the members of the first board of the consolidated district may act, however, as advisory members to the first board until such time as the terms of office for which they were originally elected would have expired. Advisory members

may be compensated equally with compensation paid to the board of the consolidated district for each meeting attended. Advisory board members may not act as officers of nor bind the consolidated district and shall have no vote on any matters before the board of the consolidated district, but they may be employed by the board of the consolidated district in any capacity.

Source: L. 81: Entire article R&RE, p. 1566, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-115 as it existed prior to 1981.

32-1-605. Special election provisions for consolidated districts. (1) The first election of the consolidated district shall be the next regular special district election. Except as otherwise provided in this part 6, nominations and elections for the consolidated district shall be governed by the provisions of article 4 of title 1, C.R.S.

(2) (a) For those consolidated districts having seven directors on the board, beginning with the first regular special district election and continuing with each regular special district election thereafter, members of the consolidated board shall be eligible electors of the director district which they represent. Nominations for a director shall be signed by eligible electors from the director district which the director to be elected is to represent.

(b) After the first regular special district election of directors to the board in such consolidated districts, the board of the consolidated district, at least ninety days prior to any subsequent regular special district election, shall determine the boundaries of each director district pursuant to section 32-1-603 (2) and shall not make any change until after the regular special district election has been held. Upon making any change in the boundaries of any director district, the board, within ninety days prior to a regular special district election, shall file a resolution changing the boundaries with the clerk of the court having jurisdiction and shall give notice by one publication within the consolidated district.

Source: L. 81: Entire article R&RE, p. 1566, § 1, effective July 1. L. 85: (1)(b) amended, p. 1084, § 4, effective July 1, 1986. L. 92: Entire section amended, p. 880, § 114, effective January 1, 1993.

Editor's note: (1) This section is similar to former § 32-1-116 as it existed prior to 1981.

(2) Changes were made in numbering in 1994 to conform to C.R.S. format.

32-1-606. Bonded indebtedness of consolidated districts. (1) Except as otherwise provided in subsection (3) of this section and approved by the eligible electors pursuant to section 32-1-602 (2) (e), all of the outstanding bonded indebtedness of any special district which becomes part of a consolidated district or which has all of its services completely consolidated shall be paid and discharged by the taxpayers having taxable property within the boundaries of the special district which incurred the bonded indebtedness. The board of the consolidated district shall levy a general property tax annually, for so long as may be necessary to pay the bonded indebtedness according to its terms, upon the properties lying within the boundaries of the special district which incurred the bonded indebtedness as the boundaries existed when the special district became a part of the consolidated district. The levying of the tax shall not prevent the board of the consolidated district from imposing special rates, tolls, or charges for services and facilities afforded within the boundaries of the indebted special district or made available to the properties lying within the indebted special district.

(2) Except as otherwise provided in subsection (3) of this section and approved by the eligible electors pursuant to section 32-1-602 (2) (e), all of the outstanding bonded indebtedness of any special district which consolidates less than all of its services into a consolidated district shall remain the obligation of the special district which incurred the bonded indebtedness and shall be paid and discharged by the taxpayers having taxable property within the boundaries of the indebted special district. The board of the special district which incurred the bonded indebtedness shall levy a general property tax annually,

for so long as may be necessary to pay the bonded indebtedness according to its terms, upon the properties lying within the boundaries of the indebted special district. The levying of the tax shall not prevent the board of the consolidated district from imposing special rates, tolls, or charges for services and facilities afforded within the boundaries of the indebted special district or made available to the properties lying within the indebted special district.

(3) Nothing in this section shall prevent a consolidated district from being bound by preconsolidation agreements which have been entered into between or among consolidating districts and which have become part of the terms and conditions of consolidation as set forth in the court order under section 32-1-603 (4), including the assumption of all or part of the outstanding bonded indebtedness of all of the consolidating special districts by the consolidated special district.

Source: **L. 81:** Entire article R&RE, p. 1567, § 1, effective July 1. **L. 85:** Entire section amended, p. 1115, § 4, effective July 1. **L. 92:** (1) and (2) amended, p. 881, § 115, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-117 as it existed prior to 1981.

32-1-606.5. Elector approval of financial obligations of consolidating districts.

(1) Whenever the board of a consolidating special district determines, by resolution, that the interest of the special district, the resulting consolidated district, and the public interest require that the obligation to pay and discharge any financial obligation, including accrued unfunded pension liability, remain the obligation of the taxpayers of said consolidating special district, the board shall request that the court order the submission of the proposition of treating the financial obligation as general obligation indebtedness to the electors of said consolidating district at the consolidation election. Such request shall be made to the court at the hearing held in accordance with section 32-1-602 (2) (e) and shall recite, as to each financial obligation to be submitted at the election:

(a) The object and purpose for which the financial obligation was incurred or the pension plan to which the accrued unfunded liability attaches;

(b) The estimated total cost of discharging the financial obligation;

(c) The estimated term over which the financial obligation will be discharged and the estimated annual cost;

(d) The initial mill levy necessary to pay the annual cost; and

(e) Whether the consolidation is contingent upon approval of the financial obligation as debt.

(2) If the court finds that the board's request complies with the requirements of subsection (1) of this section, the court shall grant the board's request and include in its order entered pursuant to section 32-1-602 (2) (e), that the electors of the consolidating special district vote separately on each financial obligation proposed to be treated as debt.

(3) If approved as debt by the electors at the consolidation election, the financial obligation of the consolidating special district, which becomes part of a consolidated district, shall be paid and discharged by the taxpayers having taxable property within the boundaries of the consolidating special district which incurred the obligation or maintained the pension plan to which the accrued unfunded liability attaches. The board of the consolidated district shall levy a general property tax annually for so long as may be necessary to retire the elector-approved debt.

(4) Nothing in this section shall prevent a consolidated district from being bound by preconsolidation agreements which have been entered into between or among consolidating districts and which have become part of the terms and conditions of consolidation as set forth in the court order under section 32-1-603 (4) including the assumption of any or all of the financial obligations of the consolidating special districts by the consolidated special district.

Source: **L. 93:** Entire section added, p. 563, § 2, effective April 30.

32-1-607. Powers. (1) Subject to the provisions of section 32-1-602 (2) (e), a consolidated district has all of the rights, powers, and authorities which were granted by statute to each of the special districts which are consolidated and may have the rights, powers, and authorities granted to a metropolitan district. Any consolidated district which embraces any special district is not limited in its exercise of the rights, powers, and authorities granted in this section because the full extent of the purposes and powers to be exercised by the consolidated district was not stated or was stated otherwise in any organization petition, court order, or ballot of any one or more of the special districts so consolidated, but a consolidated district established on or after July 1, 1985, is limited in its exercise of the rights, powers, and authorities granted or validated in this section to the extent the purposes and powers to be exercised by the consolidated district are stated in the consolidation resolution or subsequently approved by a vote of the eligible electors of the consolidated district.

(2) The consolidated district, upon order of the court as provided in section 32-1-603 (4), shall immediately become the owner of and entitled to receive, hold, sue for, and collect all moneys, funds, taxes, levies, assessments, fees, and charges and all property and assets of any kind or nature owned, leased, or claimed by or due to any of the special districts so consolidated. The obligations of the special districts, other than bonded indebtedness and elector-approved debt, shall be assumed by the consolidated district and paid by the consolidated district. Inclusions and exclusions of lands to and from the consolidated district shall be governed by the provisions of parts 4 and 5 of this article.

(3) In the case of a district into which services are consolidated, the district shall have all of the rights, powers, and authorities which are granted by statute for each of the consolidated services. Unless all of the rights, powers, and authorities of a metropolitan district are granted pursuant to section 32-1-602 (2) (e), if the consolidated district is authorized to provide two or more of the services specified in section 32-1-1004 (2), the consolidated district shall have only those rights, powers, and authorities granted and shall be subject to the limitations applicable to other single-purpose special districts providing a similar service. Any consolidated district which embraces any special district is not limited in its exercise of the rights, powers, and authorities granted in this section because the full extent of the purposes and powers to be exercised by the consolidated district was not stated or was stated otherwise in any organization petition, court order, or ballot of any one or more of the special districts so consolidated, but the consolidated district is limited in its exercise of the rights, powers, and authorities granted or validated in this section to the extent the purposes and powers to be exercised are stated in the consolidated resolution or subsequently approved by a vote of the eligible electors of the consolidated district.

(4) A consolidated district, upon order of the court as provided in section 32-1-603 (4), shall immediately become the owner of and entitled to receive, hold, sue for, and collect all moneys, funds, levies, assessments, fees, and charges and all properties and assets of any kind or nature owned, leased, or claimed by or due to any of the special districts so consolidated for the services consolidated, subject to the terms of a preconsolidation agreement, contract, or bond covenant affecting the conveyance. The obligations of the special districts for the services consolidated, other than bonded indebtedness and elector-approved debt, shall be assumed by the consolidated district and paid by the district. Inclusions and exclusions of lands to and from the consolidated district shall be governed by the provisions of parts 4 and 5 of this article.

(5) Except as provided in this part 6, any special district which consolidates less than all of its services into a consolidated district may remain in existence and not be affected by the consolidation proceeding or may, on motion of the board after notice to the court and after providing for the payment of any outstanding indebtedness, be dissolved. If the special district remains in existence, such special district shall no longer possess the power to provide the services so consolidated. If such special district is authorized to provide only a single remaining service, it shall have only those rights, powers, and authorities granted and shall be subject to the limitations applicable to other single-purpose special districts providing a similar service.

(6) No consolidation proceeding under this part 6 shall be subject to the provisions of part 2 of this article; except that any consolidation proceeding under this part 6 which will

result in the creation of a consolidated district or the consolidation of services within the boundaries of any existing municipality or within a radius of three miles of such municipality shall subject the proposed consolidated district to the provisions of part 2 of this article. In such event, the provisions of part 2 of this article relating to the organization of a proposed special district shall be complied with by the special district initiating the consolidation after adoption of the consolidation resolution and concurring resolutions but prior to filing such resolutions with the court as specified in section 32-1-602 (2) (c); except that the provisions of section 32-1-203 (2) (b) shall not be applicable when existing service is being provided by a consolidating special district. Any such municipality shall be an interested party and shall be entitled to notice of the proceedings for all of the purposes provided in part 2 of this article and in this part 6. If the board of either the initiating special district or a concurring special district disapproves the final action taken on such service plan, the consolidation proceeding shall be terminated.

Source: **L. 81:** Entire article R&RE, p. 1567, § 1, effective July 1. **L. 85:** (1) amended and (3) to (6) added, p. 1116, § 5, effective July 1. **L. 92:** (1) and (3) amended, p. 882, § 116, effective January 1, 1993. **L. 93:** (2) and (4) amended, p. 565, § 3, effective April 30.

Editor's note: This section is similar to former § 32-1-118 as it existed prior to 1981.

32-1-608. Subsequent consolidations. Any consolidated district may initiate proceedings for the consolidation of one consolidated district with another special district, whether or not a consolidated district, as provided in section 32-1-602. Such proceedings shall proceed in accordance with this part 6 without regard to the fact that the districts have been previously consolidated.

Source: **L. 81:** Entire article R&RE, p. 1567, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-120 as it existed prior to 1981.

PART 7

DISSOLUTION

32-1-701. Initiation - petition - procedure. (1) Whenever the majority of all the members of the board of a special district deems it to be in the best interests of such district that it be dissolved, the board shall file a petition for dissolution with the court.

(2) (a) The board, promptly and in good faith, shall also take the necessary steps to dissolve the special district whenever the lesser of five percent of the eligible electors or two hundred fifty eligible electors or, in case of special districts larger than twenty-five thousand persons, three percent of the eligible electors of the district or the division file an application with the board to dissolve the special district pursuant to the provisions of this part 7. In that case the board shall file a petition for dissolution with the court within sixty days after the date of filing of the application by the eligible electors. The petition for dissolution shall request an election and shall include a report on the steps which have been taken to comply with the requirements of section 32-1-702. The board, at the time it files a petition for dissolution pursuant to this subsection (2), may request that the proceedings under sections 32-1-703 and 32-1-704 be continued until further progress has been made in complying with the requirements of section 32-1-702.

(b) No application to dissolve a special district shall be circulated until it has been approved as following as nearly practicable the requirements of section 31-11-106, C.R.S., for municipal petitions. The application shall be submitted to the secretary of the board of directors of the special district. The secretary shall approve the application as to form or notify the person who submitted the application of any deficiencies in the form of the application by the close of the fifteenth business day following the submission of such

application. The secretary shall mail written notice of the approval or deficiencies to the person who submitted the application within two days after the date the action is taken.

(c) Any signature that is affixed to an application to dissolve a special district prior to the date that the written approval notice is mailed pursuant to paragraph (b) of this subsection (2) shall be invalid.

(d) No application to dissolve a special district filed by the eligible electors in accordance with paragraph (a) of this subsection (2) shall be accepted by the board of directors of such district more than ninety days after the date that the written approval notice is mailed pursuant to paragraph (b) of this subsection (2).

(3) If at least eighty-five percent of the territory encompassed by a special district lies within the corporate limits of a municipality, the governing body of such municipality may file an application with the board to dissolve the special district, and the board, promptly and in good faith, shall take the necessary steps to dissolve such district in accordance with the procedures specified in subsection (2) of this section.

(4) If the territory encompassed by a special district lies wholly within the boundaries of a regional service authority and if such service authority provides the same service as that provided by the special district, the board of directors of any such service authority may file an application with the board to dissolve the special district, and the board, promptly and in good faith, shall take the necessary steps to dissolve such district in accordance with the procedures specified in subsection (2) of this section.

(5) If the territory encompassed by a special district lies within the boundaries of two or more regional service authorities and if such service authorities provide the same service as that provided by the special district, the two or more service authorities may file jointly an application with the board to dissolve the special district, and the board, promptly and in good faith, shall take the necessary steps to dissolve such district in accordance with the procedures specified in subsection (2) of this section. The application shall include the consent of such service authorities to assume the responsibilities for providing the service in their respective jurisdictions or the consent of one regional service authority to provide the service on a contractual basis.

(6) Any application filed with the board to dissolve a special district under subsection (2), (3), (4), or (5) of this section shall be accompanied by a cash bond in the amount of three hundred dollars to cover the expenses connected with the proceedings if the dissolution is not effected.

Source: **L. 81:** Entire article R&RE, p. 1568, § 1, effective July 1. **L. 87:** (2) amended, p. 1236, § 1, effective May 8. **L. 91:** (2) amended, p. 788, § 14, effective June 4. **L. 92:** (2) amended, p. 882, § 117, effective January 1, 1993. **L. 99:** (2) amended, p. 448, § 2, effective August 4.

Editor's note: This section is similar to former § 32-1-603 as it existed prior to 1981.

32-1-702. Requirements for dissolution petition. (1) A petition for dissolution shall generally describe the territory embraced in the special district, shall have a map showing the special district, a current financial statement of the special district, and a plan for final disposition of the assets of the special district and for payment of the financial obligations of the special district, shall state whether or not the services of the special district are to be continued and, if so, by what means, and shall state whether the existing board or a portion thereof shall continue in office, subject to court appointment to fill vacancies. Said petition may provide for the regional service authority board or the governing body of the municipality to act as the board in accordance with the provisions of section 32-1-707.

(2) The special district's current financial statement shall be accompanied by adequate evidence of compliance with the requirements of subsection (3) of this section.

(3) The petition for dissolution shall provide for one of the following:

(a) A certificate that the special district has no financial obligations or outstanding bonds;

(b) A plan for dissolution stating that there are financial obligations or outstanding bonds but that the special district will not continue in existence and specifically providing

that funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., will be placed in escrow, prior to dissolution, in a state or national bank within this state having trust powers and which is a member of the federal deposit insurance corporation and stating that such funds or securities will be sufficient for the payment of the financial obligations and outstanding bonds and all expenses relating thereto, including charges of any escrow agent;

(c) A plan for dissolution stating that there are financial obligations or outstanding bonds and specifically providing that the special district will continue in existence to such extent as is necessary to adequately provide for the payment of such financial obligations and outstanding bonds.

(4) The petition for dissolution shall also provide for one of the following:

(a) A statement that the services of the special district will not be continued within such district;

(b) (I) A plan for dissolution specifically providing that services are to be continued within the special district by one or more regional service authorities, municipalities, counties, intergovernmental authorities formed and operated under part 2 of article 1 of title 29, C.R.S., or other special districts, or any combination thereof, and incorporating an agreement with such regional service authority, municipality, county, intergovernmental authority, or other special district, or any combination thereof, under which responsibility for all services presently provided by the special district will be assumed by such entity. Such agreement shall provide for the operation and maintenance of the system or facilities of the special district by the regional service authority, municipality, county, intergovernmental authority, or other special district, provisions for service, rates, and charges, and, if applicable, provisions concerning acquisition of the special district's system or facilities, consolidation or inclusion of territory, and procedures for contract modification, employee rights, and retirement benefits. Such agreement may include provisions for certification of levies by the special district continuing in existence under paragraph (c) of subsection (3) of this section, the contracting regional service authority, municipality, county, intergovernmental authority, or other special district providing the services. Any agreement concerning fire protection districts entered into pursuant to this subsection (4) shall include provisions for the continuation of paid employees' rights pursuant to section 32-1-1002 (2) and the retirement benefits of paid firefighters as provided in parts 2 and 4 of article 30.5 and article 31 of title 31, C.R.S., and the retirement benefits of volunteer firefighters under part 11 of article 30 of title 31, C.R.S.

(II) If a portion of a special district is located within the boundaries of a municipality and a dissolution proceeding has been initiated by the special district, the board shall hold a public hearing for residents in the unincorporated area of the special district to express their views concerning the provision of services to the unincorporated portions of the special district at the time of negotiation of the agreement or any modification thereof.

(5) Any plan for dissolution shall include adequate provision for continuance of existing services, and the financing thereof, to all areas of the special district being dissolved if such services are essential for the health, welfare, and safety of those residents of the special district being dissolved.

Source: **L. 81:** Entire article R&RE, p. 1569, § 1, effective July 1. **L. 89:** (3)(b) amended, p. 1116, § 31, effective July 1. **L. 91:** (4)(b)(I) amended, p. 796, § 1, effective April 10. **L. 95:** (4)(b)(I) amended, p. 1385, § 18, effective June 5. **L. 96:** (4)(b)(I) amended, p. 942, § 8, effective May 23.

Editor's note: This section is similar to former § 32-1-604 as it existed prior to 1981.

Cross references: For the legislative declaration contained in the 1995 act amending subsection (4)(b)(I), see section 1 of chapter 254, Session Laws of Colorado 1995.

32-1-703. Notice of filing petition. (1) Upon filing of the petition for dissolution by the board with the court, the court shall give notice by publication reciting the fact that a petition for dissolution has been filed and reciting the applicable financial provision set forth

under section 32-1-702 (3) and the applicable service provision set forth under section 32-1-702 (4).

(2) Such notice shall specify the time and place of a hearing, to be held within fifty days after filing of said petition, and shall provide that any interested party may appear and be heard on the sufficiency of the petition for dissolution or on the adequacy of the applicable financial and service provisions.

(3) The court shall also forthwith cause a copy of said notice to be mailed to the board of county commissioners of each county having territory within the special district and to the governing body of each municipality having territory located within a radius of three miles of the special district boundaries.

Source: L. 81: Entire article R&RE, p. 1570, § 1, effective July 1.

Editor's note: This section is similar to former §§ 32-1-605 and 32-3-125 as they existed prior to 1981.

32-1-704. Conditions necessary for dissolution - permissible provisions - hearings - court powers. (1) Prior to the court hearing on the petition for dissolution, the governing body of any municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., other special district, or regional service authority which is a party to an agreement to render services and which is assuming the responsibility to provide those services in the special district to be dissolved shall submit to the jurisdiction of the court by a written entry of appearance.

(2) Hearings may be continued by the court on the petition for dissolution as necessary to complete the proceedings authorized by this part 7. No petition shall be declared void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular.

(3) (a) Subject to the provisions of paragraphs (b) and (c) of this subsection (3), if the court finds that the special district has no financial obligations or outstanding bonds or that the special district's financial obligations and outstanding bonds will be adequately provided for prior to dissolution by means of escrow funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., to secure payment thereof, that the petition for dissolution meets the requirements of this part 7, and that an adequate plan exists for continuation of services, if required, the court shall order an election in the special district on the question of dissolution.

(b) Subject to the provisions of paragraph (c) of this subsection (3), the court shall enter an order dissolving the special district pursuant to section 32-1-707 without an election if the special district lies wholly within the corporate limits of the municipality, if the special district has no financial obligations or outstanding bonds, and if the special district board and the governing body of the municipality consent to the dissolution.

(c) If, at the court hearing on the petition for dissolution, the lesser of ten percent or one hundred of the eligible electors of the special district petition the court for a special election to be held on the question of dissolution of the special district, the court shall order an election in the special district on the question of dissolution.

(4) (a) If the court finds the special district has financial obligations or outstanding bonds and no escrow plan, the court shall determine whether the plan for dissolution, as submitted, adequately provides for payment of the financial obligations and outstanding bonds of the special district.

(b) If the court determines that the plan for dissolution adequately provides for the payment of the financial obligations and outstanding bonds of the special district, that the petition for dissolution meets the requirements of this part 7, and that an adequate plan exists for continuance of services, if required, the court shall order an election to be held in the special district on the question of dissolution.

(c) If, at any time after the filing of a petition for dissolution under section 32-1-701, the court determines that no agreement can be reached concerning the plan for dissolution under section 32-1-702 (4) (b) or that any other requirements of this part 7 cannot be met,

and that the board has acted in good faith, it shall dismiss the dissolution proceedings. If, however, the special district is entirely within the municipality and the parties are unable to reach an agreement, the court may impose a plan for dissolution under section 32-1-702 at the request of either the municipality or the special district and shall order an election to be held in the special district on the question of dissolution.

Source: **L. 81:** Entire article R&RE, p. 1570, § 1, effective July 1. **L. 89:** (3)(a) amended, p. 1117, § 32, effective July 1. **L. 91:** (1) amended, p. 797, § 2, effective April 10. **L. 92:** (3)(c) amended, p. 883, § 118, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-606 as it existed prior to 1981.

32-1-705. Election notice. When an election is ordered by the court, the court shall give notice pursuant to section 1-5-207, C.R.S.

Source: **L. 81:** Entire article R&RE, p. 1571, § 1, effective July 1. **L. 92:** Entire section amended, p. 883, § 119, effective January 1, 1993. **L. 93:** Entire section amended, p. 1439, § 135, effective July 1.

Editor's note: This section is similar to former § 32-1-607 as it existed prior to 1981.

32-1-706. Conduct of election. It is the duty of the secretary to administer the election, subject to court supervision. The election shall be conducted pursuant to the provisions of articles 1 to 13 of title 1, C.R.S.

Source: **L. 81:** Entire article R&RE, p. 1571, § 1, effective July 1. **L. 92:** Entire section amended, p. 883, § 120, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-608 as it existed prior to 1981.

32-1-707. Order of dissolution - conditions attached. (1) (a) If a majority of the eligible electors voting at the election approve the question of dissolution, the judge shall enter an order dissolving the special district for all purposes or for all purposes except those reserved in the plan, as the case may be.

(b) The order of dissolution shall:

(I) State that there are no financial obligations or outstanding bonds or that any such financial obligations or outstanding bonds are adequately secured by escrow funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.;

(II) If the special district has financial obligations or outstanding bonds, incorporate the applicable financial provisions of the findings of the court accepting the plan for dissolution entered into pursuant to section 32-1-704 (4);

(III) Incorporate the applicable service provisions of the findings of the court accepting the plan for dissolution entered into pursuant to section 32-1-704 (3) or (4).

(2) (a) Whenever the special district will continue in existence pursuant to the provisions of section 32-1-702 (3) (c), the court may provide that all or certain directors of the board of the special district being dissolved remain in office to perform duties pursuant to subsections (3) and (4) of this section. The remaining directors of the board shall not be subject to election. Any vacancies on the board shall be filled by appointment by the court.

(b) If a portion of the special district being dissolved lies outside the contracting regional service authority, municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., or other special district providing the services, the court, from time to time, shall appoint directors to the board so that proportionate representation is provided, taking into account the size, population, and valuation for assessment within and without the regional service authority, municipality, county, intergovernmental authority, or other special district.

(c) If the special district being dissolved lies entirely within the corporate limits of a municipality and such municipality is providing the same services within the area of the special district being dissolved, the court shall order that the governing body of such municipality shall serve as the board of the special district to perform the duties specified in this section.

(3) If the special district is to continue in existence for the purpose of the payment of financial obligations or outstanding bonds, the order of dissolution shall provide that:

(a) The board shall be responsible for setting rates, tolls, fees, or charges and certifying to the board of county commissioners the amount of revenue to be raised by the annual mill levy of the special district necessary for payment of the special district's financial obligations and outstanding bonds; and

(b) The contracting regional service authority, municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., or other special district providing the services shall be responsible for fixing the rates, tolls, fees, or charges needed to finance the services being provided pursuant to the provisions of section 32-1-702 (4) (b).

(4) (a) In any case in which an agreement has been made for continuation of services within the special district pursuant to the provisions of section 32-1-702 (4) (b), the court may authorize the board to continue in existence for the purpose of assuring the performance of any condition of such agreement, including negotiations relating to any future modifications of the agreement, procedures for which are provided in the original agreement for services.

(b) The court's order may in such case specify that its jurisdiction over the dissolution continues for the purpose of considering any future modifications of the agreement or other questions concerned with performance of the agreement.

(5) A certified copy of the order of dissolution shall be filed with the county clerk and recorder of the county or counties in which the special district is located and with the division by the clerk of the court. The costs of such filing shall be paid with remaining funds of the district.

(6) The order of dissolution shall be final and conclusive against all persons; except that an action may be instituted by the state of Colorado in the nature of quo warranto commenced within thirty-five days after the order of dissolution. The dissolution of said district shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (6).

Source: L. 81: Entire article R&RE, p. 1572, § 1, effective July 1. L. 89: (1)(b)(I) amended, p. 1117, § 33, effective July 1. L. 91: (2)(b) and (3)(b) amended, p. 797, § 3, effective April 10. L. 92: (1)(a) and (2)(a) amended, p. 883, § 121, effective January 1, 1993. L. 2012: (6) amended, (SB 12-175), ch. 208, p. 882, § 148, effective July 1.

Editor's note: (1) This section is similar to former §§ 32-1-609 and 32-1-611 as they existed prior to 1981.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (6) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

32-1-708. Disposition of remaining funds - unpaid tax or levies. (1) If services are to be continued within the special district, all funds remaining in the treasury of such special district in excess of all financial obligations and outstanding bonds shall be utilized, upon completion of the requirements for dissolution, to reduce the rates, tolls, fees, and charges fixed by the contracting municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., other special district, or regional service authority to finance the services continued in the special district. If services are not to be continued within the special district, such funds shall be divided among the municipalities and counties in which the special district is located, pro rata, as the valuation for assessment of taxable property in the parts of the special district lying in each municipality and unincorporated portions of each county bears to the total valuation for assessment of the

taxable property of the special district as determined by the respective county assessors for the preceding tax year.

(2) All outstanding and unpaid tax sales and levies of a dissolved special district shall be valid and remain a lien against the property against which they are assessed or levied until paid, subject, however, to the limitations of liens of tax certificates and of certificates of purchase provided by general law. The board of county commissioners has the same power to enforce the collection of all outstanding tax sales of the special district as the special district would have had if it had not been dissolved. Taxes paid or collected after dissolution shall be distributed in the same manner as provided in subsection (1) of this section.

Source: L. 81: Entire article R&RE, p. 1573, § 1, effective July 1. L. 91: (1) amended, p. 797, § 4, effective April 10.

Editor's note: This section is similar to former § 32-1-612 as it existed prior to 1981.

32-1-709. Dissolution of health service district - limitation. Any health service district organized pursuant to part 3 of this article may be dissolved in the manner provided in this part 7, but no such health service district shall be dissolved within a one-year period from the date of the entry of an order declaring said district organized or one year from the date of final determination of any petition to set aside such order, whichever date is later.

Source: L. 81: Entire article R&RE, p. 1574, § 1, effective July 1. L. 96: Entire section amended, p. 474, § 15, effective July 1.

Editor's note: This section is similar to former § 32-5-215 as it existed prior to 1981.

32-1-710. Dissolution by administrative action. (1) The division shall notify a special district by certified mail of the division's intent to certify the district dissolved if:

(a) (I) Except as provided in section 32-1-905 (2.5), the district has failed to hold or properly cancel an election pursuant to this article;

(II) The district has failed to adopt a budget, pursuant to section 29-1-108, C.R.S., for two consecutive years;

(III) The district has failed to comply with part 6 of article 1 of title 29, C.R.S., for two consecutive years; or

(IV) The district has not provided or attempted to provide any of the services or facilities for which the district was organized for two consecutive years; and

(b) The district has no outstanding financial obligations.

(2) (a) The division may declare the special district dissolved if, within thirty days of the notice provided pursuant to subsection (1) of this section, the district has failed to demonstrate to the division that the district has performed such statutory or service responsibility or will proceed to perform such responsibilities within a time period agreed to by the division and the district.

(b) If the district has failed to hold or properly cancel an election, no board has been appointed pursuant to section 32-1-905 (2.5), and there will be no interruption of services being provided by the district, it shall be presumed that the district has failed to demonstrate to the division that it has performed its statutory or service responsibility or will proceed to perform such responsibilities.

(3) Following the division's declaration of dissolution, the division shall submit the declaration to the court for certification of the district's dissolution. The court shall make a determination on the division's declaration within thirty days after the declaration has been submitted and shall order the disposition of the assets, if any, of the district in accordance with section 32-1-708. In the event that the court determines that the district is not inactive, it may terminate the dissolution proceeding. The division shall give notice that it has applied to the court for certification of the declaration of dissolution to the following

parties: The county clerk and recorder, the board of county commissioners, and the assessor of each county in which the district is located; the governing body of any municipality in which the special district is located; and the special district.

Source: **L. 85:** Entire section added, p. 1021, § 7, effective July 1. **L. 87:** (1)(a)(I) and (2) amended, p. 1237, § 1, effective May 16. **L. 90:** (1)(a)(II) amended, p. 1436, § 4, effective January 1, 1991.

PART 8

ELECTIONS

Editor's note: This article was repealed and reenacted in 1981, and this part 8 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 8 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1992 are shown in editor's notes following those sections that were relocated.

32-1-801. Legislative declaration - applicability. It is hereby declared that the orderly conduct of elections of special districts will serve a public use and will promote the health, safety, security, and general welfare of the people of the state of Colorado. Therefore, all elections shall be held pursuant to the provisions of articles 1 to 13 of title 1, C.R.S., unless otherwise provided.

Source: **L. 92:** Entire part R&RE, p. 884, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-801 as it existed prior to 1992.

32-1-802. Acts and elections conducted pursuant to provisions which refer to qualified electors. Any elections, and any acts relating thereto, carried out under this part 8, which were conducted prior to July 1, 1987, pursuant to provisions which referred to a qualified elector rather than an eligible elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

Source: **L. 92:** Entire part R&RE, p. 884, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-801.5 as it existed prior to 1992.

32-1-803. Acts and elections conducted pursuant to provisions which refer to registered electors. Any elections and any acts relating to those elections, carried out under this part 8 which were conducted prior to July 1, 1992, and which were valid when conducted, shall be held to be legal and valid in all respects.

Source: **L. 92:** Entire part R&RE, p. 884, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-801.5 as it existed prior to 1992.

32-1-803.5. Organizational election - new special district. At any election for the organization of a new special district, the court shall also order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness or any question or questions necessary to implement the provisions of section 20 of article X of the Colorado constitution as applied to the new special district, if the petition filed pursuant to section 32-1-301 requests that such questions be submitted at the organizational election. The order of the court shall make the determinations required by

section 32-1-1101 (2) and (3) (a) and require the clerk of the court to conduct the election in accordance with section 20 of article X of the Colorado constitution.

Source: L. 93: Entire section added, p. 1439, § 136, effective July 1.

Editor's note: This provision was added by House Bill 93-1255, chapter 258, Session Laws of Colorado 1993, as section 32-1-802 (6) but was renumbered on revision to give proper effect and location.

32-1-804. Board to conduct elections - combined election - time for special election.

(1) After a special district is organized and the first board is elected, the board shall govern the conduct of all subsequent regular and special elections of the special district and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of the elections. The board in its discretion, but no more frequently than every four years, may reestablish the boundaries of director districts created pursuant to section 32-1-301 (2) (f) so that the director districts have, as nearly as possible, the same number of eligible electors.

(2) All powers and authority granted to the board by this part 8 for the conduct of regular or special elections may be exercised in the absence of the board by the secretary or by an assistant secretary appointed by the board. The person named by the board who is responsible for the conducting of the election shall be the designated election official.

Source: L. 92: Entire part R&RE, p. 884, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-803 as it existed prior to 1992.

32-1-804.1. Call for nominations. Not less than seventy-five days nor more than ninety days before a regular special district election, the designated election official shall provide notice by publication of a call for nominations for the election. The call shall state the special district director offices to be voted upon at the election, where a self-nomination and acceptance form may be obtained, the deadline for submitting the self-nomination and acceptance form to the designated election official, and information on obtaining an absentee ballot.

Source: L. 99: Entire section added, p. 449, § 3, effective August 4.

32-1-804.3. Candidates for director - self-nomination and acceptance form.

(1) Not less than sixty-seven days before the date of the regular special district election, any person who desires to be a candidate for the office of a special district director shall file a self-nomination and acceptance form or letter signed by the candidate and by a registered elector as a witness to the signature of the candidate.

(2) On the date of signing the self-nomination and acceptance form or letter, a candidate for director shall be an eligible elector of the special district, if the district is divided into director districts established pursuant to section 32-1-301 (2) (f), the candidate shall be an eligible elector within the boundaries of the director district in which the candidate is running for office.

(3) A self-nomination and acceptance form that is not sufficient may be amended once at any time prior to 3 p.m. on the sixty-seventh day before the election.

(4) The self-nomination and acceptance form or letter must contain the name of the special district in which the election will be held, the special district director office sought by the candidate, the term of office sought if more than one length of a director's term is to be voted upon at the election, the date of the election, the full name of the candidate as it is to appear on the ballot, and whether the candidate is a member of an executive board of a unit owners' association, as defined in section 38-33.3-103, C.R.S., located within the boundaries of the director district for which the candidate is running for office. Unless physically unable, all candidates and witnesses shall sign their own signature and shall print

their names, their respective residence addresses, including the street number and name, the city or town, the county, telephone number, and the date of signature on the self-nomination and acceptance form or letter.

(5) The self-nomination and acceptance form or letter shall be filed with the designated election official or, if none has been designated, the presiding officer or the secretary of the board of directors of the special district in which the election will be held.

(6) The self-nomination and acceptance form or letter shall be verified and processed substantially as provided in section 1-4-908, C.R.S. A protest on such a form or letter shall be determined substantially as provided in sections 1-4-909 and 1-4-911, C.R.S. Cure of such a form or letter shall be allowed substantially as provided for in section 1-4-912, C.R.S.

Source: L. 99: Entire section added, p. 449, § 3, effective August 4. **L. 2011:** (4) amended, (HB 11-1124), ch. 105, p. 328, § 1, effective April 13.

32-1-805. Time for holding elections - type of election - manner of election - notice - permanent mail-in voters. (1) Except as otherwise provided in subsection (4) of this section, regular special district elections shall be held on the Tuesday succeeding the first Monday of May in every even-numbered year.

(2) Special elections may be held on the first Tuesday after the first Monday in February, May, October, or December, except for ballot issue elections, which may be held only in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. A ballot issue election that is not part of an organizational election shall be conducted either as part of a coordinated election or in accordance with the provisions of the "Mail Ballot Election Act", article 7.5 of title 1, C.R.S.

(3) Whenever the date of a regular special district election is identical to the date set for a municipal or another special district election in any municipality or other special district having boundaries coterminous with the special district, the election may be held jointly with the municipal or other special district election.

(4) Any election for the organization of a new health assurance or health service district shall be held on the date of the general election or on the first Tuesday in November of an odd-numbered year, and any election on the proposal of a health assurance or health service district shall be conducted by the county clerk and recorder in which the proposed district will be located as part of a coordinated election in accordance with the provisions of section 1-7-116, C.R.S.

(5) (a) At least sixty days prior to a metropolitan district election, a designated election official of the metropolitan district shall request a clerk and recorder of a county in which the metropolitan district is wholly or partially located to provide the designated election official with a list of the names and addresses of registered electors of the county who are also registered electors of the metropolitan district and who have applied to the county clerk and recorder for permanent mail-in voter status in accordance with section 1-8-104.5 (1), C.R.S. Along with the request, the designated election official shall certify that the metropolitan district has provided the county clerk and recorder with a current, accurate map of its boundaries in accordance with section 32-1-306. After receipt of the request, the clerk and recorder shall provide the designated election official with such list of the names and addresses of registered electors; except that, if the designated election official has not certified that the special district has provided the county clerk and recorder with a current, accurate map of its boundaries, the clerk and recorder shall provide to the designated election official the names and addresses of all registered electors of the county who have applied for permanent mail-in voter status in accordance with section 1-8-104.5 (1), C.R.S. If, within ten days of receiving the list of the names and addresses of registered electors pursuant to this paragraph (a), a designated election official notifies the county clerk and recorder of any problems with the list, the county clerk and recorder may provide the designated election official with a corrected list.

(b) In an election conducted by the board of a metropolitan district having fewer than ten thousand registered electors, the designated election official shall mail a mail-in ballot

to each eligible elector on the list provided to the designated election official pursuant to paragraph (a) of this subsection (5).

(b.5) The board of a metropolitan district having ten thousand or more registered electors may instruct the designated election official to mail a mail-in ballot to each eligible elector on the list provided pursuant to paragraph (a) of this subsection (5). Alternatively, the board may choose to instruct the designated election official to only mail a mail-in ballot to each eligible elector:

(I) Whose name appeared on the list provided to the designated election official pursuant to paragraph (a) of this subsection (5) who returned a mail-in ballot in one of the two most recent metropolitan district elections; and

(II) Who requests, either in person or in writing, a mail-in ballot for the metropolitan district election.

(b.7) If a metropolitan district chooses not to deliver a mail-in ballot to an elector because the elector has not returned a mail-in ballot in the two most recent metropolitan district elections as specified in subparagraph (I) of paragraph (b.5) of this section, the metropolitan district shall mail to the elector by forwardable mail, no later than forty-five days before the metropolitan district election, a postcard notice. The postcard notice shall include but not be limited to:

(I) A statement informing the elector that the elector may cast a ballot in person at any polling place in the metropolitan district;

(II) A statement that the elector may request a mail ballot for the election by contacting the designated election official by phone, mail, electronic mail, or in person;

(III) Contact information for the designated election official, including but not limited to a phone number, physical address, and electronic mail address; and

(IV) The location of any polling place where an elector may cast a ballot in person.

(c) The provisions of this subsection (5) shall only apply to a metropolitan district with more than twenty-five thousand dollars of annual revenue or a metropolitan district that has total authorized debt of more than one thousand dollars per eligible elector.

Source: **L. 92:** Entire part R&RE, p. 885, § 122, effective January 1, 1993. **L. 94:** (2) amended, p. 1195, § 100, effective July 1. **L. 95:** (2) amended, p. 859, § 109, effective July 1. **L. 2007:** (2) amended, p. 922, § 2, effective May 17; (1) amended and (4) added, p. 1191, § 10, effective July 1. **L. 2009:** (5) added, (SB 09-087), ch. 325, p. 1732, § 4, effective September 1. **L. 2011:** (5)(b) amended and (5)(b.5) and (5)(b.7) added, (SB 11-057), ch. 123, p. 385, § 1, effective April 20.

Editor's note: This section is similar to former § 32-1-803 as it existed prior to 1992.

32-1-805.5. Ranked voting methods. (1) Notwithstanding any provision of this article to the contrary, a special district may use a ranked voting method, as defined in section 1-1-104 (34.4), C.R.S., to conduct a regular election to elect directors of the special district in accordance with section 1-7-1003, C.R.S., and the rules adopted by the secretary of state pursuant to section 1-7-1004 (1), C.R.S.

(2) A special district conducting an election using a ranked voting method may adapt the requirements of the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., including requirements concerning the form of the ballot, the method of marking the ballot, the procedure for counting ballots, and the form of the election judges' certificate, as necessary for compatibility with the ranked voting method.

Source: **L. 2008:** Entire section added, p. 1253, § 5, effective August 5.

32-1-806. Persons entitled to vote at special district elections. (1) No person shall be permitted to vote in any election unless that person is an eligible elector as defined in section 32-1-103 (5) (a).

(2) Any person desiring to vote at any election as an eligible elector pursuant to section 32-1-103 (5) (a) (II) shall sign a self-affirmation that the person is an elector of the special

district. The self-affirming oath or affirmation shall be on a form that contains in substance the following:

"I, (printed name), who reside at (address), am an elector of this (name of special district) district and desire to vote at this election. I do solemnly swear (or affirm) that I am registered to vote in the state of Colorado and qualified to vote in this special district election as:

A resident of the district or area to be included in the district for not less than thirty days; or

The owner of taxable real or personal property situated within the boundaries of the special district or area to be included within the special district; or

A person who is obligated to pay taxes under a contract to purchase taxable property in the special district or the area to be included within the special district; or

The spouse of (name of spouse) who is the owner of taxable real or personal property situated within the boundaries of the special district or area to be included within the special district.

I have not voted previously at this election.

Date

Signature of elector ."

(3) For electors who vote at any election by mail-in ballot or mail ballot, the affidavit on the envelope of the ballot as required by title 1, C.R.S., may be substituted for the self-affirming oath or affirmation required by subsection (2) of this section.

(4) A person who completes the self-affirming oath or affirmation required by subsection (2) of this section shall be permitted to vote, unless such person's right to vote is challenged.

Source: L. 92: Entire part R&RE, p. 885, § 122, effective January 1, 1993. L. 93: Entire section amended, p. 1439, § 137, effective July 1. L. 94: (2) amended, p. 1195, § 101, effective July 1. L. 95: (3) added, p. 859, § 110, effective July 1. L. 96: Entire section amended, p. 1772, § 74, effective July 1. L. 2007: (3) amended, p. 1798, § 72, effective June 1.

Editor's note: This section is similar to former § 32-1-804 as it existed prior to 1992.

Cross references: For the requirement of registration before voting in a primary, general, or congressional vacancy election, see § 1-2-201.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Nonresidents do not have fundamental right to vote in elections in this state. *Millis v. Bd. of County Comm'rs*, 626 P.2d 652 (Colo. 1981).

The fact that a nonresident owns land in this state does not create a fundamental right to political participation in decisions which affect that land. While nonresident landowners may be enfranchised, there is nothing in the constitution that requires they be given voting rights in a political subdivision where they do not live. *Millis v. Bd. of County Comm'rs*, 626 P.2d 652 (Colo. 1981).

The decision to grant the franchise to residents of Colorado owning property in a special district but not residing there, while denying the franchise to owners of such property living outside Colorado, does not violate the equal protection guarantee of the state constitution. *Millis v. Bd. of County Comm'rs*, 626 P.2d 652 (Colo. 1981).

Constitutional challenge to this section on grounds that denying corporate entities the right to vote on the formation of a special district violates the equal protection clause was premature as no petition for organization was pending before district court. *State Farm v. City of Lakewood*, 788 P.2d 808 (Colo. 1990).

32-1-807. Nonapplicability of criminal penalties. Election offenses and penalties prescribed by parts 2 and 3 of article 13 of title 1, C.R.S., do not apply to elections authorized under this title.

Source: L. 92: Entire part R&RE, p. 885, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-833 as it existed prior to 1992.

32-1-808. Transfer of property title to qualify electors - limitations. (1) (a) No person shall knowingly take or place title to taxable property in the name of another or enter into a contract to purchase or sell taxable property for the purpose of attempting to qualify such person as an eligible elector at any special district election. Any ballot cast in violation of this subsection (1) as determined in an election contest conducted pursuant to part 2 of article 11 of title 1, C.R.S., shall be void.

(b) No person shall aid or assist any person in doing any of the acts described in paragraph (a) of this subsection (1).

(2) (a) A person may take or place title to taxable property in the name of another or enter into a contract to purchase or sell taxable property for the purpose of attempting to qualify such person as an eligible elector for any special district election under the following circumstances:

(I) A vacancy exists on the board of the special district and, within ten days of the publication of notice of such vacancy, no otherwise qualified eligible elector files a letter of interest in filling such position with the board;

(II) In any organizational election at which there are more than ten eligible electors, on or after the second day before the filing deadline for self-nomination and acceptance forms or letters pursuant to section 32-1-305.5 (4), the number of otherwise qualified eligible electors who have filed such self-nomination and acceptance forms or letters is less than the number of special district director offices to be voted upon at such election;

(III) There are less than eleven eligible electors as of any date before an organizational election; or

(IV) On or after the day after the filing deadline for self-nomination and acceptance forms or letters pursuant to section 32-1-804.3, before any regular special district election, the number of otherwise qualified eligible electors who have filed self-nomination and acceptance forms or letters pursuant to section 32-1-804.3 is less than the number of special district director offices to be voted upon at the election.

(b) (I) Notwithstanding any other provision of law, no person shall place title to taxable property in the name of another or enter into a contract to sell taxable property for the purpose of attempting to qualify more than the number of persons who are necessary to be eligible electors in order to:

(A) Fill a vacancy on a board except as permitted by the provisions of subparagraph (I) of paragraph (a) of this subsection (2); or

(B) Become a candidate for director in a special district election except as permitted by the provisions of subparagraphs (II), (III), and (IV) of paragraph (a) of this subsection (2).

(II) The incidental qualification of the spouse of a person as an eligible elector pursuant to section 32-1-103 (5) (a) (II) shall not constitute a qualification of more than the number of persons necessary to be eligible electors under subparagraph (I) of this paragraph (b).

(3) It shall not constitute a violation of subsection (1) of this section for a person to take or place title to taxable property in the name of another or to enter into a contract to purchase or sell taxable property in substitution of property acquired in accordance with subsection (2) of this section.

(4) Any person who is an eligible elector as of July 1, 2006, or who has been qualified as an eligible elector under this section shall remain qualified as an eligible elector until such time as such person ceases to meet the qualifications set forth in section 32-1-103 (5).

(5) Any person elected to a board whose qualification as an eligible elector is not challenged and overturned in accordance with the requirements specified in part 2 of article 11 of title 1, C.R.S., shall not be subject to further challenge based upon qualification as a property owner under this section for the remainder of the director's term in office.

Source: L. 2006: Entire section added, p. 135, § 1, effective March 29.

32-1-809. Notice to electors. (1) No more than sixty days prior to and not later than January 15 of each year, the board shall provide notice to the eligible electors of the special district in the manner set forth in subsection (2) of this section. The notice shall contain the following:

(a) The address and telephone number of the principal business office of the special district;

(b) The name and business telephone number of the manager or other primary contact person of the special district;

(c) The names of the members of the board, indicating each member whose office will be on the ballot at the next regular special district election;

(d) The times and places designated for regularly scheduled meetings of the board during the year and the place where notice of board meetings is posted pursuant to section 24-6-402 (2) (c), C.R.S.;

(e) The current mill levy of the special district and the total ad valorem tax revenue received by the district during the last year;

(f) The date of the next regular special district election at which members of the board will be elected;

(g) Information on the procedure and time for an eligible elector of the special district to submit a self-nomination form for election to the board pursuant to section 32-1-804.3;

(h) A statement that an application to request permanent mail-in voter status can be obtained from the county clerk and recorder, or on-line from the office of the secretary of state, and can be returned to the county clerk and recorder of the county or counties in which the district is wholly or partially located; and

(i) The address of any web site on which the special district's election results will be posted.

(2) The notice required by subsection (1) of this section shall be made in one or more of the following ways:

(a) Mailing the notice separately to each household where one or more eligible electors of the special district resides;

(b) Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card or other notice of election, or other informational mailing sent by the special district to the eligible electors of the special district;

(c) Posting the information on the official web site of the special district if there is a link to the district's web site on the official web site of the division;

(d) For any district that is a member of a statewide association of special districts formed pursuant to section 29-1-401, C.R.S., by mailing or electronically transmitting the notice to the statewide association of special districts, which association shall post the notice on a publicly accessible section of the association's web site; or

(e) For a special district with less than one thousand eligible electors that is wholly located within a county with a population of less than thirty thousand, posting the notice in at least three public places within the limits of the special district and, in addition, posting a notice in the office of the county clerk and recorder of the county in which the special district is located. Such notices shall remain posted until the Tuesday succeeding the first Monday of the following May.

(3) A special district shall:

(a) File a copy of the notice required by subsection (1) of this section with the clerk and recorder of each county in which the special district is located and with the division; and

(b) Make a copy of the notice required by subsection (1) of this section available for public inspection at the principal business office of the special district.

(4) Special districts with overlapping boundaries may combine the notices mailed pursuant to paragraph (a) of subsection (2) of this section, so long as the information regarding each district is separately displayed and identified.

Source: L. 2009: Entire section added, (SB 09-087), ch. 325, p. 1733, § 5, effective September 1.

PART 9

DIRECTORS - ORGANIZATION OF BOARD

32-1-901. Oath and bond of directors. (1) Each director, within thirty days after his or her election or appointment to fill a vacancy, except for good cause shown, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto. When an election is cancelled in whole or in part pursuant to section 1-5-208 (1.5), C.R.S., each director who was declared elected shall take the oath required by this subsection (1) within thirty days after the date of the regular election, except for good cause shown. The oath may be administered by the county clerk and recorder, by the clerk of the court, by any person authorized to administer oaths in this state, or by the chairman of the board and shall be filed with the clerk of the court and with the division.

(2) At the time of filing said oath, there shall also be filed for each director an individual, schedule, or blanket surety bond at the expense of the special district, in an amount determined by the board of not less than one thousand dollars each, conditioned upon the faithful performance of his duties as director.

(3) If any director fails to take the oath or furnish the requisite bond within the period allowed, except for good cause shown, his office shall be deemed vacant, and the vacancy thus created shall be filled in the same manner as other vacancies in the office of director.

Source: L. 81: Entire article R&RE, p. 1586, § 1, effective July 1. **L. 2001:** (1) amended, p. 1004, § 15, effective August 8.

Editor's note: This section is similar to former § 32-1-846 as it existed prior to 1981.

32-1-902. Organization of board - compensation - disclosure. (1) After taking oath and filing bonds, the board shall elect one of its members as chairman of the board and president of the special district, one of its members as a treasurer of the board and special district, and a secretary who may be a member of the board. The secretary and the treasurer may be one person, but, if such is the case, he or she shall be a member of the board. The board shall adopt a seal, and the secretary shall keep in a visual text format that may be transmitted electronically a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and all corporate acts, which shall be open to inspection of all electors, as well as to all other interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the special district in permanent records. He shall file with the clerk of the court, at the expense of the special district, a corporate fidelity bond in an amount determined by the board of not less than five thousand dollars, conditioned on the faithful performance of the duties of his office.

(3) (a) (I) For directors serving a term of office commencing prior to July 1, 2005, each director may receive as compensation for the director's service a sum not in excess of one thousand two hundred dollars per annum, payable not to exceed seventy-five dollars per meeting attended.

(II) For directors serving a term of office commencing on or after July 1, 2005, each director may receive as compensation for the director's service a sum not in excess of one thousand six hundred dollars per annum, payable not to exceed one hundred dollars per meeting attended.

(b) No director shall receive compensation as an employee of the special district, other than that provided in this section, and any director shall disqualify himself or herself from voting on any issue in which the director has a conflict of interest unless the director has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S. Reimbursement of actual expenses for directors shall not be considered compensation. No director receiving workers' compensation benefits awarded in the line of duty as a volunteer firefighter or pension payments to retired firefighters shall be allowed to vote on issues involving the director's disability or pension payments.

(4) If a director of any special district owns undeveloped land which constitutes at least twenty percent of the territory included in the special district, such director shall disclose such fact in accordance with section 18-8-308, C.R.S., before each meeting of the board, and the fact of such disclosure shall be entered in the minutes of such meeting. For the purposes of this subsection (4), "undeveloped land" means real property which has not been subdivided or which has no improvements constructed on it, excluding real property dedicated for park, recreation, or open space purposes.

Source: **L. 81:** Entire article R&RE, p. 1586, § 1, effective July 1. **L. 84:** (3) amended, p. 843, § 1, effective July 1. **L. 90:** (3) amended, p. 572, § 64, effective July 1. **L. 91:** (4) added, p. 788, § 16, effective June 4. **L. 96:** (3) amended, p. 548, § 1, effective April 24. **L. 2005:** (3)(a) amended, p. 386, § 1, effective July 1. **L. 2009:** (1) amended, (HB 09-1118), ch. 130, p. 562, § 9, effective August 5.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For article, "Director Conflicts: The Effect of Disclosure — Parts I and II", see 17 Colo. Law. 461 and 639 (1988).

Subsection (3) in no way circumscribes the authority of the court to review the district's decision to determine whether the conflicts of interest resulted in "bad faith". If primary purpose of condemnation is to advance private

interests, the existence of an incidental public benefit does not prevent a court from finding "bad faith" and invalidating a condemning authority's determination that a particular acquisition is necessary. *Denver West Metro. Dist. v. Geudner*, 786 P.2d 434 (Colo. App. 1989).

Applied in *Berkeley Metro. Dist. v. Poland*, 705 P.2d 1004 (Colo. App. 1985).

32-1-903. Meetings. (1) The board shall meet regularly at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the special district require, upon notice to each director. All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (1) governing the location of meetings may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (1) and further stating the date, time, and place of such meeting.

(2) Notice of time and place designated for all regular meetings shall be posted in at least three public places within the limits of the special district, and, in addition, one such notice shall be posted in the office of the county clerk and recorder in the county or counties in which the special district is located. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special meetings may be called by any director by informing the other directors of the date, time, and place of such special meeting, and the purpose for which it is called, and by posting

notice as provided in this section at least seventy-two hours prior to said meeting. All official business of the board shall be conducted only during said regular or special meetings at which a quorum is present, and all said meetings shall be open to the public.

(3) The notice posted pursuant to subsection (2) of this section for any regular or special meeting at which the board intends to make a final determination to issue or refund general obligation indebtedness, to consolidate the special district with another special district, to dissolve the special district, to file a plan for the adjustment of debt under federal bankruptcy law, or to enter into a private contract with a director, or not to make a scheduled bond payment, shall set forth such proposed action.

Source: L. 81: Entire article R&RE, p. 1587, § 1, effective July 1. L. 90: (1) amended, p. 1496, § 4, effective April 10. L. 91: (3) added, p. 789, § 17, effective June 4. L. 2009: (2) amended, (SB 09-087), ch. 325, p. 1735, § 6, effective September 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-904. Office. The office of the special district shall be at some fixed place to be determined by the board.

Source: L. 81: Entire article R&RE, p. 1587, § 1, effective July 1.

Editor's note: This section is similar to former § 32-4-207 (1) as it existed prior to 1981.

32-1-905. Vacancies. (1) A director's office shall be deemed to be vacant upon the occurrence of any one of the following events prior to the expiration of the term of office:

(a) If for any reason a properly qualified person is not elected to a director's office by the electors as required at a regular election;

(b) If a person who was duly elected or appointed fails, neglects, or refuses to subscribe to an oath of office or to furnish the bond in accordance with the provisions of section 32-1-901;

(c) If a person who was duly elected or appointed submits a written resignation to the board;

(d) If the person who was duly elected or appointed ceases to be qualified for the office to which he was elected;

(e) If a person who was duly elected or appointed is convicted of a felony;

(f) If a court of competent jurisdiction voids the election or appointment or removes the person duly elected or appointed for any cause whatsoever, but only after his right to appeal has been waived or otherwise exhausted;

(g) If the person who was duly elected or appointed fails to attend three consecutive regular meetings of the board without the board having entered upon its minutes an approval for an additional absence or absences; except that such additional absence or absences shall be excused for temporary mental or physical disability or illness;

(h) If the person who was duly elected or appointed dies during his term of office.

(2) (a) Any vacancy on the board shall be filled by appointment by the remaining director or directors, the appointee to serve until the next regular election, at which time, the vacancy shall be filled by election for any remaining unexpired portion of the term. If, within sixty days of the occurrence of any vacancy, the board fails, neglects, or refuses to appoint a director from the pool of any duly qualified, willing candidates, the board of county commissioners of the county which approved the organizational petition may appoint a director to fill such vacancy. The remaining director or directors shall not lose their authority to make an appointment to fill any vacancy unless and until the board of county commissioners which approved the organizational petition has actually made an appointment to fill that vacancy.

(b) No board of county commissioners shall make an appointment pursuant to paragraph (a) of this subsection (2) unless it provides thirty days' notice of its intention to make such appointment to the remaining members of the board and the vacancy remains open at the time the board of county commissioners makes its appointment. If the organizational petition was approved by more than one board of county commissioners, then the appointment shall be made by the boards of the county commissioners which approved the petition, sitting jointly. Such an appointment shall be made at an open public meeting.

(2.5) If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district, then the board of county commissioners of the county or counties which approved the organizational petition may appoint all directors from the pool of duly qualified, willing candidates. The board appointed pursuant to this subsection (2.5) shall call a special election within six months after their appointment, which special election is to be held in accordance with the provisions of section 32-1-305.5 and articles 1 to 13 of title 1, C.R.S.; except that the question of the organization shall not be presented at the election. In the event a district is wholly within the boundaries of a municipality, the governing body of the municipality may appoint directors.

(3) All appointments shall be evidenced by an appropriate entry in the minutes of the meeting, and the board shall cause a notice of appointment to be delivered to the person so appointed. A duplicate of each notice of appointment, together with the mailing address of the person so appointed, shall be forwarded to the division.

Source: L. 81: Entire article R&RE, p. 1587, § 1, effective July 1. L. 87: (2.5) added, p. 1237, § 2, effective May 16. L. 92: (2) and (2.5) amended, p. 970, § 12, effective June 1; (2.5) amended, p. 885, § 123, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-849 as it existed prior to 1981.

32-1-906. Directors subject to recall. (1) Any director elected to the board of any special district who has actually held office for at least six months may be recalled from office by the eligible electors of the special district. A petition signed by the lesser of three hundred eligible electors or forty percent of the eligible electors demanding the recall of any director named in the petition shall be filed in the court. Any recall shall be governed by the provisions of part 1 of article 12 of title 1, C.R.S.

(2) to (5) (Deleted by amendment, L. 92, p. 886, § 124, effective January 1, 1993.)

Source: L. 81: Entire article R&RE, p. 1588, § 1, effective July 1. L. 88: (5) added, p. 296, § 11, effective May 29. L. 92: Entire section amended, p. 886, § 124, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-847 as it existed prior to 1981.

ANNOTATION

Constitutionality of recall. There is no express or necessary implied constitutional prohibition contained in § 4 of art. XXI, Colo. Const., against including directors of special districts as elective officers who are subject to recall. *Groditsky v. Pinckney*, 661 P.2d 279 (Colo. 1983).

An official accepting petitions for recall of special district directors has a duty to evaluate the petitions for compliance with statutes, even if there is no protest. *Adams v. Hill*, 780 P.2d 55 (Colo. App. 1989).

32-1-907. Recall election - resignation. (1) If a director subject to a recall petition offers a resignation, it shall be accepted, and the vacancy caused by the resignation, or from any other cause, shall be filled as provided by section 32-1-905 (2). If the director does not

resign within five days after the sufficiency of the recall petition has been sustained, the board shall order that a recall election be held pursuant to the provisions of part 1 of article 12 of title 1, C.R.S.

(2) (Deleted by amendment, L. 92, p. 887, § 125, effective January 1, 1993.)

Source: **L. 81:** Entire article R&RE, p. 1589, § 1, effective July 1. **L. 92:** Entire section amended, p. 887, § 125, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-848 as it existed prior to 1981.

PART 10

GENERAL POWERS

32-1-1001. Common powers - definitions. (1) For and on behalf of the special district the board has the following powers:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued and to be a party to suits, actions, and proceedings;
- (d) (I) To enter into contracts and agreements affecting the affairs of the special district except as otherwise provided in this part 10, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a special district will receive aid from a governmental agency or purchase through the state purchasing program, a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of sixty thousand dollars or more of public moneys. The special district may reject any and all bids, and, if it appears that the special district can perform the work or secure material for less than the lowest bid, it may proceed to do so.

- (II) No contract for work or material including a contract for services, regardless of the amount, shall be entered into between the special district and a member of the board or between the special district and the owner of twenty-five percent or more of the territory within the special district unless a notice has been published for bids and such member or owner submits the lowest responsible and responsive bid.

- (e) To borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, and to issue bonds, including revenue bonds, in accordance with the provisions of part 11 of this article, and to invest any moneys of the special district in accordance with part 6 of article 75 of title 24, C.R.S.;

- (f) To acquire, dispose of, and encumber real and personal property including, without limitation, rights and interests in property, leases, and easements necessary to the functions or the operation of the special district; except that the board shall not pay more than fair market value and reasonable settlement costs for any interest in real property and shall not pay for any interest in real property which must otherwise be dedicated for public use or the special district's use in accordance with any governmental ordinance, regulation, or law;

- (g) To refund any bonded indebtedness as provided in part 13 of this article or article 54 or 56 of title 11, C.R.S.;

- (h) To have the management, control, and supervision of all the business and affairs of the special district as defined in this article and all construction, installation, operation, and maintenance of special district improvements;

- (i) To appoint, hire, and retain agents, employees, engineers, and attorneys;

- (j) (I) To fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the special district; except that fire protection districts may only fix fees and charges as provided in section 32-1-1002 (1) (e). The board may pledge such revenue for the payment of any indebtedness of the special district. Until paid, all such fees, rates, tolls, penalties, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens.

- (II) Notwithstanding any other provision to the contrary, the board may waive or amortize all or part of the tap fees and connection fees or extend the time period for paying

all or part of such fees for property within the district in order to facilitate the construction, ownership, and operation of affordable housing on such property, as such affordable housing is defined by resolution adopted by the board. However, the board shall have the authority to condition such waiver, amortization, or extension upon the recordation against the property of a deed restriction, lien, or other lawful instrument requiring the payment of such fees in the event that the property's use as affordable housing is discontinued or no longer meets the definition of affordable housing as established by the board.

(k) To furnish services and facilities without the boundaries of the special district and to establish fees, rates, tolls, penalties, or charges for such services and facilities;

(l) To accept, on behalf of the special district, real or personal property for the use of the special district and to accept gifts and conveyances made to the special district upon such terms or conditions as the board may approve;

(m) To adopt, amend, and enforce bylaws and rules and regulations not in conflict with the constitution and laws of this state for carrying on the business, objects, and affairs of the board and of the special district;

(n) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to special districts by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(o) To authorize the use of electronic records or signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures pursuant to article 71.3 of title 24, C.R.S.

Source: **L. 81:** Entire article R&RE, p. 1589, § 1, effective July 1. **L. 89:** (1)(e) amended, p. 1117, § 34, effective July 1. **L. 91:** (1)(d) and (1)(f) amended, p. 789, § 18, effective June 4. **L. 99:** (1)(o) added, p. 1348, § 8, effective July 1; (1)(j) amended, p. 555, § 1, effective August 4. **L. 2002:** (1)(o) amended, p. 858, § 9, effective May 30. **L. 2006:** (1)(d)(I) amended, p. 345, § 1, effective August 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For foreclosure of mechanics' liens, as provided in subsection (1)(j), see article 22 of title 38; for composition or adjustment of indebtedness, see part 14 of this article.

ANNOTATION

The statutory provision authorizing special districts to set their own fees for services is not an unconstitutional delegation of legislative authority. Statutory scheme, in conjunction with a special district's rules and regulations, is sufficient to prevent unnecessary and uncontrolled exercise of discretionary power by the special district. *Krupp v. Breckenridge Sanitation Dist.*, 1 P.3d 178 (Colo. App. 1999).

Underlying purpose of this section is to protect property holders and taxpayers. The advantage to be derived by individual bidders is merely incidental. *Intermountain Sys. v. Gore Valley/Big Horn Water Dists.*, 654 P.2d 872 (Colo. App. 1982).

If taxes have been improperly imposed against property owned by a park and recreation district, it is entitled to pursue a remedy therefor to the same extent as any other owner. *South Suburban Park and Recreation Dist. v. Bd. of Assessment Appeals*, 894 P.2d 771 (Colo. App. 1994).

A special district has the power to enter into contracts and agreements affecting its affairs, however, if a contract is beyond the scope of the special district's constitutional or statutory powers, the contract is ultra vires and consequently void. *Black v. First Fed. Sav. and Loan*, 830 P.2d 1103 (Colo. App. 1992).

Liability for emergency services. A water and sanitation district can be held liable for additional services performed, valued at more than \$5,000, although no competitive bids are obtained, when an emergency situation exists which demands immediate attention, and which threatens the public health and safety of a community. *Martin Excavating, Inc. v. Tyrollean Terrace Water & San. Dist.*, 671 P.2d 1329 (Colo. 1983) (decided under former § 32-4-113).

Action to challenge propriety of award limited. This section creates a cause of action to challenge the propriety of an award only in taxpayers and property owners within the geo-

graphic limits of the contracting governmental body, and not in the unsuccessful bidder. *Intermountain Sys. v. Gore Valley/Big Horn Water Dists.*, 654 P.2d 872 (Colo. App. 1982).

Lowest bidder cannot compel contract. The lowest bidder cannot compel the issue of a writ of mandamus to force the officers of a municipality to enter into a contract with him. *Intermountain Sys. v. Gore Valley/Big Horn Water Dists.*, 654 P.2d 872 (Colo. App. 1982).

Special district, as a political subdivision of the state, possesses only those powers that are expressly conferred upon it by the constitution and by statute and such incidental implied powers as are reasonably necessary to carry out the express powers so conferred. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

Power to "sue and be sued" granted in subsection (1)(c) is not a grant of authority to file a civil action against the state for declaratory relief. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

This section authorizes a special district to collect tolls for the use of public roads which it is obligated to maintain. *Wick v. Pueblo West Metro. Dist.*, 789 P.2d 457 (Colo. App. 1989).

Although a special district has the power to enter into contracts, if the contract is beyond the scope of its constitutional or statutory powers, the contract is ultra vires and void. *Black v. First Fed. Sav. and Loan*, 830 P.2d 1103 (Colo. App. 1992).

Under this section, a special district may enter into a master lease. But, where the lease does not provide for cancellation by the special district during the term of the lease, the lease violates the constitutional prohibition against governmental debt by loan and is therefore ultra

vires and void. *Black v. First Fed. Sav. and Loan*, 830 P.2d 1103 (Colo. App. 1992).

Where a special district was also a limited partner, it was entitled to contract with itself. However, where the master lease entered into by the special district amounted to an unconstitutional governmental debt by loan, the special district's master lease was ultra vires and void. *Black v. First Fed. Sav. and Loan*, 830 P.2d 1103 (Colo. App. 1992).

The broad, general powers set forth in this section are sufficient to constitute general authorization for a special district to file a chapter 9 petition in bankruptcy. In re Villages at Castle Rock Metro. Dist. No. 4, 145 Bankr. 76 (Bankr. D. Colo. 1990).

Language in this section authorizing special districts to charge fees for services furnished by the district implicitly requires that those fees be reasonable in light of the services actually furnished by the district. *Krupp v. Breckenridge Sanitation Dist.*, 1 P.3d 178 (Colo. App. 1999).

Statutory lien held by sanitation district that attached to debtors' real property pursuant to subsection (1)(j) survived debtors' bankruptcy proceedings. The question whether the district's lien was extinguished by the bankruptcy proceedings is governed by 11 U.S.C. § 1141 (c), which provides an exception to the general rule that liens pass through bankruptcy unaffected. Because the debtors' plan of reorganization made no provision for the district's lien, the lien was not extinguished pursuant to § 1141 (c) upon confirmation of the plan. *250 Gregory LLC v. Black Hawk/Central City Sanitation Dist.*, 77 P.3d 841 (Colo. App. 2003).

Applied in *Groditsky v. Pinckney*, 661 P.2d 279 (Colo. 1983); *Valley Hous. and Dev. Corp. v. Ridges Metro. Dist.*, 753 P.2d 801 (Colo. App. 1988).

32-1-1002. Fire protection districts - additional powers and duties. (1) In addition to the powers specified in section 32-1-1001, the board of any fire protection district has the following powers for and on behalf of such district:

(a) To acquire, dispose of, or encumber fire stations, fire protection and fire fighting equipment, and any interest therein, including leases and easements;

(b) To have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the special district;

(c) To undertake and to operate as a part of the duties of the fire protection district an ambulance service, an emergency medical service, a rescue unit, and a diving and grappling service;

(d) To adopt and enforce fire codes, as the board deems necessary, but no such code shall apply within any municipality or the unincorporated portion of any county unless the governing body of the municipality or county, as the case may be, adopts a resolution stating that such code or specific portions thereof shall be applicable within the fire protection district's boundaries; except that nothing in this paragraph (d) shall be construed to affect any fire codes existing on June 30, 1981, which have been adopted by the governing body of a municipality or county. Notwithstanding any other provision of this section, no fire protection district shall prohibit the sale of permissible fireworks, as defined in section 12-28-101 (8), C.R.S., within its jurisdiction.

(e) To fix and from time to time increase or decrease fees and charges as follows, and the board may pledge such revenue for the payment of any indebtedness of the district:

(I) For ambulance or emergency medical services and extrication, rescue, or safety services provided in furtherance of ambulance or emergency medical services. "Extrication, rescue, or safety services" includes but is not limited to any:

(A) Services provided prior to the arrival of an ambulance;

(B) Rescue or extrication of trapped or injured parties at the scene of a motor vehicle accident; and

(C) Lane safety or blocking provided by district equipment.

(II) For requested or mandated inspections if a fire code is in existence on June 30, 1981, as specified in paragraph (d) of this subsection (1) or has been adopted thereafter pursuant to said paragraph (d);

(III) For requested inspections if a fire code has been adopted by the board of the fire protection district, whether or not the code has been adopted by a municipality or county pursuant to paragraph (d) of this subsection (1);

(f) In areas of the special district where the county or municipality has rejected the adoption of a fire code submitted by the fire protection district, to compel the owners of premises, whenever necessary for the protection of public safety, to install fire escapes, fire installations, fireproofing, automatic or other fire alarm apparatus, fire extinguishing equipment, and other safety devices. This paragraph (f) shall not apply when a valid ordinance providing for fire safety standards, pursuant to section 30-15-401.5, C.R.S., is in effect.

(g) To create and maintain a paid firefighters' pension fund, under the provisions of parts 2 and 4 of article 30.5 of title 31, C.R.S., subject to the provisions of article 31 of said title, and a volunteer firefighter pension fund under part 11 of article 30 of title 31, C.R.S.;

(h) To establish, in its discretion, a system of civil service in the fire protection district to cover its paid employees who are directly employed by the fire protection district as full-time paid firefighters in accordance with the provisions of subsection (2) of this section.

(2) (a) A fire protection district's civil service system shall not cover employees of a fire department that renders fire protection service to the fire protection district under contract. The question of establishing a system of civil service shall be submitted at any regular special district election or special election of the fire protection district and shall not become effective unless approved as required for authorization of indebtedness. In establishing a system of civil service, the board may provide for the exclusion of supervisory and administrative personnel from the system. The board shall appropriate such funds as are necessary for the regular special district election or special election from the general funds of the fire protection district, and the election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S.

(b) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), the board of any fire protection district establishing a system of civil service for its paid employees may appoint three electors residing in the district to serve as a civil service committee, referred to in this subsection (2) as the "committee". Of those initially appointed, one member of the committee shall be appointed for a term of two years, one for four years, and one for six years; thereafter, each member shall be appointed for a term of six years.

(B) When two or more fire protection districts having established civil service systems consolidate into a single consolidated district pursuant to section 32-1-602, the civil service committee of each of the consolidating districts shall dissolve, and the board of directors of the consolidated district shall appoint at least three but no more than nine members to serve on the civil service committee of the consolidated district. Of those initially appointed, three of the members of the civil service committee of the consolidated district shall serve staggered terms pursuant to sub-subparagraph (A) of this subparagraph (I), and the board shall appoint any other member for a term of six years. Thereafter, each member shall be appointed for a term of six years.

(C) Any member may be appointed to succeed himself or herself. No paid firefighter employed by the fire protection district may be a member of the committee. The members of the committee shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the discharge of their duties.

(D) The board of directors of any fire protection district consolidated prior to July 1, 1996, may expand, by appointment, the membership of its established civil service committee to no more than nine members pursuant to sub-subparagraph (B) of this subparagraph (I). The board shall appoint such members for a term of six years.

(II) The committee shall elect from among its members a president. The secretary of the board shall serve as the secretary of the committee but shall have no vote on the committee. The secretary shall keep a record of the minutes of all proceedings of the committee in a bound book separate and apart from the records of the board. The secretary is the only member of the board who may be a member of the committee.

(III) Any member of the committee may be discharged by the board for cause, but only after affording the member the right to a public hearing at which the member may be represented by counsel. Vacancies in office on the committee shall be filled according to the provisions of section 1-12-207, C.R.S.

(IV) The attorney for the board shall act as legal advisor to the committee, but at all hearings before the committee involving a firefighter, such firefighter may be represented by counsel.

(c) The committee shall:

(I) Establish standards for employment and termination of employment, including minimum conditions of employment for applicants for appointment and promotion, which shall assure that such applicants shall be of good moral character and physically, mentally, and emotionally capable of performing arduous duties, eighteen years of age or older, graduates of a high school or the equivalent thereof, citizens of the United States, and residents of the state of Colorado. In establishing standards concerning a person's character, the committee shall be governed by the provisions of section 24-5-101, C.R.S.

(II) Recruit applicants for employment; formulate and hold competitive examinations, or cause the same to be done, in order to determine the relative qualifications of persons seeking employment in any class or position as a firefighter; and formulate and hold promotional examinations for firefighters within the fire department of the fire protection district, or cause the same to be done;

(III) Certify to the board, as a result of such examinations, lists of qualified applicants for the various classes of positions who successfully completed such examinations;

(IV) Determine that any examination held pursuant to subparagraph (II) or (III) of this paragraph (c) is practical and consists only of subjects which will fairly determine the capacity of persons examined to perform duties of the position sought, including, but not limited to, tests of physical fitness and manual skill;

(V) When a vacant position is to be filled, certify to the board, upon written request of the board, the names of the three persons highest on the eligible list for that position or the applicable classification; but if less than three persons are on such list, then all the names shall be certified to the board. If there are no such lists, the committee shall authorize provisional or temporary appointment lists for such position or applicable classification.

(d) The committee, from time to time, may make, amend, and repeal bylaws and rules and regulations necessary to administer the provisions of this subsection (2).

(e) Disciplinary action against any firefighter may be instituted by the chief of the fire protection district, and a hearing thereon, after reasonable notice, shall be afforded to the firefighter concerned, at which hearing the firefighter may be represented by counsel of his or her choice at his or her expense. Such hearings shall be conducted in the same manner, insofar as possible, as provided in section 24-4-105, C.R.S. Any firefighter aggrieved by the decision of the board may obtain review thereof by appeal to the committee, and on such review the firefighter may be represented by counsel of his or her choice at his or her expense.

(f) The committee shall hear all complaints involving alleged injustice, wrongful discharge, and other violations of the rules and regulations of the committee and shall hear all appeals from decisions of the board on disciplinary actions pursuant to paragraph (e) of this subsection (2). All such hearings shall be conducted in the same manner, insofar as possible, as provided in section 24-4-105, C.R.S. The decision of the committee shall be final and shall not be set aside except by the committee or by a court of competent

jurisdiction. Judicial review of any decision of the committee may be had in the same manner as prescribed in section 24-4-106, C.R.S.

(g) The board, if requested by the committee, may contract with any municipal or state agency for the purpose of conducting examinations for original appointment or for promotion, or for any other purpose in connection with the selection or administration of personnel.

(h) The firefighters of any fire protection district in good standing at the time of the establishment of said civil service system shall continue in their employment and rank, shall be automatically included in the civil service system, and shall be promoted or discharged in accordance with the provisions of the civil service rules and regulations; except that the office of fire chief shall be excluded from such civil service system. The board shall make provision for tenure of the fire chief, and the committee shall implement the same by appropriate rules and regulations.

(i) Any fire protection district which has established a system of civil service for its paid employees pursuant to this section shall not terminate the system unless the question of termination is submitted at an election. The election shall be conducted pursuant to the provisions of articles 1 to 13 of title 1, C.R.S.

(j) The board shall appropriate annually, by resolution, to the committee sufficient funds to administer the provisions of this subsection (2).

(k) If any county assumes countywide responsibility for fire protection or any board of county commissioners becomes the board of a fire protection district and adopts a countywide merit, civil service, or career service system, any civil service system established under the provision of this subsection (2) shall be dissolved and merged with such countywide system, including all employees' benefits, rights, liabilities, and duties accrued or incurred under this subsection (2), and the same shall be continued following such merger.

(3) (a) The chief of the fire department in each fire protection district in the state of Colorado, by virtue of such office so held by him or her, shall have authority over the supervision of all fires within the district; except that responsibility for coordinating fire suppression efforts in case of any prairie, forest, or wildland fire that exceeds the capabilities of the district to control or extinguish shall be transferred to the county sheriff in accordance with section 30-10-513, C.R.S., subject to the duties and obligations imposed by this subsection (3) and subject to the provisions of the community wildfire protection plan prepared by the county in accordance with section 30-15-401.7, C.R.S. The chief shall be vested with such other express authority as is contained in this subsection (3), including commanding the fire department of such district.

(b) The chief of the fire department in each fire protection district shall:

(I) Enforce all laws of this state and ordinances and resolutions of the appropriate political subdivisions relating to the prevention of fires and the suppression of arson;

(II) (A) Inspect, or cause to be inspected by members or officers of his department, as often as he shall deem necessary, all buildings, premises, and public places, except the interior of any private dwelling, for the purpose of ascertaining and causing to be corrected any condition liable to cause fire or for the purpose of obtaining information relative to the violation of the various provisions of this subsection (3). Any individual conducting such inspection shall carry on his person properly authorized fire department identification which shall be shown, on request, to the owner, lessee, agent, or occupant of any structure prior to the inspection of the same.

(B) The chief of any such fire department or fire department members designated by the chief have the authority to enter into all structures and upon all premises within their respective jurisdictions at reasonable times during business hours or such times as such structures or premises are open for the purpose of examination in conformity with the duties imposed by this subsection (3), and it is unlawful for any person to interfere with the chief of any such fire department, or any member of such fire department designated by the chief to conduct an inspection, in the discharge of his duties or to hinder or prevent him from entering into or upon or from inspecting any buildings, establishments, enclosures, or premises in the discharge of his duties.

(III) Include, as part of the inspections required by subparagraph (II) of this paragraph (b), all of the following:

(A) An inspection of all buildings and enclosures to see that proper receptacles for ashes are provided, to cause all rubbish or other inflammable material to be properly removed or disposed of, and to make such suggestions and issue such orders to the owners or occupants of buildings as, in the opinion of such inspecting officer, will render the same safe from fire;

(B) An inspection of the surroundings of boilers and other heating apparatus in any building to ascertain whether all woodwork is properly protected and that no rubbish or combustible material is allowed to accumulate;

(C) An inspection of fire escapes and stairways to cause the removal of all obstructions therefrom and of all places where explosives or inflammable compounds are sold or stored;

(D) An inspection of the construction, placing, repair, and control of all fire escapes, standpipes, pressure tanks, fire doors, fire shutters, fire lines, fire hose, sprinkling systems, exit lights, and exit signs and a review of the installation and testing of fire equipment in all buildings and places requiring such equipment and of the provisions for means of escape or protection against loss of life and property from fire in such buildings and places;

(IV) Enforce, within his respective jurisdiction, all laws of this state and ordinances and resolutions of any appropriate political subdivision pertaining to the keeping, storage, use, manufacture, sale, handling, transportation, or other disposition of highly inflammable materials and rubbish, gunpowder, dynamite, crude petroleum or any of its products, explosive or inflammable liquids or compounds, tablets, torpedoes, or any explosives of a like nature, or any other explosive, including fireworks and firecrackers, and such chief may prescribe the materials and construction of receptacles to be used for the storage of any of said items; but authorization for enforcement of the provisions of this subsection (3) does not extend to the production, transportation, or storage of inflammable liquids as regulated by articles 20 and 20.5 of title 8 and title 34, C.R.S.;

(V) Investigate or cause to be investigated the cause, origin, and circumstance of every fire occurring within his jurisdiction by which property is destroyed or damaged and, so far as is possible, determine whether the fire was the result of carelessness or design. Such investigation shall begin immediately upon the occurrence of the fire, and if, after such investigation, the chief is of the opinion that the facts in relation to such fire indicate that a crime has been committed, he shall present the facts of such investigation and the testimony taken from any person involved, together with any other data in his possession, to the district attorney of the proper county, with his request that the district attorney institute such criminal proceedings as the investigation, testimony, or data may warrant. It is the duty of the district attorney upon such request to assist in such further investigation as may be required.

(c) Whenever any chief, or any designated member of a fire department, finds, through inspection procedures as outlined in subparagraph (II) or (III) of paragraph (b) of this subsection (3), any building or other structure which, for want of repair or of lack of or insufficient fire escapes, automatic or other fire alarm apparatus, or fire extinguishing equipment as may be required by law or for reasons of age, dilapidated condition, or any other cause, is especially liable to fire or is hazardous to the safety of the occupants thereof and which is so situated as to endanger other property, and whenever such officer finds in any building combustible or explosive matter or inflammable conditions, dangerous to the safety of such building or its occupants, the chief shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner, lessee, agent, or occupant of such premises or buildings. Any such owner, lessee, agent, or occupant who feels himself aggrieved by any such order may file, within five days after the making of any such order, a petition with the district court of the county in which such premises or building is located, requesting a review of such order, and it is the duty of such court to hear the same at the first convenient day and to make such order in the premises as justice may require, and such decision shall be final.

(d) Any owner, lessee, agent, or occupant of any building or premises maintaining any condition likely to cause fire or to constitute an additional fire hazard or any condition which impedes or prevents the egress of persons from such building or premises in violation

of the provisions of this subsection (3) shall be deemed to be maintaining a fire hazard. Any person who violates any provision of this subsection (3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars. Each day in which such a violation occurs shall constitute a separate violation of this subsection (3).

(4) (a) Within any fire protection district organized under the provisions of this article, it is unlawful for any person:

(I) To willfully or maliciously give, make, or cause to be given or made a false alarm of fire, whether by the use of a fire alarm box, telephone call, or otherwise;

(II) To willfully or maliciously disconnect, cut, or sever any wire of the fire alarm telegraph or in any manner tamper with any part of such communication apparatus;

(III) To aid, abet, knowingly permit, or participate in the commission of any act prohibited by this paragraph (a).

(b) Any person who violates any provision of this subsection (4) is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(c) The provisions of paragraphs (a) and (b) of this subsection (4) shall not limit the power of municipalities to enact ordinances covering the same or similar subject matter, but no person acquitted of, convicted of, or pleading guilty to a violation of a municipal ordinance shall be charged or tried in a state court for the same or a similar offense, and no person acquitted of, convicted of, or pleading guilty to a violation of paragraph (a) of this subsection (4) in a state court shall be charged or tried in a municipal court for the same or a similar offense.

(5) The district attorney in the judicial district in which the special district was organized shall prosecute any violation under subsection (3) or (4) of this section.

Source: **L. 81:** Entire article R&RE, p. 1591, § 1, effective July 1. **L. 85:** (1)(d) and (1)(f) amended, p. 1062, § 2, effective July 1. **L. 92:** (2)(a), (2)(b)(III), and (2)(i) amended, p. 887, § 126, effective January 1, 1993. **L. 95:** (1)(g) amended, p. 1386, § 19, effective June 5; (3)(b)(IV) amended, p. 420, § 10, effective July 1. **L. 96:** (2)(b)(I) amended, p. 247, § 1, effective April 8; (1)(d) amended, p. 283, § 3, effective April 11; (1)(g) amended, p. 943, § 9, effective May 23. **L. 97:** (1)(h), (2)(b)(IV), (2)(c)(II), (2)(e), and (2)(h) amended, p. 1027, § 59, effective August 6. **L. 2009:** (3)(a) amended, (SB 09-020), ch. 189, p. 830, § 6, effective April 30; (1)(e)(I) amended, (HB 09-1041), ch. 415, p. 2291, § 1, effective August 5; (3)(a) amended, (SB 09-001), ch. 30, p. 128, § 6, effective August 5. **L. 2010:** (1)(e)(I)(B) amended, (HB 10-1095), ch. 23, p. 96, § 1, effective August 11.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to subsection (3)(a) by Senate Bill 09-001 and Senate Bill 09-020 were harmonized.

Cross references: (1) For provisions in title 34 concerning storage of flammable liquids as referred to in subsection (3)(b)(IV), see article 64 of said title concerning underground storage of natural gas.

(2) For the legislative declaration contained in the 1995 act amending subsection (1)(g), see section 1 of chapter 254, Session Laws of Colorado 1995.

ANNOTATION

Law reviews. For article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995). For article, "The Lawyer's Role in Fire Code Enforcement Actions", see 24 Colo. Law. 2201 (1995).

City may provide fire hydrants. Although a fire district may have the statutory authority to

provide for fire hydrants and a supporting water system, the statute is permissive and the fire district is clearly not required to do so. The fact that the fire district has the power to provide for such a system does not prevent a city from providing a similar service as part of its water system. The city has the right, as an incident to

the water system servicing the area, to install fire hydrants as part of this service. *Dunford v. City of Thornton*, 29 Colo. App. 349, 483 P.2d 977 (1971).

And judicial review is available. To the extent that an employee is protected in his employment by the rules and regulations of the fire protection district, he has "tenure" and can only be deprived thereof for cause, under procedures adopted by the district. The employee is entitled to judicial review of the full procedures resulting in his discharge, and the board of directors can be required to answer. *Maulding v. Schmitt*, 162 Colo. 337, 426 P.2d 183 (1967).

Therefore, a trial court errs in reaching the conclusion that the board of directors has a perfect right to discharge employees no matter what their reasons are. *Maulding v. Schmitt*, 162 Colo. 337, 426 P.2d 183 (1967).

Board of directors must follow its own procedures for discharging firemen. When the board of directors establishes procedures con-

cerning the manner in which firemen employed by them are to be subjected to censure or discharge, the board can not discharge a fireman without following the procedures prescribed by the rules. *Maulding v. Schmitt*, 162 Colo. 337, 426 P.2d 183 (1967).

Local regulation of fireworks has not been preempted by 1991 changes to the fireworks regulation statutes. *Starr Fireworks, Inc. v. West Adams County Fire Dept.*, 903 P.2d 1202 (Colo. App. 1995).

The authority of the director of the division of labor in § 8-1-107 (2)(d) to "enforce the provisions of §§ 22-32-124 and 23-71-122" relating to building inspections is not exclusive but may also be taken by a fire protection district absent the school district or junior college district's exercise of authority to contract with a qualified fire inspector. *West Adams County Fire v. Adams County Sch. Dist. 12*, 926 P.2d 172 (Colo. App. 1996).

32-1-1003. Health service districts - additional powers. (1) In addition to the powers specified in section 32-1-1001, the board of any health service district has any or all of the following powers for and on behalf of such district:

(a) To establish, maintain, or operate, directly or indirectly through lease to or from other parties or other arrangement, public hospitals, convalescent centers, nursing care facilities, intermediate care facilities, emergency facilities, community clinics, or other facilities providing health and personal care services, including but not limited to facilities licensed or certified pursuant to section 25-1.5-103 (1) (a), C.R.S., and to organize, own, operate, control, direct, manage, contract for, or furnish ambulance service in said district;

(b) To organize, own, operate, control, direct, manage, contract for, or furnish ambulance service;

(c) To draw warrants against health service district funds held by the county treasurer for the purposes set forth in paragraphs (a) and (b) of this subsection (1);

(d) To contract with or work cooperatively and in conjunction with a health assurance district or other existing health care provider or service to provide health care services to the residents of such district; and

(e) To seek approval from the eligible electors in the health service district to collect, retain, and spend all revenue generated by any tax approved by the eligible electors in excess of the limitation provided in section 20 of article X of the state constitution.

(2) The board of county commissioners of any county or the governing body of any municipality within the health service district may transfer any real and personal property, whether or not theretofore used by the county or municipality for hospital purposes, to any newly organized health service district if such real and personal property is located in the newly organized district.

(3) A hospital district established prior to July 1, 1996, may continue to use and operate under the name it is using on June 30, 1996, or it may rename itself as otherwise provided by law and in accordance with this section. Nothing in this section shall be construed to limit the powers under prior law of a hospital district established prior to July 1, 1996.

(4) Nothing in this section or section 32-1-103 (9) shall be construed to limit any or all of the common powers of a special district as set forth in 32-1-1001 as it applies to a hospital district that was established prior to July 1, 1996, or a health service district established on or after July 1, 1996.

(5) Any health service district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect a uniform sales tax throughout the entire geographic area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions

of article 26 of title 39, C.R.S., excluding the sale of cigarettes, subject to the following provisions:

(a) For purposes of this subsection (5), “eligible elector” shall have the same meaning as set forth in section 32-19-102 (3).

(b) For purposes of complying with the provisions of section 32-1-301 (2) (d.1), the petition for organization shall set forth the estimated sales tax revenues for the health service district’s first budget year if the district will seek approval from the eligible electors of the district to levy a sales tax in its first budget year.

(c) Any sales tax authorized pursuant to this subsection (5) shall be levied and collected as provided in section 32-19-112.

Source: **L. 81:** Entire article R&RE, p. 1597, § 1, effective July 1. **L. 96:** Entire section amended, p. 471, § 3, effective July 1. **L. 2003:** (1)(a) amended, p. 715, § 59, effective July 1. **L. 2007:** (1)(a) amended and (1)(d), (1)(e), and (5) added, pp. 1191, 1192, §§ 11, 12, effective July 1. **L. 2009:** IP(5) amended, (HB 09-1342), ch. 354, p. 1847, § 4, effective July 1.

Editor’s note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Hospital board authority. The hospital board has both the power and the authority to terminate a physician’s hospital privileges.

Leonard v. Bd. of Dirs., 673 P.2d 1019 (Colo. App. 1983).

32-1-1003.5. Health assurance districts - additional powers - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that access to health care services is an increasing problem in Colorado and that some Coloradans do not have access to a primary care provider. It is the intent of the general assembly to ease the strain on Coloradan’s health care needs by allowing a special district to be created to provide health care services. It is the intention of the general assembly to review the success of such efforts as authorized by subsection (2) of this section to determine the effectiveness of the program.

(2) In addition to the powers specified in section 32-1-1001, the board of any health assurance district has any or all of the following powers for and on behalf of such district:

(a) To organize, operate, control, direct, manage, contract for, furnish, or provide, directly or indirectly, health care services to residents of the health assurance district who are in need of such services;

(b) To draw warrants against health assurance district funds held by the county treasurer for the purposes set forth in paragraph (a) of this subsection (2);

(c) To contract with or work cooperatively and in conjunction with a health service district or other existing health care provider or service to provide health care services to the residents of such district; and

(d) To seek approval from the eligible electors in the health assurance district to collect, retain, and spend all revenue generated by any tax approved by the eligible electors in excess of the limitation provided in section 20 of article X of the state constitution.

(3) The board of county commissioners of any county or the governing body of any municipality within the health assurance district may transfer any real and personal property, whether or not theretofore used by the county or municipality for hospital purposes, to any newly organized health assurance district if such real and personal property is located in the newly organized district.

(4) (Deleted by amendment, L. 2007, p. 1192, § 13, effective July 1, 2007.)

(5) Any health assurance district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect a uniform sales tax throughout the entire geographic area of the district upon every transaction or other

incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S., excluding the sale of cigarettes, subject to the following provisions:

(a) For purposes of this subsection (5), "eligible elector" shall have the same meaning as set forth in section 32-19-102 (3).

(b) For purposes of complying with the provisions of section 32-1-301 (2) (d.1), the petition for organization shall set forth the estimated sales tax revenues for the health assurance district's first budget year if the district will seek approval from the eligible electors of the district to levy a sales tax in its first budget year.

(c) Any sales tax authorized pursuant to this subsection (5) shall be levied and collected as provided in section 32-19-112.

Source: L. 2001: Entire section added, p. 1164, § 14, effective June 5. **L. 2007:** (1), (2)(a), and (4) amended and (2)(c), (2)(d), and (5) added, pp. 1192, 1193, §§ 13, 14, effective July 1. **L. 2009:** IP(5) amended, (HB 09-1342), ch. 354, p. 1847, § 5, effective July 1.

Cross references: For the legislative declaration contained in the 2001 act enacting this section, see section 1 of chapter 300, Session Laws of Colorado 2001.

32-1-1004. Metropolitan districts - additional powers and duties. (1) In addition to the powers specified in section 32-1-1001, the board of any metropolitan district has the following powers for and on behalf of such district:

(a) To enter into contracts with public utilities, cooperative electric associations, and municipalities for the purpose of furnishing street lighting service;

(b) To erect and maintain, in providing safety protection services, traffic and safety controls and devices on streets and highways and at railroad crossings and to enter into agreements with the county or counties in which a metropolitan district is situate or with adjoining counties, the department of transportation, or railroad companies for the erection of such safety controls and devices and for the construction of underpasses or overpasses at railroad crossings;

(c) To finance line extension charges for new telephone construction for the purpose of furnishing telephone service exclusively in districts which have no property zoned or valued for assessment as residential;

(d) To finance payment of incremental directional drilling costs for oil and gas wells drilled within the greater Wattenberg area, as that term is defined in section 24-65.5-102, C.R.S.

(2) A metropolitan district shall provide two or more of the following services:

(a) Fire protection as specified in section 32-1-103 (7);

(b) Elimination and control of mosquitoes;

(c) Parks or recreational facilities or programs as specified in section 32-1-103 (14);

(d) Safety protection through traffic and safety controls and devices on streets and highways and at railroad crossings;

(e) Sanitation services as specified in section 32-1-103 (18);

(f) Street improvement through the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements;

(g) Establishment and maintenance of television relay and translator facilities;

(h) Transportation as specified in subsection (5) of this section;

(i) Water and sanitation services as specified in section 32-1-103 (18), (24), and (25);

(j) Water as specified in section 32-1-103 (25);

(k) Solid waste disposal facilities or collection and transportation of solid waste as specified in section 32-1-1006 (6) and (7).

(3) Any metropolitan district providing services specified in paragraph (a), (c), (e), (i), or (j) of subsection (2) of this section shall have all the duties, powers, and authority granted to a fire protection, park and recreation, sanitation, water and sanitation, or water district by this article, except as provided in subsection (4) of this section.

(4) A metropolitan district may have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by article 1 of title 38, C.R.S., may take any property necessary to the exercise of the powers granted, both within and without the special district, only for the purposes of fire protection, sanitation, street improvements, television relay and translator facilities, water, or water and sanitation, except for the acquisition of water rights, and, within the boundaries of the district, if the district is providing park and recreation services, only for the purpose of easements and rights-of-way for access to park and recreational facilities operated by the special district and only where no other access to such facilities exists or can be acquired by other means.

(5) The board of a metropolitan district has the power to establish, maintain, and operate a system to transport the public by bus, rail, or any other means of conveyance, or any combination thereof, and may contract pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The board of a metropolitan district may not establish, maintain, or operate such a system of transportation in a county, city, city and county, or any other political subdivision of the state empowered to provide a system of transportation except pursuant to a contract entered into pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The board of a metropolitan district not originally organized as having the power granted in this subsection (5) may exercise its power upon compliance with the provisions of part 2 of this article. Notwithstanding any other provision of this subsection (5), the board of a metropolitan district shall not exercise the power under this subsection (5) until approved by the district court in compliance with the provisions of part 2 of this article and unless authorized, at a regular special district election or a special election held and conducted pursuant to articles 1 to 13 of title 1, C.R.S., by a majority of the eligible electors of the district voting on the question of whether the board should exercise such power. The board of a metropolitan district which exercises the power granted in this subsection (5) shall provide transportation services only in the county or counties within which the boundaries of the metropolitan district lie.

(6) Notwithstanding anything in this article or any other law to the contrary:

(a) A metropolitan district may be formed within any part of the area within the regional transportation district, as described in section 32-9-106.1, for the single service of financing a system to transport the public by bus, guideway, or any other means of conveyance, or any combination thereof.

(b) A district created pursuant to paragraph (a) of this subsection (6) may be formed wholly or partly within an existing special district which provides or is authorized to provide the service of mass transportation if the improvements or facilities to be financed by such a district do not duplicate or interfere with any other improvements or facilities already constructed or planned to be constructed within the limits of the existing special district.

(c) The intergovernmental contract required by subsection (5) of this section shall not be required for such a district except where the county, city, or city and county or any other political subdivision of the state within which a system of transportation is to be financed is actually operating a system of transportation.

(d) Except as specifically modified by this subsection (6), all other provisions of this article shall apply to such a district.

(7) The board of a metropolitan district has the power to furnish security services for any area within the special district. Such power may be exercised only after the district has provided written notification to, consulted with, and obtained the written consent of all local law enforcement agencies having jurisdiction within the area and any applicable master association or similar body having authority in its charter or declaration to furnish security services in the area. Any local law enforcement agency having jurisdiction within the area and any applicable master association or similar body having authority in its charter or declaration to furnish security services in the area may subsequently withdraw its consent after consultation with and providing written notice of the withdrawal to the board.

(8) (a) The board of a metropolitan district has the power to furnish covenant enforcement and design review services within the district if:

(I) The governing body of the applicable master association or similar body and the metropolitan district have entered into a contract to define the duties and responsibilities of

each of the contracting parties, including the covenants that may be enforced by the district, and the covenant enforcement services of the district do not exceed the enforcement powers granted by the declaration, rules and regulations, or any similar document containing the covenants to be enforced; or

(II) The declaration, rules and regulations, or any similar document containing the covenants to be enforced for the area within the metropolitan district name the metropolitan district as the enforcement or design review entity.

(b) The board of a metropolitan district shall have the power to furnish covenant enforcement and design review services pursuant to this subsection (8) only if the revenues used to furnish such services are derived from the area in which the service is furnished.

(c) Nothing in this subsection (8) shall be construed to authorize a metropolitan district to enforce any covenant that has been determined to be unenforceable as a matter of law.

(9) Except as limited by the service plan of the district, the board of a metropolitan district has the power to provide activities in support of business recruitment, management, and development within the district if the valuation for assessment of the commercial property within the district is more than one and one quarter billion dollars. For purposes of this subsection (9), "commercial property" means any taxable real or personal property that is not classified for property tax purposes as either residential or agricultural. A metropolitan district meeting the qualifications of this subsection (9) shall neither have nor exercise the power of eminent domain or dominant eminent domain for the purposes set forth in this subsection (9).

Source: **L. 81:** Entire article R&RE, p. 1597, § 1, effective July 1. **L. 82:** (6) added, p. 501, § 7, effective April 15. **L. 87:** (1)(c) added, p. 1239, § 1, effective April 22. **L. 91:** (1)(b) amended, p. 1070, § 45, effective July 1. **L. 92:** (5) amended, p. 888, § 127, effective January 1, 1993. **L. 98:** (2)(k) added, p. 1070, § 2, effective June 1. **L. 2004:** (7) and (8) added, p. 1065, § 1, effective May 21. **L. 2007:** (6)(a) amended, p. 834, § 3, effective May 14; (1)(d) added, p. 2122, § 9, effective August 3; (9) added, p. 938, § 1, effective August 3. **L. 2008:** (1)(d) amended, p. 1082, § 3, effective August 5.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-1005. Park and recreation districts - additional powers - limitations. (1) In addition to the powers specified in section 32-1-1001, the board of any park and recreation district has the following powers for and on behalf of such district:

(a) To operate a system of television relay and translator facilities and to use, acquire, equip, and maintain land, buildings, and other recreational facilities therefor;

(b) To use the power granted in section 32-1-1001 (1) (f) for the establishment of recreational facilities, including leases, easements, and other interests in land for the preservation or conservation of sites, scenes, open space, and vistas of recreational, scientific, historic, aesthetic, or other public interest. "Interests in land", as used in this paragraph (b), means any rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land, held pursuant to this paragraph (b), when recorded shall be deemed to run with the land to which it pertains for the benefit of the park and recreation district and may be protected and enforced by such district in any court of general jurisdiction by any proceeding known at law or in equity.

(c) To have and exercise the power of eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the special district, only for the purposes of television relay and translator facilities, and, within the boundaries of the district, only for the purpose of easements and rights-of-way for access to park and recreational facilities operated by the special district and only where no other access to such facilities exists or can be acquired by other means.

(2) (a) No district shall construct, own, or operate any bowling alley, roller skating rink, batting cage, golf course on which the game is played on an artificial surface, or an amusement park which has water recreation as its central theme, unless the board of such district receives approval for such project from the board of county commissioners of each county which has territory included in the district. The board of county commissioners shall disapprove the facility or service unless evidence satisfactory to the board of each of the following is presented:

- (I) The facility or service is not adequately provided in the district by private providers;
- (II) There is sufficient existing and projected need for the facility or service within the district;
- (III) The existing facilities or services in the district are inadequate for present and projected needs;
- (IV) The district has or will have the financial ability to discharge any proposed indebtedness on a reasonable basis; and
- (V) The facility or service will be in the best interests of the district and of the residents of the district.

(b) In addition to any existing notice requirements, notice of the hearing of the board of county commissioners on the proposal of the district to construct, own, or operate a facility or to provide a service pursuant to this subsection (2) shall be sent by the district to all providers of the same or similar type of facility or service located within two miles of the proposed facility or service no later than ten days prior to such hearing. The notice required by this paragraph (b) will be deemed to have been sent to all required providers if said notice has been sent by first-class mail, postage prepaid, to all such providers listed in a current classified telephone directory and to all such providers whose names are provided to the district by the appropriate trade association.

Source: **L. 81:** Entire article R&RE, p. 1599, § 1, effective July 1. **L. 89:** (2) added, p. 1313, § 2, effective April 18.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration contained in the 1989 act enacting subsection (2), see section 1 of chapter 287, Session Laws of Colorado 1989.

32-1-1006. Sanitation, water and sanitation, or water districts - additional powers - special provisions. (1) In addition to the powers specified in section 32-1-1001, the board of any sanitation, water and sanitation, or water district has the following powers for and on behalf of such district:

(a) (I) To compel the owner of premises located within the boundaries of any such district, whenever necessary for the protection of public health, to connect such owner's premises, in accordance with the state plumbing code, to the sewer, water and sewer, or water lines, as applicable, of such district within twenty days after written notice is sent by registered mail, if such sewer or water line is within four hundred feet of such premises. If such connection is not begun within twenty days, the board may thereafter connect the premises to the sewer, water and sewer, or water system, as applicable, of such district and shall have a perpetual lien on and against the premises for the cost of making the connection, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens.

(II) Nothing in subparagraph (I) of this paragraph (a) authorizes the board of any sanitation, water and sanitation, or water district to compel any connection with the sewer, water and sewer, or water lines, as applicable, of such district, by any owner of premises located outside of such district who utilizes private or nongovernmental persons, services, systems, or facilities including an on-site wastewater treatment system, for the provision of sewer, water and sewer, or water lines to such premises.

(b) (I) To divide such district into areas according to the water or sanitation services furnished or to be furnished therein. The board has the power to fix different rates, fees, tolls, or charges and different rates of levy for tax purposes against all of the taxable property within the several areas of such district according to the services and facilities furnished or to be furnished therein within a reasonable time. In addition, if the board finds it infeasible, impracticable, or undesirable for the good of the entire district to extend water or sewer lines and facilities to any part of such district, the board may designate by resolution such area not to be served with water or sanitation service, but such area designated not to be served shall be at least ten acres in extent.

(II) If the board divides a special district into areas according to the facilities and services furnished or to be furnished, to determine the amount of money necessary to be raised by taxation within each such area, taking into consideration other sources of revenue within the area, and to fix a levy which, when levied upon every dollar of the valuation for assessment of taxable property within such area of the special district, will supply funds for the payments of the costs of acquiring, operating, and maintaining the services or facilities furnished in such area and will pay promptly, when due, the principal or interest on bonds or other obligations issued and its pro rata share of the general operating expenses of the district.

(c) (I) To establish, construct, operate, and maintain works and facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are the property of the state of Colorado, and across any stream of water or watercourse. The board of county commissioners of any county in which any public streets or highways are situated which are to be cut into or excavated in the construction or maintenance of any such facilities has authority to adopt by resolution such rules as it deems necessary in regard to any such excavations and may require the payment of reasonable fees by such district as may be fixed by the board of county commissioners to insure proper restoration of such streets or highways.

(II) When such fee is paid, it is the responsibility of the board of county commissioners to promptly restore such street or highway to its former state. If the fee is not fixed and paid, such district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof.

(III) This grant of authority is not and shall not be construed as a limitation upon the existing powers of any municipality to regulate works and facilities in public streets or highways.

(d) To assess reasonable penalties for delinquency in the payment of rates, fees, tolls, or charges or for any violations of the rules and regulations of the special district together with interest on delinquencies from any date due at not more than one percent per month or fraction thereof, and to shut off or discontinue water or sanitation service for such delinquencies and delinquencies in the payment of taxes or for any violation of the rules and regulations of the special district, and to provide for the connection with and the disconnection from the facilities of such district;

(e) To acquire water rights and construct and operate lines and facilities within and without the district;

(f) To have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the special district, except for the acquisition of water rights;

(g) To fix and from time to time to increase or decrease tap fees. The board may pledge such revenue for the payment of any indebtedness of the special district.

(h) (I) To assess availability of service or facilities charges subject to the following provisions:

(A) No fee, rate, toll, or charge for connection to or use of services or facilities of such district shall be considered an availability of service or facilities charge.

(B) Any availability of service or facilities charges shall be made only when a notice, stating that such availability of service or facilities charges are being considered and stating the date, time, and place of the meeting at which they are to be considered, has been mailed

by first-class United States mail, postage prepaid, to each taxpaying elector of such district at his last-known address, as disclosed by the tax records of the county or counties within which such district is located.

(C) Availability of service or facilities charges shall be assessed solely for the purpose of paying principal of and interest on any outstanding indebtedness or bonds of such district and shall not be used to pay any operation or maintenance expenses of, nor capital improvements within or for, such district.

(D) Availability of service or facilities charges shall be assessed only where water, sewer, or both water and sewer lines are installed and ready for connection within one hundred feet of any property line of the residential lot or residential lot equivalent to be assessed, but to one or both of which line or lines the particular lot or lot equivalent to be assessed is not connected.

(E) Availability of service or facilities charges shall be a percentage, not to exceed fifty percent, of the fees, rates, tolls, or charges for use of services or facilities of such district, said percentage to be determined by the board. If the fees, rates, tolls, or charges for the use of services or facilities vary dependent upon quantities of usage, the availability of service or facilities charges shall be a percentage, not to exceed fifty percent, of the average usage derived by dividing the total usage quantity for such district for the last preceding fiscal year by the total number of users in such district, said percentage to be determined by the board. In addition the aggregate amount of revenue budgeted and expected to be derived from availability of service or facilities charges shall not exceed the total amount of principal of and interest on the outstanding indebtedness or bonds of such district for such service currently budgeted for and to mature or accrue during the annual period within which such availability of service or facilities charges are payable, less the amount budgeted and expected to be produced during such period by the mill levy allocable to such service then being budgeted for and levied and assessed by such district.

(II) Notwithstanding the provisions of this paragraph (h), any metropolitan district providing water or sanitation or water and sanitation services which, prior to July 1, 1981, has imposed an availability of service charge pursuant to section 31-35-402 (1) (f), C.R.S., and has pledged such availability of service charges to the payment of outstanding bonds may continue such charge until such bonds are retired.

(1.5) (a) No water and sanitation district or water district shall furnish water service or water supply to any property located outside of the district's boundaries if such property is within the legal boundaries of another special district that has been organized with the power to furnish water facilities or water services, unless:

(I) In compliance with the provisions of this title and with the consent of the special district within whose boundaries such property is located, such property is included within the boundaries of the district seeking to provide water service or water supply; or

(II) After April 15, 1996, in lieu of inclusion pursuant to subparagraph (I) of this paragraph (a), the special district within whose boundaries such property is located gives consent to the provision of such water service or water supply.

(b) In the absence of such inclusion or consent, no water and sanitation district or water district shall have any right or power, however derived, to provide water service or water supply to any property outside of that district's boundaries and within the boundaries of another special district that has been organized with the power to furnish water facilities or water services.

(c) As used in this subsection (1.5), "water facilities" has the same meaning as in section 31-35-401 (7), C.R.S.

(2) (a) A special district organized for water or sanitation or for water and sanitation purposes, upon the filing of a resolution of the board with the court and after an election held pursuant to paragraph (b) of this subsection (2), may become a water and sanitation or metropolitan district, respectively, possessing all the rights, powers, and authority of such a district if there is not then pending a petition for the organization of a water and sanitation or metropolitan district, partially or wholly within the water or sanitation or water and sanitation district, and if a metropolitan district does not already exist wholly or partly within the boundaries of the sanitation or water or water and sanitation district.

(b) (I) After a hearing on the resolution, the court shall direct that the question of conversion of the special district be submitted to the eligible electors of the special district and shall appoint the secretary as the designated election official responsible for the calling and conducting of the election according to the provisions of articles 1 to 13 of title 1, C.R.S.

(II) If a majority of the votes cast at the election are in favor of conversion and the court determines the election was held in accordance with articles 1 to 13 of title 1, C.R.S., the court shall enter an order including any conditions so prescribed and converting the special district.

(3) Taxpaying electors of any area of five acres or more within or without a special district furnishing sanitation or water services or facilities or sanitation and water services or facilities or any area regardless of size immediately contiguous to such district may agree among themselves for the construction of water or sanitation facilities or water and sanitation facilities within such area, and the board of such district has the authority to enter into a contract with such taxpaying electors to allow any portion of revenue derived from water or sanitation charges and fees from such area or from special charges assessed against users of such sanitation or water facilities to be applied on the payment of the cost of the construction of such water or sanitation facilities. Such payment shall be made without interest and upon such terms as the parties may agree upon, but payment shall not extend over fifteen years. Such contracts shall not be included within the dollar limitation of debts provided by this article and shall not require approval of the electors of the special district.

(4) Any dispute involving a special district furnishing sanitation or water services or facilities or sanitation and water services or facilities and any customer of such district in which physical damage to the property of the customer in the amount of ten thousand dollars or less is alleged to have been caused by the actions of such special district may be submitted with the consent of the district and the customer to alternative dispute resolution procedures pursuant to the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S., if such procedures are available in the judicial district where a complaint in such dispute would be filed. Notwithstanding any other provision of law to the contrary, once a party to such dispute has properly submitted the dispute to alternative dispute resolution procedures pursuant to this section, neither party shall remove the dispute from the alternative dispute resolution forum without the consent of the other party.

(5) The governing body of each special district providing water or sanitation services which implements an industrial wastewater pretreatment program pursuant to the federal act, as defined in section 25-8-103 (8), C.R.S., may seek such relief and impose such penalties as are required by such federal act and its implementing regulations for such programs.

(6) The board of a sanitation district or water and sanitation district with a resident elector population of two thousand five hundred or less that is located in whole or in part within a county with a population of twenty-five thousand or less, as determined by the 1996 population estimates prepared by the division, may provide collection and transportation of solid waste for and on behalf of the district, including but not limited to the financing thereof. If the board decides to provide collection and transportation of solid waste, the board shall request proposals to provide such services within a designated area of the district by publishing notice and awarding a contract in accordance with the procedures specified in section 30-15-401 (7.5) (c) and (7.7), C.R.S. The board shall not award a contract that exceeds three years in duration.

(7) The board of any sanitation district or water and sanitation district may provide solid waste disposal facilities, including but not limited to the financing thereof, for and on behalf of such district. Any service or facility pursuant to this subsection (7) shall be subject to part 1 of article 20 of title 30, C.R.S.

(8) (a) A water district or a water and sanitation district may provide park and recreation improvements and services in connection with a water reservoir owned by the district and adjacent land if such improvements and services are not already being provided by another entity with respect to the reservoir and adjacent land.

(b) Once the board of a water district or a water and sanitation district adopts a resolution to provide improvements and services pursuant to this subsection (8), no other

entity may provide park and recreation improvements and services with respect to the reservoir and adjacent land without the consent of the board.

(c) The district may exercise any powers that a park and recreation district has in connection with the provision of park and recreation improvements and services, including imposing rates, fees, and charges in connection with the improvements and services. The district may use any district revenues to provide the improvements and services. The provision of improvements and services pursuant to this subsection (8) is not a material modification of the service plan of the district.

Source: **L. 81:** Entire article R&RE, p. 1599, § 1, effective July 1. **L. 83:** (1)(h)(I)(B) amended, p. 1279, § 1, effective May 25; (2) amended, p. 1280, § 1, effective May 26. **L. 89:** (4) added, p. 1315, § 1, effective March 15. **L. 90:** (5) added, p. 1346, § 8, effective July 1. **L. 92:** (2)(b) amended, p. 888, § 128, effective January 1, 1993. **L. 94:** (1)(a) amended, p. 593, § 1, effective April 7. **L. 96:** (1.5) added, p. 309, § 6, effective April 15. **L. 98:** (6) and (7) added, p. 1070, § 3, effective June 1. **L. 2005:** (8) added, p. 151, § 1, effective April 5. **L. 2012:** (1)(a)(II) amended, (HB 12-1126), ch. 137, p. 499, § 8, effective August 8.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For foreclosure of mechanics' liens, as provided in subsection (1)(a), see article 22 of title 38.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

This section contains no procedure for "re-organization", and in the absence of any legislatively created procedure for such, the court will not superimpose a judicially crafted "re-organization" procedure. *Upper Bear Creek v. Bd. of County Comm'rs*, 715 P.2d 799 (Colo. 1986).

Annexation by a city of a portion of territory owned by a quasi-municipal water district corporation does not deprive the district of its assets in the annexed territory, and does not prevent the district from continuing its service in the annexed territory. *Valley Water Dist. v. City of Littleton*, 32 Colo. App. 286, 512 P.2d 644 (1973).

Police power to protect citizens prevails over proprietary powers of district. As between the proprietary powers given to a district organized under former § 32-4-101 and the police power to protect its citizens and streets given to a city by § 31-15-702, the police power prevails. *People v. Haase*, 198 Colo. 47, 596 P.2d 392 (1979).

Street cut permit may be required by municipality. A municipality acting reasonably has the right to require a water and sanitation district, or those acting in its behalf, to obtain a permit to effect a street cut to repair the district's water lines located below the surface of the street. *People v. Haase*, 198 Colo. 47, 596 P.2d 392 (1979).

Contract between a water district to sell and deliver water to a city outside the district's boundaries in perpetuity was not null and void since the state grants the right to appropriators to the use of water in perpetuity. *Cherokee Water Dist. v. Colo. Springs*, 184 Colo. 161, 519 P.2d 339 (1974).

No authority to abrogate price portion of contract. Where a water district's contract involves a sale and delivery of water outside the boundaries of the district, the district does not have authority to abrogate the price portion of the contract. *Cherokee Water Dist. v. Colo. Springs*, 184 Colo. 161, 519 P.2d 339 (1974).

District acted within its statutory authority in classifying property for purposes of assessing standby fees in accordance to the type and extent of services to be furnished to the particular parcels of property. *Valley Hous. and Development Corp. v. Ridges Metro. Dist.*, 753 P.2d 801 (Colo. App. 1988).

Tap fees are installation "charges" for making sewer services available to the real estate, and those "charges" constitute a perpetual lien against the property served. *North Wash. Water & San. Dist. v. Majestic Sav. & Loan Ass'n*, 42 Colo. App. 158, 594 P.2d 599 (1979).

District's lien given priority. When an improvement effected by the water and sanitation district advances the interest of the public health, safety and welfare and the public policy of this state, the district's lien must be given priority over the private lien of a private lender.

Wasson v. Hogenson, 196 Colo. 183, 583 P.2d 914 (1978).

Priority over existing security interest not violative of due process. The creation of a perpetual lien for water and sewer tap fees and the priority given it does not violate the due process rights of those persons holding a security interest perfected before imposition of the lien. North Wash. Water & San. Dist. v. Majestic Sav. & Loan Ass'n, 42 Colo. App. 158, 594 P.2d 599 (1979).

Lien statement not necessary. A lien statement is necessary in order to perfect a mechanic's lien; however, where the charges are "in the nature of taxes", the lien is already perfected and a statement is not required. North Wash. Water & San. Dist. v. Majestic Sav. & Loan Ass'n, 42 Colo. App. 158, 594 P.2d 599 (1979); Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

District empowered to levy taxes without according proportional benefit. The district's board of directors has the power to levy general ad valorem taxes upon property within the district without according a benefit in proportion to the tax burden imposed. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

Taxation of property according to its value constitutional. The fact that property may be taxed according to its value regardless of whether the owners choose to participate in the proposed water system does not have any constitutional significance. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

Authorization of imposition of disparate tax levies upon real property in the same district in this statute does not violate the uniform taxation provision of § 3 of art. X of the state constitution. Senior Corp. v. Bd. of Assessment Appeals, 702 P.2d 732 (Colo. 1985) (decided under constitutional provision in effect prior to 1982 amendment).

Availability charges may be assessed against lots which have no road or sewer line access, provided that water line is installed and ready for connection within 100 feet of the properties, where owner of lots failed to overcome statutory presumption that benefit received by installation of lines equaled or exceeded assessment for sewer line. Crested Butte South Metro. Dist. v. Dyke, 768 P.2d 1248 (Colo. App. 1988).

District has the authority under this section to compel owners of certain premises to connect to the district's water and sewer lines whenever necessary for the protection of public health. Unless a governing body acts arbitrarily or capriciously, the determination that an ordinance is necessary for preservation of health and safety is binding upon a reviewing court. Risen v. Cucharas San. & Water Dist., 32 P.3d 596 (Colo. App. 2001).

Board may collect a tap fee, penalties, attorney fees, and interest in addition to the costs of making a forced connection. Risen v. Cucharas San. & Water Dist., 32 P.3d 596 (Colo. App. 2001).

A metropolitan district which imposed availability of service charges prior to July 1, 1981, to repay water and sewer bonds may continue to impose such charges to retire the outstanding indebtedness notwithstanding the requirement that such charges not exceed fifty percent of the charges for the use of the services of the district. Durango W. Metro. D. 1 v. HKS J. Venture, 793 P.2d 661 (Colo. App. 1990).

The term "dominant eminent domain", under § 32-9-103 (6), means that the power of eminent domain is superior to that of other specific governmental subdivisions of the state, but not the state itself. Absent a contrary definition in the special district provisions, the court assumed that the general assembly intended that the term in subsection (1)(f) has a similar meaning, and, therefore, town and water and sanitation district were not authorized to condemn state-owned property to determine feasibility of recreation and water storage project. Town of Parker v. Colo. Div. of Parks, 860 P.2d 584 (Colo. App. 1993).

A special district's lease purchase agreement cannot be considered indebtedness within the meaning of subsection (1)(h)(I)(C) when the lease specifies that it does not constitute a debt or indebtedness, and, therefore, it may not be used to assess and calculate availability of service or facility charges. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

This section and § 32-1-1603 should be read together because both are part of the act that sets forth a comprehensive regulatory scheme for special districts. By using the words "mill levy allocable to such service", subsection (1)(h)(I)(E) refers to the process described in § 32-1-1603 that requires that mill levies be certified to the board of county commissioners separately for the funding requirement of general obligation debt and for other budgetary requirements of the special district. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

Pursuant to subsection (1)(h)(I)(E), the indebtedness to be budgeted by a special district is the indebtedness due to accrue during the next year. Although the budget itself may later change, the calculation of availability of service or facility charges is to be based on the indebtedness then currently budgeted. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

The repeated time references in the statute are construed to mean that once the mill levy has been certified and allocated to debt service and a budget is in place for the indebtedness or

bonds that will mature during the next year, the availability of service or facility charges budgeted at that time and expected to be derived shall not exceed the amount of that indebtedness or bonds, less the amount of the mill levy that has been allocated to debt service as certified pursuant to § 32-1-1603. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

This section indicates a legislative intent to limit the availability of service or facility charges to a precise annual statutory calculation, not to expand the charges beyond those encompassed by the plain language of the statute, and to provide only for such portions of a district's principal and interest payments on outstanding indebtedness or bonds that are not otherwise covered in the certified mill levy.

Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

The possibility that a district's budget may be amended during any given fiscal year pursuant to § 29-1-109 is immaterial to the assessment and calculation of a district's total availability of service or facility charge for the year at issue. Nothing in the language of this section suggests that the calculation may be revised when the budget changes or when other financial changes take place in the district. In addition, the total yearly calculation may not be recalculated based on an amended budget that is adopted later. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

32-1-1007. Ambulance districts - additional powers - special provisions. (1) In addition to the powers specified in section 32-1-1001, the board of any ambulance district, unless provided in section 32-1-1002 (1) (c) or 32-1-1003 (1) (b), has the following powers for and on behalf of such district:

(a) To own, maintain, and operate ambulances and other vehicles and equipment necessary for the provision of emergency medical services in said district;

(b) To provide emergency medical services by employees of the district, to provide a voluntary ambulance service, and to make contracts with individuals, partnerships, associations, or corporations or with other political subdivisions of the state or any combination thereof. For the purpose of this paragraph (b), "voluntary ambulance service" means an ambulance service which is operating not for pecuniary profit or financial gain and no part of the assets or income of which is distributable to, or enures to the benefit of, its members, directors, or officers.

(2) An ambulance district may be composed of only one county of the state or a portion thereof or two or more contiguous counties of the state or portions thereof, and the district shall consist of contiguous territory within such county or counties. No ambulance district shall be established in any area in which there is a fire protection district or a health service district that is providing an ambulance service or in any municipality that is providing an ambulance service.

Source: L. 83: Entire section added, p. 412, § 6, effective June 1. **L. 96:** (2) amended, p. 474, § 16, effective July 1.

32-1-1008. Tunnel districts - additional powers - special provisions. (1) In addition to the powers specified in section 32-1-1001, the board of any tunnel district has the following powers for and on behalf of such district:

(a) To acquire, construct, improve, equip, operate, maintain, and finance one or more tunnel projects;

(b) To enter into contracts and agreements concerning the affairs of the tunnel district, including contracts with the United States, the state, any political subdivision of the state, any agency or instrumentality of any of the foregoing, and any private person, without taking bids therefor or otherwise awarding the same on a competitive basis, if in the opinion of the board, it is in the best interests of the tunnel district to so proceed;

(c) To exercise the power of eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the tunnel district, for the purposes of the acquisition, construction, improvement, equipping, operation, or maintenance, or any combination thereof, of one or more tunnels.

Source: L. 87: Entire section added, p. 1232, § 3, effective May 13.

32-1-1009. Regional tourism projects. (1) In addition to the powers specified in this part 10, and notwithstanding any limitation on the powers of a metropolitan district otherwise specified in this part 10 or in the metropolitan district's service plan, any metropolitan district designated as an approved financing entity pursuant to part 3 of article 46 of title 24, C.R.S., shall have all the powers necessary or convenient to carry out and effect its authority as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., including but not limited to the power to receive state sales tax increment revenue and to disburse and otherwise utilize such revenue for all lawful purposes pursuant to part 3 of article 4 of title 24, C.R.S. Such lawful purposes shall include but need not be limited to the financing of eligible costs and the design, construction, maintenance, and operation of eligible improvements as defined in section 24-46-303 (5), C.R.S., or otherwise incorporated into the Colorado economic development commission's conditions of approval pursuant to part 3 of article 46 of title 24, C.R.S.

(2) Notwithstanding any provision of section 32-1-207 or of the metropolitan district's service plan, authorization to receive state sales tax increment revenue pursuant to part 3 of article 46 of title 24, C.R.S., shall not be considered a material modification to the plan and corresponding changes to the plan may be made by the governing body to incorporate the use of state sales tax increment revenue of the metropolitan district without the requirement of petition to or approval by the board of county commissioners or the governing body of the municipality, as applicable.

(3) Any metropolitan district receiving state sales tax increment revenue, whether pursuant to designation as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., or pursuant to a contract entered into with any such entity, shall not use the state sales tax increment revenue to acquire property through the exercise of eminent domain.

Source: L. 2009: Entire section added, (SB 09-173), ch. 434, p. 2419, § 4, effective June 4.

PART 11

FINANCIAL POWERS

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

32-1-1101. Common financial powers. (1) For and on behalf of the special district, the board has the following powers:

(a) To levy and collect ad valorem taxes on and against all taxable property within the special district, which shall not be limited except as provided in section 39-10-111 (11), C.R.S., and in part 3 of article 1 of title 29, C.R.S. Any election on the question of an increased levy pursuant to section 29-1-302, C.R.S., shall be conducted as a special election in accordance with articles 1 to 13 of title 1, C.R.S.

(b) To levy taxes and collect revenue, whenever any indebtedness has been incurred by a special district, for the purpose of creating one or more reserve funds in such amounts as the board may determine, which may be used to meet the obligations of the special district for bond interest repayment and for maintenance and operating charges and depreciation and to provide extensions of and replacements and improvements to the facilities and property of the special district;

(c) To issue negotiable coupon bonds of the special district. Bonds shall bear interest at a rate or rates such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium, not exceeding three percent of the principal thereof. Said bonds shall be executed in the name of and on behalf of the district and signed by the president with the

seal of the district affixed thereto and attested by the secretary. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the president.

(d) To issue revenue bonds authorized by action of the board without the approval of the eligible electors of the special district. The revenue bonds shall be issued in the manner provided in part 4 of article 35 of title 31, C.R.S., for the issuance of revenue bonds by municipalities; except that the revenue bonds may be sold in one or more series at par or below or above par at public or private sale, in such manner and for such price as the board, in its discretion, shall determine. The revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the special district within the meaning of any provision or limitation of the laws of Colorado or the state constitution and shall not constitute nor give rise to a pecuniary liability of the special district or charge against its general credit or taxing powers. The revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(e) In addition to any other means provided by law, to elect, by resolution, at a public meeting held after receipt of notice by the affected parties, including the property owner, to have certain delinquent fees, rates, tolls, penalties, charges, or assessments made or levied solely for water, sewer, or water and sewer services, certified to the treasurer of the county to be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be collected and paid over pursuant to section 39-10-107, C.R.S. The governing body of said special district shall pay to the county in which the affected property of the special district is located, at least once a year, an amount which shall be just and reasonable compensation for the extra labor imposed by this paragraph (e) and an amount for the special district's proportion of the expense of advertising the sale of lands for said delinquent fees, rates, tolls, penalties, charges, or assessments in each year, said amounts to be certified to the governing body of the special district by the county treasurer. Any such fee, rate, toll, penalty, charge, or assessment shall total at least one hundred fifty dollars per account and shall be at least six months delinquent. The treasurer of the county is also authorized to charge and retain a penalty at the rate of thirty percent, or thirty dollars, whichever is greater, on the delinquent sum due and owing to defray the costs of collection.

(f) (I) To divide the special district into one or more areas consistent with the services, programs, and facilities to be furnished therein. However, any facility operated by the special district within such area may be used by any resident of the special district for the same fee charged to persons residing within such area. Whenever the board divides the special district into one or more areas pursuant to this subparagraph (I), the board shall provide notification of such action to the board of county commissioners of each county that has territory included within the district and the governing body of any municipality that has adopted a resolution of approval of the district pursuant to section 32-1-204.5 or 32-1-204.7. Each board of county commissioners and municipal governing body that is entitled to such notification may elect, within thirty days after such notification, to treat the action as a material modification of the district service plan in accordance with section 32-1-207 (2).

(II) Any area created pursuant to this paragraph (f) shall be a subdistrict of the special district. A subdistrict shall be an independent quasi-municipal corporation, shall act pursuant to the provisions of this article, and shall possess all of the rights, privileges, and immunities of the special district. The subdistrict shall be subject to the service plan of the special district. The general assembly hereby finds and declares that any such division of the special district into one or more subdistricts shall provide for the fair and equitable taxation within the territorial limits of the authority levying the tax in conformity with the requirements of section 3 of article X of the state constitution.

(III) The board of the special district shall constitute ex officio the board of directors of the subdistrict. The presiding officer of the board shall be ex officio the presiding officer of the subdistrict, the secretary of the board shall be ex officio the secretary of the subdistrict, and the treasurer of the board shall be ex officio the treasurer of the subdistrict. For the purposes of complying with the requirements of subsection (6) of this section and article 59 of title 11, C.R.S., the debt of the subdistrict shall be treated separately from the debt of the special district and shall not be treated as debt of the special district. The total debt of the

special district and all subdistricts shall not exceed any debt limits specified in the service plan of the special district.

(g) To establish special improvement districts within the boundaries of a special district and levy special assessments on property specially benefited by such improvements as specified in section 32-1-1101.7.

(1.5) (a) The board shall make any determination specified in paragraph (f) of subsection (1) of this section by resolution adopted at a regular or special meeting of the board after publication of notice of the purpose of the public meeting and the place, time, and date of such meeting.

(b) No resolution dividing the special district into one or more areas shall be adopted by the board pursuant to paragraph (a) of this subsection (1.5) if a petition objecting to such division is signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property within the proposed area boundaries, and is filed with the special district no later than five days prior to the public meeting. However, the board may change the geographical boundaries of such area at the public meeting.

(c) Except as otherwise provided in this paragraph (c), no single parcel of land having a valuation for assessment constituting twenty-five percent or more of the total valuation of assessment of all real property within the boundaries of an area in a special district shall be included in such area without the written consent of the owner or owners of such real property. No single parcel of land owned by a corporate entity and having a valuation for assessment constituting five percent or more of the total valuation of assessment of all real property within the boundaries of an area in a special district shall be included in such area without the written consent of the owner of such real property. If, contrary to the provisions of this paragraph (c), such parcel of real property is included within the boundaries of such area, the owner or owners of such real property shall be entitled to petition the board to have such real property excluded from the area boundaries free and clear of any contract, obligation, debt, lien, or charge for which the owner or owners may otherwise be liable due to the inclusion of such real property in the area.

(d) If taxes are to be levied or debt is to be created within an area of the special district, the board shall submit a ballot issue approving such taxes or debt to the eligible electors within such area at a regular special district election or at a special election held on the Tuesday after the first Monday of November in an even-numbered year or the first Tuesday of November in an odd-numbered year conducted in accordance with the provisions of this article and section 20 of article X of the state constitution. In addition to any other matters, the ballot issue shall provide that the tax to be levied for services, programs, and facilities within such area is in addition to any other taxes imposed by the special district.

(e) Nothing in this subsection (1.5) or paragraph (f) of subsection (1) of this section shall repeal or affect any other law or any part thereof as it is the intent of the general assembly that this subsection (1.5) and paragraph (f) of subsection (1) of this section shall provide a separate but not an exclusive method of accomplishing the objectives of the general assembly.

(f) Nothing in this subsection (1.5) or in paragraph (f) of subsection (1) of this section shall impose any requirement contained in House Bill 02-1465, as enacted at the second regular session of the sixty-third general assembly, upon any area that was in existence prior to October 1, 2002; except that a district may, by resolution, elect to apply any of said requirements to such area.

(2) Whenever the board determines, by resolution, that the interest of the special district and the public interest or necessity demand the acquisition, construction, installation, or completion of any works or other improvements or facilities or the making of any contract with the United States or other persons or corporations to carry out the objects or purposes of such district, requiring the creation of a general obligation indebtedness exceeding one and one-half percent of the valuation for assessment of the taxable property in the special district, the board shall order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness, except the issuing of revenue bonds, at an election held for that purpose. The resolution shall also fix the date upon which the election will be held. The election shall be held and conducted as provided in articles

1 to 13 of title 1, C.R.S. Any election may be held separately or may be held jointly or concurrently with any other election authorized by this article. If the issuance of general obligation bonds is approved at an election held pursuant to this subsection (2), the board shall be authorized to issue such bonds for a period not to exceed the later of five years following the date of the election or, subject to the provisions of section 32-1-1101.5, for a period not to exceed twenty years following the date of the election if the issuance of such bonds is in material compliance with the financial plan set forth in the service plan, as that plan is amended from time to time, or in material compliance with the statement of purposes of the special district. After the specified period has expired, the board shall not be authorized to issue bonds which were authorized but not issued after the initial election unless the issuance is approved at a subsequent election; except that nothing in this subsection (2) shall be construed as limiting the board's power to issue refunding bonds in accordance with statutory requirements.

(3) (a) The declaration of public interest or necessity required and the provision for the holding of such an election may be included within the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite:

- (I) The objects and purposes for which the indebtedness is proposed to be incurred;
- (II) The estimated cost of the works or improvements, as the case may be;
- (III) How much, if any, of said estimated cost is to be defrayed out of any state or federal grant;
- (IV) The amount of principal of the indebtedness to be incurred therefor; and
- (V) The maximum net effective interest rate to be paid on such indebtedness.

(b) Whenever the board determines that the district should incur indebtedness in an amount which does not require approval by the eligible electors of the special district under subsection (2) of this section, the board shall establish the maximum net effective interest rate prior to the time the debt is incurred or contracted.

(4) If any proposition is approved at an election provided for in subsection (2) of this section, the board shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, or issue and sell such bonds of the special district, as the case may be, all for the purposes and objects provided for in the proposition submitted and in the resolution therefor, in the amount so provided, at a price or prices and a rate or rates of interest such that the maximum net effective interest rate recited in such resolution is not exceeded. Except as provided in section 32-1-106 (2), submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose.

(5) Whenever any special district organized pursuant to this article has moneys on hand which are not then needed in the conduct of its affairs, the special district may deposit such moneys in any state bank, national bank, or state or federal savings and loan association in Colorado in accordance with state law. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the special district's moneys, and such persons shall give surety bonds in such amount and form and for such purposes as the board may require. Subject to the requirements of part 7 of article 75 of title 24, C.R.S., the special district's moneys may be pooled for investment with the moneys of other local government entities.

(6) (a) The total principal amount of general obligation debt of a special district issued pursuant to subsection (2) of this section, which debt is issued on or after July 1, 1991, shall not at the time of issuance exceed the greater of two million dollars or fifty percent of the valuation for assessment of the taxable property in the special district, as certified by the assessor, except for debt which is:

(I) Rated in one of the four highest investment grade rating categories by one or more nationally recognized organizations which regularly rate such obligations;

(II) Determined by the board of any special district in which infrastructure is in place to be necessary to construct or otherwise provide additional improvements specifically ordered by a federal or state regulatory agency to bring the district into compliance with applicable federal or state laws or regulations for the protection of the public health or the environment if the proceeds raised as a result of such issue are limited solely to the direct

and indirect costs of the construction or improvements mandated and are used solely for those purposes;

(III) Secured as to the payment of the principal and interest on the debt by a letter of credit, line of credit, or other credit enhancement, any of which must be irrevocable and unconditional, issued by a depository institution:

(A) With a net worth of not less than ten million dollars in excess of the obligation created by the issuance of the letter of credit, line of credit, or other credit enhancement;

(B) With the minimum regulatory capital as defined by the primary regulator of such depository institution to meet such obligation; and

(C) Where the obligation does not exceed ten percent of the total capital and surplus of the depository institution, as those terms are defined by the primary regulator of such depository institution; or

(IV) Issued to financial institutions or institutional investors.

(b) Nothing in this title shall prohibit a special district from issuing general obligation debt or other obligations which are either payable from a limited debt service mill levy, which mill levy shall not exceed fifty mills, or which are refundings or restructurings of outstanding obligations, or which are obligations issued pursuant to part 14 of this article.

Source: **L. 81:** Entire article R&RE, p. 1602, § 1, effective July 1. **L. 83:** (5) amended, p. 1010, § 4, effective March 29. **L. 86:** (1)(a)(II) repealed, p. 1069, § 2, effective March 26; (1)(a) amended, p. 1027, § 7, effective January 1, 1987. **L. 89:** (1)(e) added, p. 1316, § 1, effective April 23. **L. 91:** (2) amended and (6) added, p. 790, § 19, effective June 4. **L. 92:** (1)(a), (1)(d), (2), and (3)(b) amended, p. 889, § 129, effective January 1, 1993. **L. 94:** (2) amended, p. 1196, § 102, effective July 1. **L. 95:** (1)(a) amended, p. 128, § 1, effective April 7. **L. 2000:** (1)(f) and (1.5) added, pp. 456, 457, §§ 1, 2, effective August 2. **L. 2002:** (1)(f)(II) and (1)(f)(III) R&RE, (1.5)(b) and (1.5)(d) amended, and (1.5)(f) added, pp. 1730, 1731, §§ 1, 2, effective October 1. **L. 2003:** (1)(f)(I) amended, p. 1317, § 4, effective August 6. **L. 2009:** (1)(g) added, (HB 09-1005), ch. 81, p. 298, § 1, effective April 2.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

For the constitutionality of former § 32-4-124 under § 25 of art. II, Colo. Const., see *Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. Dist.*, 140 Colo. 371, 344 P.2d 685 (1959).

Test as to whether delay in issuance of bonds is fatal is reasonableness, prudence, or necessity. Where bonds are authorized by an election several years prior to their issuance, delay in their issuance is not fatal, the applicable test being whether the delay is reasonable, pru-

dent, or necessary. *Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. & San. Dist.*, 140 Colo. 371, 344 P.2d 685 (1959).

Debt service decrease not to prevent special election on tax levy. Any decrease in a district's debt service is a separate matter and cannot be offset against the increase in general revenue so as to reduce the percentage increase for purposes of determining whether a special election is required for a proposed tax levy. *Stegon v. Pueblo W. Metro. Dist.*, 198 Colo. 128, 596 P.2d 1206 (1979).

Applied in *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982).

32-1-1101.5. Special district debt - quinquennial findings of reasonable diligence.

(1) The results of special district ballot issue elections to incur general obligation indebtedness shall be certified by the special district by certified mail to the board of county commissioners of each county in which the special district is located or to the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 within forty-five days after the election. For all special districts with authorized but unissued general obligation debt approved before

July 1, 1995, the results of the election at which such approval was given and a statement of the principal amount of any general obligation debt that has been issued pursuant to such authorization shall be so certified by the special district on or before January 1, 1996. If for any reason certification required by this subsection (1) is not made, the special district shall certify such election results by certified mail no later than thirty days before issuing any general obligation debt to the board of county commissioners or the governing body of such municipality. The special district shall file a copy of any certification made under this subsection (1) with the division of securities created by section 11-51-701, C.R.S., within the applicable time period prescribed in this subsection (1). Whenever a special district incurs general obligation debt, the special district shall submit a copy of the notice required by section 32-1-1604 to the board of county commissioners of each county in which the district is located or the governing body of such municipality within thirty days after incurring the debt.

(1.5) In every fifth calendar year after the calendar year in which a special district's ballot issue to incur general obligation indebtedness was approved by its electors, the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 may require the board of such special district to file an application for a quinquennial finding of reasonable diligence. If the board of county commissioners or the governing body of such municipality requires such filing, it shall notify the special district in writing to file an application within sixty days after receipt of the notice. The application shall set forth the amount of the special district's authorized and unissued general obligation debt, any current or anticipated plan to issue such debt, a copy of the district's last audit or application for exemption from audit, and any other information required by the board of county commissioners or the governing body of such municipality relevant to making the determinations under subsection (2) of this section. If required by the board of county commissioners or the governing body of such municipality, subsequent applications shall be filed within sixty days after receipt of such notice but no more frequently than every five years after the prior notice until all of the general obligation debt that was authorized by the election has been issued or abandoned. If a special district is wholly or partially located in a municipality that has not adopted a resolution of approval of such special district pursuant to section 32-1-204.5 or 32-1-204.7, the board of the special district shall file a copy of any such application with the governing body of such municipality, and such municipality may submit comments thereon prior to the determination made under subsection (2) of this section.

(2) (a) Within thirty days after submittal of any application required under subsection (1.5) of this section, the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 shall accept such application without further action or shall conduct a public hearing within the next thirty days, with no less than ten days prior notice to the district, to consider whether the service plan and financial plan of the district are adequate to meet the debt financing requirements of the authorized and unissued general obligation debt based upon present conditions within the district. Within thirty days after such hearing, the board of county commissioners or the governing body of the municipality shall:

(I) Determine that the implementation of the service plan or financial plan will result in the timely and reasonable discharge of the special district's general obligation debt. If the board of county commissioners or the governing body of the municipality makes such a finding, it shall grant a continuation of the authority for the board of the special district to issue any remaining authorized general obligation debt.

(II) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of the special district's general obligation debt and that such implementation will place property owners at risk for excessive tax burdens to support the servicing of such debt. If the board of county commissioners or the governing body of the municipality makes such a finding, it shall deny a continuation of the authority of the board of the special district to issue any remaining authorized general obligation debt.

(III) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of general obligation debt and require the board of the special district to submit amendments or modifications to such plans as a precondition to a finding of reasonable diligence; except that nothing in this section shall be construed as limiting the board's power to issue refunding bonds in accordance with statutory requirements.

(b) The board of county commissioners or the governing body of such municipality shall have all available legal remedies to enforce its determination under paragraph (a) of this subsection (2).

(3) The provisions of this section shall apply to all authorized but unissued general obligation debt for each special district organized under this title. All such authorized but unissued debt shall be valid until the board of county commissioners or the governing body of the municipality has made the determination to deny the continuation of such authority pursuant to subsection (2) of this section.

(4) Any determination made pursuant to this section is subject to judicial review by a district court. If the court finds the determination is arbitrary, capricious, or unreasonable, the court shall remand the matter to the board of county commissioners or to the governing body of the municipality to hold another hearing with no less than ten days prior notice to the district and for any other further action consistent with the court's direction to avoid the arbitrary, capricious, or unreasonable determination.

(5) Any action to enforce this section except an action brought under subsection (4) of this section shall be initiated only by the board of county commissioners or the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 and before any bonds are issued as authorized by law.

(6) Any determination made under this section before July 1, 1995, is hereby validated, unless decided otherwise in a legal proceeding instituted to challenge the determination. Any application for a quinquennial finding of reasonable diligence filed by a special district that is pending on July 1, 1995, and any subsequent application filed by a special district on or after July 1, 1995, is subject to this section.

Source: L. 91: Entire section added, p. 792, § 20, effective June 4. L. 92: (3) amended, p. 970, § 13, effective June 1. L. 95: Entire section amended, p. 124, § 1, effective July 1. L. 96: (1) amended, p. 1772, § 75, effective July 1. L. 2003: (1), (1.5), 1P(2)(a), and (5) amended, p. 1317, § 5, effective August 6.

32-1-1101.7. Establishment of special improvement districts within the boundaries of a special district. (1) A special district may establish a special improvement district within the boundaries of the special district to finance all or part of the costs of any improvements that the special district is authorized to finance if the power to levy assessments is authorized in the special district's service plan or statement of purposes or approved in writing by the county or municipality that approved the special district's service plan or accepted the special district's statement of purposes.

(2) If a special improvement district is established within the boundaries of a special district, assessments shall be levied on a frontage, area, zone, or other equitable basis and only:

(a) With the written consent of one hundred percent of the owners of the property to be assessed; or

(b) Upon approval of a majority of the eligible electors, as defined in section 32-1-103 (5), within the special improvement district voting thereon.

(3) The method of creating a special improvement district, making the improvements specified for the special improvement district, and the levying and collecting of assessments for the costs of the improvements specified for the special improvement district shall be as provided in part 5 of article 25 of title 31, C.R.S., as amended, subject to the following:

(a) The special district shall have all the rights, powers, and duties of the municipality as set forth in parts 5 and 11 of article 25 of title 31, C.R.S.

(b) The board shall perform the duties of the governing body as set forth in part 5 of article 25 of title 31, C.R.S.

(c) The chairman and president of the special district shall perform the duties of the mayor as set forth in part 5 of article 25 of title 31, C.R.S.

(d) The secretary of the special district shall perform the duties of the municipal clerk as set forth in part 5 of article 25 of title 31, C.R.S.

(e) The board shall appoint a person to perform the duties of the municipal treasurer as set forth in part 5 of article 25 of title 31, C.R.S.

(f) All actions by the board pursuant to the provisions of part 5 of article 25 of title 31, C.R.S., shall be by resolution, notwithstanding any reference in said part 5 to action by ordinance.

(g) Any bonds payable from the assessments shall be approved by a majority of the eligible electors, as defined in section 32-1-103 (5), voting on the question of issuing such bonds. The board may determine by resolution whether the eligible electors voting on the question shall be:

(I) The eligible electors of the special district; or

(II) The eligible electors of the special improvement district.

Source: L. 2009: Entire section added, (HB 09-1005), ch. 81, p. 298, § 2, effective April 2.

32-1-1102. Special financial provisions - fire protection districts. (Repealed)

Source: L. 81: Entire article R&RE, p. 1604, § 1, effective July 1. **L. 86:** Entire section repealed, p. 1027, § 8, effective January 1, 1987.

32-1-1103. Special financial provisions - health service districts. (1) In addition to the powers specified in section 32-1-1101, the board of any health service district has the following powers for and on behalf of such district:

(a) (I) Repealed.

(II) To levy, in health service districts with a valuation for assessment on real and personal property of fifteen million dollars or less contracting bonded indebtedness not to exceed three percent of the total valuation for assessment within the health service district to be fully paid within a twenty-year period from the date of incurring the indebtedness, on all taxable property within such district without limitations as to rate or amount for purposes of retiring the indebtedness created in accordance with the provisions of section 32-1-1101 (2);

(III) To levy, in health service districts with a valuation for assessment on real and personal property of over fifteen million dollars contracting bonded indebtedness not to exceed five percent of the total valuation for assessment within the health service district to be fully paid within a twenty-year period from the date of incurring the indebtedness, on all taxable property within such district without limitations as to rate or amount for purposes of retiring the indebtedness created in accordance with the provisions of section 32-1-1101 (2);

(IV) To levy, in health service districts with a population of twenty thousand or less with a valuation for assessment on real and personal property of over fifteen million dollars contracting bonded indebtedness not to exceed twenty percent of the total valuation for assessment within the health service district to be fully paid within a twenty-year period from the date of incurring the indebtedness, on all taxable property within such district without limitations as to rate or amount for purposes of retiring the indebtedness created in accordance with the provisions of section 32-1-1101 (2);

(b) To issue without an election, pursuant to an authorizing resolution and subject to the provisions and contractual limitations in resolutions authorizing outstanding bonds and other securities of the health service district, securities to defray, in whole or in part, the cost of a project in the manner provided in and subject to the limitations imposed by subsection (3) of this section.

(2) Notwithstanding any other provisions of this article, all moneys belonging to or collected on behalf of the health service district shall be deposited, in the discretion of the board, with either the treasurer of the county in which the greatest percentage of the valuation for assessment of the taxable property of the district is located or in a depository enumerated in section 24-75-603, C.R.S., to the account of the health service district. All expenditures therefrom of the moneys shall be made upon warrants or checks duly drawn on said account and signed by the president and secretary-treasurer of the health service district. The board may invest any moneys of the district not required to meet the immediate expenses of the district in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(3) (a) (I) The project for which securities are issued pursuant to paragraph (b) of subsection (1) of this section may be the acquisition, by purchase, construction, or otherwise, the improvement, or the equipment, or any combination thereof, for the purposes set forth in section 32-1-1003 (1) (a) or any other building, structure, or land necessary or desirable for use in connection with the operations of a health service district.

(II) The cost of the project may include, in the board's discretion, all incidental costs pertaining to the project and the financing thereof, including, without limitation, contingencies and the capitalization, with proceeds of securities, of operation and maintenance expenses appertaining to facilities to be acquired and interest on the securities for any period not exceeding the period estimated by the board to effect the project plus one year, of any discount on the securities, and of any reserves for payment of principal of and interest on the securities.

(b) The board may issue interim securities, which may be designated "bonds", "notes", or "warrants", evidencing any emergency loans, construction loans, and other temporary loans not exceeding three years, in supplementation of long-term financing, such interim securities to be funded with the proceeds of long-term securities, net pledged revenues, or further interim securities, or any combination thereof, as the board may determine.

(c) (I) Except to the extent inconsistent with the provisions of this section, any securities issued pursuant to this section for any project shall be issued in the form and manner and with the effect provided in sections 11-54-111 and 11-54-112, C.R.S., for public securities issued under the "Refunding Revenue Securities Law".

(II) The authorizing resolution, trust indenture, or other instrument appertaining thereto may contain any of the covenants, and the board may do such acts and things, as are permitted in section 11-54-113, C.R.S.

(III) Revenue obligations issued to refund revenue bonds of a health service district and to refund securities issued under this section may be issued under the "Refunding Revenue Securities Law".

(d) The securities shall be payable and collectible, as to principal, interest, and any prior redemption premium, solely out of net pledged revenues, and the holder thereof may not look to any general or other fund for the payment of such securities except the net revenues pledged therefor. The securities shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation, if any provision or limitation appertains thereto. The securities shall not be considered or held to be general obligations of the health service district but shall constitute its special obligations, and the full faith and credit of the health service district shall not be pledged for their payment. The payment shall not be secured by an encumbrance, mortgage, or other pledge of property of the health service district, except for its pledged revenues. No property of the health service district, subject to said exception, shall be liable to be forfeited or taken in payment of securities.

(e) A resolution providing for the issuance of bonds or other securities under this section or an indenture or other proceedings appertaining thereto may provide that the securities contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(f) The determination of the board that the limitations imposed under this subsection (3) upon the issuance of securities under this section have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion, regardless of whether the

authorizing resolution or the securities thereby authorized contain a recital as authorized by paragraph (e) of this subsection (3).

(g) Nothing in this section or in any other law shall be deemed to impair the existing obligations of contract embodied in outstanding bonds validly issued under the statutes in force at the times of their issue prior to July 1, 1971.

(h) Bonds and other securities issued under the provisions of this section, their transfer, and the income therefrom shall forever remain free and exempt from taxation by this state or any political subdivision thereof.

(i) (I) This section, without reference to other statutes of this state, except as otherwise expressly provided in this section, constitutes full authority for the exercise of the incidental powers granted in this section concerning the borrowing of money to defray wholly or in part the cost of any project and the issuance of securities to evidence such loans.

(II) The powers conferred by this section are in addition and supplemental to and not in substitution for, and the limitations imposed by this section shall not affect, the powers conferred by any other law.

(III) Nothing in this section shall be construed as preventing the exercise of any power granted to the board or to a health service district acting by and through its board or any officer, agent, or employee thereof by any other law.

Source: **L. 81:** Entire article R&RE, p. 1605, § 1, effective July 1. **L. 86:** (1)(a)(I) amended, p. 1069, § 1, effective March 26; (1)(a)(I) repealed, pp. 1027, 1030, §§ 8, 16, effective January 1, 1987. **L. 89:** (2) amended, p. 1134, § 82, effective July 1. **L. 91:** (1)(a)(IV) added, p. 793, § 21, effective June 4. **L. 96:** IP(1), (1)(a)(II), (1)(a)(III), (1)(a)(IV), (1)(b), (2), (3)(a)(I), (3)(c)(III), (3)(d), and (3)(i)(III) amended, p. 475, § 17, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the "Refunding Revenue Securities Law", see article 54 of title 11.

32-1-1104. Special financial provisions - park and recreation districts. (Repealed)

Source: **L. 81:** Entire article R&RE, p. 1607, § 1, effective July 1. **L. 86:** Entire section repealed, p. 1027, § 8, effective January 1, 1987.

32-1-1105. Special financial provisions - tunnel districts. (1) In addition to the powers specified in section 32-1-1101, the board of any tunnel district has the following powers for and on behalf of such district:

(a) To fix and from time to time increase or decrease tolls or other charges for the use of any tunnel and to pledge the same for the payment of principal of and interest and any prior redemption premium on any securities or other obligations of the tunnel district issued in connection with the acquisition, construction, improvement, equipping, operation, maintenance, or financing of a tunnel located in whole or in part within such tunnel district;

(b) To issue without an election, pursuant to an authorizing resolution and subject to the provisions and contractual limitations and resolutions authorizing outstanding bonds and other securities of the tunnel district, securities to defray, in whole or in part, the costs of one or more tunnel projects in the manner provided in and subject to the limitations imposed by subsection (2) of this section;

(c) To invest or deposit moneys belonging to or collected by and on behalf of the tunnel district in accordance with the requirements established in part 6 of article 75 of title 24, C.R.S. In addition, a tunnel district may direct a corporate trustee which holds funds of the tunnel district to invest or deposit such funds in investments or deposits other than those specified by said part 6 if the board determines by resolution that such investments or deposits meet the standard established in section 15-1-304, C.R.S., if the income is at least comparable to income available on investments or deposits specified by said part 6, and if

such investments will assist the tunnel district in the acquisition, construction, improvement, equipping, operation, maintenance, or financing of a tunnel.

(2) (a) (I) The tunnel project for which securities are issued pursuant to paragraph (b) of subsection (1) of this section may be the acquisition, construction, improvement, equipping, operation, or maintenance, or any combination thereof, of any land, tunnel, building, structure, equipment, or other property necessary or desirable for use in connection with the operations of a tunnel district.

(II) The cost of the project may include, in the board's discretion, all incidental costs pertaining to the project and the financing thereof, including, without limitation, contingencies and the capitalization, with proceeds of securities, of operation and maintenance expenses appertaining to the tunnel project and interest on the securities for any period not exceeding the period estimated by the board to effect the acquisition, construction, improvement, or equipping of the tunnel project plus one year, of any discount on the securities, and of any reserves for payment of principal of and interest on the securities.

(b) The board may issue interim securities, which may be designated "bonds", "notes", or "warrants", evidencing any emergency loans, any acquisition, construction, improvement, equipping, operation, or maintenance loans, and any other temporary loans not exceeding three years in supplementation of long-term financing, such interim securities to be funded with the proceeds of long-term securities, net pledged revenues, or further interim securities, or any combination thereof, as the board may determine.

(c) (I) Except to the extent inconsistent with the provisions of this section, any securities issued pursuant to this section for any tunnel project shall be issued in the form and manner and with the effect provided in sections 11-54-111 and 11-54-112, C.R.S., for public securities issued under the "Refunding Revenue Securities Law", article 54 of title 11, C.R.S.

(II) The authorizing resolution, trust indenture, or other instrument appertaining thereto may contain any of the covenants, and the board may do such acts and things, as are permitted in section 11-54-113, C.R.S.

(III) Revenue obligations issued to refund revenue bonds of a tunnel district and to refund securities issued under this section may be issued under the "Refunding Revenue Securities Law", article 54 of title 11, C.R.S.

(d) The securities shall be payable and collectible, as to principal, interest, and any prior redemption premium, solely out of net pledged revenues, and the holder thereof may not look to any general or other fund for such payment of such securities except the net revenues pledged therefor. The securities shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation if any such provision or limitation appertains thereto. The securities shall not be considered or held to be general obligations of the tunnel district but shall constitute its special obligations, and the full faith and credit of the tunnel district shall not be pledged for their payment. Such payment shall not be secured by an encumbrance, a mortgage, or any other pledge of property of the tunnel district, except for its pledged revenues. No property of the tunnel district, subject to said exception, shall be liable to be forfeited or taken in payment of securities.

(e) A resolution providing for the issuance of bonds or other securities under this section or an indenture or other proceedings appertaining thereto may provide that the securities contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(f) The determination of the board that the limitations imposed under this subsection (2) upon the issuance of securities under this section have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion, regardless of whether the authorizing resolution or the securities thereby authorized contain a recital as authorized by paragraph (e) of this subsection (2).

(g) Bonds and other securities issued under the provisions of this section, their transfer, and the income therefrom shall forever remain free and exempt from taxation by this state or any political subdivision thereof.

(h) (I) Except as otherwise expressly provided in this section, this section, without reference to other statutes of this state, constitutes full authority for the exercise of the

incidental powers granted in this section concerning the borrowing of money to defray, in whole or in part, the cost of any tunnel project and the issuance of securities to evidence such loans.

(II) The powers conferred by this section are in addition and supplemental to and not in substitution for, and the limitations imposed by this section shall not affect, the powers conferred by any other law.

(III) Nothing in this section shall be construed as preventing the exercise of any power granted to the board or to a tunnel district acting by and through its board or any officer, agent, or employee thereof by any other law.

(3) The state hereby pledges and agrees with the holders of any bonds or other obligations issued by any tunnel district that the state will not limit, alter, restrict, or impair the rights vested in the tunnel district to fulfill the terms of any agreements made with the holders of bonds or other securities authorized and issued pursuant to the provisions of this section. The state further agrees that it will not in any way impair the rights or remedies of the holders of any bonds or securities of the tunnel district until such bonds or securities have been paid or until adequate provision for payment thereof has been made. The tunnel district may include this provision and undertaking of the state in such bonds or other securities.

Source: L. 87: Entire section added, p. 1233, § 4, effective May 13. L. 89: (1)(c) amended, p. 1117, § 35, effective July 1.

Editor's note: Subsection (3) was originally numbered as subsection (5) by chapter 242, Session Laws of Colorado 1987, p. 1233, but was renumbered on revision.

32-1-1106. Special financial provisions - metropolitan districts that provide street improvement, safety protection, or transportation services. (1) In addition to the powers specified in section 32-1-1101, the board of a metropolitan district organized with street improvement, safety protection, or transportation powers as described in section 32-1-1004 (2) (d), (2) (f), (2) (h), and (5) has the power, for and on behalf of the district, to levy a uniform sales tax, at a rate determined by the board, upon every transaction or other incident with respect to which a sales tax is levied by the state that occurs within any area of the district that is not also within the boundaries of an incorporated municipality subject to the following limitations:

(a) The board may levy the tax only if the question of levying the tax is submitted to and approved by a majority of the registered electors of the portion of the district in which the tax is to be levied voting at a regular district election or at a special election held on the Tuesday after the first Monday of November in an even-numbered year or on the first Tuesday of November in an odd-numbered year in accordance with this article and section 20 of article X of the state constitution. The ballot issue shall provide that the tax to be levied shall be in addition to any other taxes levied by the district. The district shall pay all costs of the election, and no district moneys may be used to urge or oppose passage of the ballot issue submitted at the election.

(b) The net revenues of any sales or use tax levied may be used only to fund one or more of the following:

(I) Safety protection, as described in section 32-1-1004 (2) (d), in areas of the district in which the tax is to be levied;

(II) Street improvement, as described in section 32-1-1004 (2) (f), in areas of the district in which the tax is to be levied; or

(III) Transportation, as described in, and limited by the provisions of, section 32-1-1004 (2) (h) and (5).

(2) (a) The collection, administration, and enforcement of any sales tax levied by a metropolitan district pursuant to subsection (1) of this section shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax levied pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and

remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of sales tax collections to the district. The district shall pay the net incremental cost incurred by the department in the administration and collection of the sales tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to a vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of any sales tax levied on a sale that is paid for directly from the qualified purchaser's funds and not the personal funds of an individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be levied on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) Revenues raised by a metropolitan district through the levy of a sales tax pursuant to subsection (1) of this section shall be in addition to and shall not be used to supplant any state funding that the district or any county, municipality, regional transportation authority, or other governmental entity that has transportation-related powers and that includes territory located within the district would otherwise be entitled to receive from the state or any other local government, including, but not limited to, any existing or budgeted department of transportation funding of any portion of the state highway system within the territory of the authority.

Source: **L. 2010:** Entire section added, (HB 10-1243), ch. 385, p. 1802, § 2, effective August 11. **L. 2012:** (1)(a) amended, (HB 12-1292), ch. 181, p. 689, § 42, effective May 17.

Editor's note: Section 43 of chapter 181, Session Laws of Colorado 2012, provides that the act amending subsection (1)(a) applies to elections conducted on or after May 17, 2012.

PART 12

LEVY AND COLLECTION OF TAXES

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the Colorado constitution.

32-1-1201. Procedure. (1) Except as provided in subsection (2) of this section, the board shall determine in each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the special district, and shall fix a rate of levy which, when levied upon every dollar of valuation for assessment of taxable property within the special district and together with other revenues, will raise the amount required by the special district annually to supply funds for paying expenses of organization and the costs of constructing, operating, and maintaining the facilities and improvements of the special district and to pay in full, promptly, when due, all interest on and principal of bonds and other obligations of the special district. In the event of accruing defaults or deficiencies, an additional levy may be made as provided in subsection (2) of this section.

(2) The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. If the moneys produced from such levies, together with other revenues of the special district, are not sufficient to pay punctually the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitation provided in part 11 of this article, such taxes shall be made and continue to be levied until the indebtedness of the district is fully paid.

(3) In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county within the special district, or having a portion of its territory within the district, the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the special district. When necessary, a special district shall, with respect to an increased mill levy, comply with the requirements of part 3 of article 1 of title 29, C.R.S.

Source: L. 81: Entire article R&RE, p. 1607, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-1202. County officers to levy and collect - lien. It is the duty of the body having authority to levy taxes within each county to levy the taxes provided by section 32-1-1201 (1) and (2). It is the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the special district ordering the levy and collection. The payment of such collections shall be made monthly to the treasurer of the special district or paid into the depository thereof to the credit of the special district. All taxes levied under this part 12, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general taxes.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

The mere existence of a water and sanitation district and the prospect of taxes in the future was not a lien, encumbrance, or defect

on the title to property. *Edwards v. St. Paul Title Co.*, 39 Colo. App. 235, 563 P.2d 979 (1977) (decided under former § 32-4-117).

32-1-1203. Sale for delinquencies. If the taxes levied are not paid, delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest, and penalties in the manner provided by the statutes of this state for selling real property for the nonpayment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the county, and the county shall account to the special district in the same manner as provided by law for accounting for school, town, and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For distraint and sale of personal property, see § 39-10-111; for the sale of tax liens, see article 11 of title 39.

32-1-1204. Liability of property included or excluded from district. All real property included within, or excluded from, a special district shall thereafter be subject to the

levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion as provided in parts 4 and 5 of this article.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: This section is similar to former § 32-2-123 as it existed prior to 1981.

PART 13

SPECIAL DISTRICT REFUNDING

32-1-1301. Legislative declaration - applicability. It is hereby declared that the orderly refunding of any general obligation bonds and any other lawful general obligation indebtedness incurred by any special district, when advantageous to the special district or persons within the special district, will serve a public use and will promote the health, safety, security, and general welfare of the inhabitants thereof and of the people of this state. It is hereby further declared to be the intent of this general assembly that any bonds issued pursuant to this part 13 are not to be considered as additional debt incurred by the special district. It is the intent of this part 13 to provide for a uniform mechanism for refunding for special districts.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-901 as it existed prior to 1981.

32-1-1302. Refunding bonds. (1) Any general obligation bonds issued and any other lawful general obligation indebtedness incurred by any special district may be refunded without an election of the special district issuing or incurring the same, or any successor thereof, in the name of the special district which issued or incurred the indebtedness being refunded, subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto.

(2) Said refunding may be accomplished by the issuance of bonds to refund, pay, and discharge all or any part of such outstanding indebtedness, including part of a single issue of general obligation bonds and including any interest thereon in arrears or about to become due, and for the purpose of:

(a) Avoiding or terminating any default in the payment of interest on or principal of, or both principal of and interest on, said indebtedness;

(b) Reducing interest costs or effecting other economies;

(c) Modifying or eliminating restrictive contractual limitations relating to the incurring of additional indebtedness or to any system or facility, or improvement thereto; or

(d) Any combination of the foregoing purposes.

(3) Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this part 13 for an original issue of bonds.

(4) Any revenue bonds issued or any other obligation pledging solely the revenue of the special district incurred by any special district may be refunded in the manner provided by section 31-35-412, C.R.S., or article 54 or 56 of title 11, C.R.S.

Source: L. 81: Entire article R&RE, p. 1609, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-902 as it existed prior to 1981.

32-1-1303. Limitations upon issuance. (1) No general obligation bond or other general obligation indebtedness may be refunded unless the holder thereof voluntarily surrenders the same for exchange or payment or the said indebtedness either matures or is callable for prior redemption under its terms within ten years from the date of issuance of

the refunding bonds, and provision shall have been made in said refunding for paying the bonds or other indebtedness being refunded within said period of time.

(2) The refunding bonds may mature at one time or from time to time but not exceeding thirty years from the date of issuance of the refunding bonds. The interest rates on such refunding bonds shall be determined by the board.

(3) The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds or other indebtedness being refunded if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued cost of the indebtedness refunded except:

(a) To the extent any interest on the indebtedness refunded in arrears or about to become due is capitalized with the proceeds of said refunding bonds; or

(b) To the extent necessary to capitalize and pay, with the proceeds of said refunding bonds, the following:

(I) All costs and expenses of said refunding procedures;

(II) The amounts of the prior redemption premiums, if any, on the indebtedness being refunded; and

(III) Any interest in arrears or about to become due and payable.

(4) The principal amount of the refunding bonds may also be less than or the same as the principal amount of the indebtedness being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

Source: L. 81: Entire article R&RE, p. 1609, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-903 as it existed prior to 1981.

32-1-1304. Use of proceeds of refunding bonds. The proceeds of general obligation refunding bonds shall either be immediately applied to the retirement of the indebtedness being refunded or be placed in escrow in any state or national bank within this state which is a member of the federal deposit insurance corporation and which has trust powers to be applied to the payment of the indebtedness being refunded upon presentation therefor; but, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest on the refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom to pay the indebtedness being refunded as the same becomes due at their respective maturities or due at any designated prior redemption dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any refunding bond issued under this part 13 shall in no manner be responsible for the application of the proceeds thereof by the special district or any of its officers, agents, or employees.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1. **L. 89:** Entire section amended, p. 1134, § 83, effective July 1.

Editor's note: This section is similar to former § 32-1-904 as it existed prior to 1981.

32-1-1305. Combination of refunding and other bonds. General obligation bonds for refunding and general obligation bonds for any other purpose authorized in this article may be issued separately or issued in combination in one or more series by any special district.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-905 as it existed prior to 1981.

32-1-1306. Board's determination final. The determination of the board that the limitations under this part 13 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-906 as it existed prior to 1981.

32-1-1307. Construction of part 13. (1) The powers conferred by this part 13 are in addition and supplemental to, and not in substitution for, and the limitations imposed by this part 13 shall not affect the powers conferred by any other law. Bonds may be issued under this part 13 without regard to the provisions of any other law. Insofar as the provisions of this part 13 are inconsistent with the provisions of any other law, the provisions of this part 13 shall be controlling.

(2) This part 13 shall be liberally construed in order to accomplish its purposes.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former §§ 32-1-907 and 32-1-908 as they existed prior to 1981.

PART 14

COMPOSITION OR ADJUSTMENT OF INDEBTEDNESS OF LOCAL TAXING DISTRICTS

32-1-1401. Legislative declaration. The general assembly hereby declares this part 14 to be necessary in order to provide for the orderly and equitable payment of the obligations of local taxing districts organized under the provisions of this article, which payment may be effected by a plan of adjustment of the debts of such taxing districts under the federal bankruptcy law. The general assembly further declares that the necessity of such taxing districts availing themselves of the provisions of the federal bankruptcy law results from unanticipated economic and fiscal conditions affecting such taxing districts, rendering such taxing districts unable to discharge their indebtedness as the same becomes due and imposing a severe hardship on the taxpayers therein to the detriment not only of the credit of such taxing districts and that of all political subdivisions of the state of Colorado but also of the creditors of such taxing districts.

Source: L. 90: Entire part added, p. 1508, § 1, effective May 24.

32-1-1402. Definitions. As used in this part 14, unless the context otherwise requires:

(1) "Federal bankruptcy law" means chapter 9 of title 11, U.S.C., as the same may be from time to time amended, or any act of congress relating to the adjustment or composition of indebtedness of municipalities enacted pursuant to article I, section 8, clause 4, of the United States constitution concerning uniform laws on the subject of bankruptcy.

(2) "Insolvent taxing district" means a taxing district which is able to show to the United States bankruptcy court in and for the district of Colorado that it has been

unsuccessful with other existing alternatives to bankruptcy and which would be unable to discharge its obligations as they become due by means of a mill levy of not less than one hundred mills to be imposed by:

- (a) The taxing district; or
 - (b) Any other taxing district pursuant to a contract which pledges the revenues of such contract to the payment of such obligations.
- (3) "Plan" means a plan for the adjustment of the debtor's debts under federal bankruptcy law filed by an insolvent taxing district.
- (4) "Taxing district" means a special district which is organized or acting under the provisions of this article.

Source: L. 90: Entire part added, p. 1508, § 1, effective May 24.

32-1-1403. Petition. Any insolvent taxing district is hereby authorized to file a petition authorized by federal bankruptcy law and to take any and all action necessary or proper to carry out the plan filed with said petition, or any modification of such plan thereafter accepted in writing by said district, if such original or modified plan is approved pursuant to federal bankruptcy law.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1403.5. Notice and hearing by board. The board shall file a petition under section 32-1-1403 only at a regular or special meeting after publication of notice and postcard or letter notification to property owners within the district and to the division of local government in the department of local affairs of the place, time, and date of such meeting and such proposed action. Postcard or letter notification shall be mailed to property owners within the special district, as listed on the records of the county assessor on the date requested, not less than ten days prior to such meeting.

Source: L. 91: Entire section added, p. 794, § 22, effective June 4.

32-1-1404. Powers. The plan may include provisions for the modification of the existing contracts of the taxing district as evidenced by its bonds or otherwise. Such plan may adapt or alter the procedures provided by the statutes of Colorado for the levy, certification, and collection of general taxes to conform to the provisions of the court approved plan of adjustment, in accordance with federal bankruptcy law; except that nothing in this part 14 shall be construed to impair the rights of persons who have purchased property at tax sale. If the court approved plan provides for the issuance of new obligations of such taxing district for delivery to the creditors of the taxing district in exchange for outstanding obligations of such taxing district, such new obligations may be issued on the terms or conditions found in the plan of adjustment, regardless of any contrary state statute. Nothing in this part 14 shall impair the claims which creditors may have against persons who are not subject to jurisdiction of the court pursuant to chapter 9 of title 11, U.S.C. Any such plan proposed may provide for payments to creditors on terms and conditions which differ from the original contract if the present value of the total payments under the provisions of the plan do not exceed the present value of the total payments under the original contract.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1405. Powers not limited by this part 14. The enumeration of powers in this part 14 shall not exclude powers not mentioned and elsewhere conferred which may be necessary for or incidental to the accomplishment of the purposes of this part 14 and the consummation of a plan approved as provided in this part 14.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1406. Validation of bankruptcy filings and approvals. The filing of a petition or a plan under the federal bankruptcy law by an insolvent taxing district prior to May 24, 1990, the approval of the plan of an insolvent taxing district prior to May 24, 1990, and any proceedings related to any such filing or approval are hereby validated.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1407. Repeal of part. (Repealed)

Source: L. 90: Entire part added, p. 1510, § 1, effective May 24. **L. 93:** Entire section repealed, p. 225, § 1, effective March 31.

PART 15

RELIEF OF RESIDENTIAL TAXPAYERS FROM
LIEN OF SPECIAL DISTRICT TAXES FOR
GENERAL OBLIGATION INDEBTEDNESS

32-1-1501 to 32-1-1505. (Repealed)

Source: L. 92: Entire part repealed, p. 993, § 1, effective July 1.

Editor's note: This part 15 was added in 1991 and was not amended prior to its repeal in 1992. For the text of this part 15 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 16

CERTIFICATION AND NOTICE
OF SPECIAL DISTRICT TAXES FOR
GENERAL OBLIGATION INDEBTEDNESS

32-1-1601. Legislative declaration. The general assembly hereby finds and declares that special districts are political subdivisions and instrumentalities of the state of Colorado and local governments thereof. The general assembly further finds that defaults in payment of general obligation debts and the possibility of further defaults by some special districts have resulted in a general loss of confidence by investors in bonds and undertakings of all types issued or to be issued by local governments of the state and have imposed severe hardship on investors in general obligation bonds of special districts and upon owners of residential real property within such districts. The general assembly further finds that this part 16 is necessary to protect the credit reputation of local governments of this state, to restore confidence of investors in local government obligations, and to protect owners of residential real property within special districts.

Source: L. 92: Entire part added, p. 993, § 2, effective July 1.

ANNOTATION

Special district, as a political subdivision of the state, possesses only those powers that are expressly conferred upon it by the constitution and by statute and such incidental implied pow-

ers as are reasonably necessary to carry out the express powers so conferred. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

32-1-1602. Definitions. As used in this part 16, unless the context otherwise requires:

(1) "General obligation debt" means an obligation of a special district created by a resolution of the special district authorizing the issuance of bonds or a contract, the obligations of which are backed by a pledge of the full faith and credit of the special district and a covenant to impose mill levies without limit to retire the bonds or fund the contractual obligation.

(2) "Special district" shall have the same meaning as provided in section 32-1-103 (20).

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

32-1-1603. Separate mill levies - certification to county commissioners. After July 1, 1992, special districts which levy taxes for payment of general obligation debt shall certify separate mill levies to the board of county commissioners, one each for funding requirements of each such debt in accordance with the relevant contracts or bond resolutions which identifies each bond issue by series, date, coupon rate, and maturity and each contract by title, date, principal amount, and maturity and one for the remainder of the budget of said district.

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

32-1-1604. Recording. Whenever a special district authorizes or incurs a general obligation debt, a notice of such action and a description of such debt in a form prescribed by the director of the division of local government in the department of local affairs shall be recorded by the special district with the county clerk and recorder in each county in which the district is located. The recording shall be done within thirty days after authorizing or incurring the debt.

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

32-1-1605. Limitations on actions - prior law. Any claim for relief under section 32-1-1504, as it existed prior to July 1, 1992, shall be commenced on or before January 1, 1993, and not thereafter.

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

PART 17

PROPERTY TAX REDUCTION AGREEMENT

32-1-1701. Legislative declaration. The general assembly hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the attraction of new private enterprise as well as the retention and expansion of existing private enterprise; that incentives are often necessary in order to attract private enterprise; and that providing incentives stimulates economic development in the state and results in the creation and maintenance of new jobs.

Source: L. 2005: Entire part added, p. 106, § 1, effective August 8.

32-1-1702. New business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation. (1) Notwithstanding any law to the contrary, a special district may negotiate for an incentive payment or credit with a taxpayer who establishes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., in the special district. In no instance shall any negotiation result in an annual incentive payment or credit that is greater than the amount of taxes levied by the special district upon the taxable business personal property located at or within the new

business facility and used in connection with the operation of the new business facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed ten years, including the term of any original agreement being renewed.

(2) Notwithstanding any law to the contrary, a special district may negotiate for an incentive payment or credit with a taxpayer who expands a facility, as defined in section 39-30-105 (7) (c), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7) (e), C.R.S., and that is located in the special district. In no instance shall any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the special district upon the taxable business personal property directly attributable to the expansion located at or within the expanded facility and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed ten years, including the term of any original agreement being renewed.

(3) A special district shall not enter into an agreement pursuant to the provisions of this section unless, prior to or simultaneous with the execution of the agreement, the taxpayer also enters into an agreement with a municipality or county pursuant to section 30-11-123, 31-15-903, or 39-30-107.5, C.R.S.

(4) A special district that negotiates an agreement pursuant to the provisions of this section shall inform any municipality, county, and school district in which a new business facility would be located or an expanded business facility is located, whichever is applicable, of such negotiations.

Source: L. 2005: Entire part added, p. 106, § 1, effective August 8. **L. 2007:** (1) and (2) amended, p. 351, § 6, effective August 3. **L. 2012:** (1) and (2) amended, (HB 12-1029), ch. 61, p. 221, § 5, effective August 8.

Cross references: In 2012, subsections (1) and (2) were amended by the “Save Colorado Jobs Act”. For the short title and the legislative declaration, see sections 1 and 2 of chapter 61, Session Laws of Colorado 2012.

PART 18

PUBLIC IMPROVEMENTS - SPECIAL DISTRICT CONTRACTS

32-1-1801. Short title. This part 18 shall be known and may be cited as the “Integrated Delivery Method for Special District Public Improvements Act”.

Source: L. 2007: Entire part added, p. 1818, § 4, effective August 3.

32-1-1802. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.

(b) Competition exists not only in the costs of goods and services, but in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.

(c) Timely and effective completion of public projects can be achieved through a variety of methods when procuring goods and services for public projects.

(d) In enacting this part 18, the general assembly intends to establish for special districts and agencies of special districts an optional alternative public project delivery method.

Source: L. 2007: Entire part added, p. 1818, § 4, effective August 3.

32-1-1803. Definitions. As used in this part 18, unless the context otherwise requires:

(1) “Agency” means any special district organized under this title or any other political subdivision that such district may create pursuant to state law that is a budgetary unit exercising construction contracting authority or discretion.

(2) “Contract” means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project.

(3) “Cost-reimbursement contract” means a contract under which a participating entity is reimbursed for costs that are allowable and allocable in accordance with the contract terms and provisions of this part 18.

(4) “Integrated project delivery” or “IPD” means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.

(5) “IPD contract” means a contract using an integrated project delivery method.

(6) “Participating entity” means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning, architectural, engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) “Public project” means any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare, or public education, to the extent the boundaries of an agency and a school district are coterminous, or for the conservation of natural resources, including the planning of any such lands, buildings, improvements, structures, works, machinery, equipment, or facilities. “Public project” shall also include existing lands, buildings, improvements, structures, works, and facilities, as well as improvements, renovations, or additions to any such lands, buildings, improvements, structures, works, or facilities, and any operation or maintenance programs for the operation and upkeep of such projects.

(8) “Public purposes” includes, but is not limited to, the supplying of public water services and facilities, public sewer services and facilities, and lands, buildings, structures, improvements, equipment, and any other services or facilities authorized under this article or for public education to the extent the boundaries of the agency and the school district are coterminous.

Source: L. 2007: Entire part added, p. 1819, § 4, effective August 3.

32-1-1804. Integrated project delivery contracts - authorization - effect of other laws. (1) Notwithstanding any other provision of law, and without limiting or modifying any alternative for public contracting by an agency authorized by any other provision of law, any agency may award an IPD contract for a public project under the provisions of this part 18 upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this part 18 shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, regulations, or ordinances governing labor relations, professional licensing, public contracting, or other related laws, except to the extent that an exemption is created under such legal authority or is granted by necessary implication from such legal authority. Notwithstanding any other provision of law, the requirements of section 32-1-1001 (1) (d) (I) shall not apply to any agency awarding an IPD contract pursuant to this part 18. Notwithstanding any other provision of law, the definitions contained in section 7-45-102, C.R.S., shall not apply to a project undertaken pursuant to this title.

Source: L. 2007: Entire part added, p. 1820, § 4, effective August 3.

32-1-1805. Integrated project delivery contracting process - prequalification of participating entities - apprentice training. (1) An agency may prequalify participating entities for an IPD contract by publication of notice of its request for qualifications prior to the date set forth in the notice. A request for qualifications may contain the following elements and such additional information as may be requested by the agency:

- (a) A general description of the proposed public project;
- (b) Relevant budget considerations;
- (c) Requirements of the participating entity, including:

(I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of submission of qualifications;

(II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;

(III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and

(IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential.

- (d) The criteria for prequalification.

(2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.

(3) Where an apprentice training program certified by the office of apprenticeship located in the employment and training administration in the United States department of labor exists in a county in which all or any portion of the special district is located, or a comparable program for the training of apprentices is available in such county:

(a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and

(b) Each participating entity shall demonstrate that each of its subcontractors, at any tier, selected to perform work under a contract with a value of two hundred fifty thousand dollars or more has access to either the certified program or a comparable alternative.

Source: L. 2007: Entire part added, p. 1820, § 4, effective August 3.

32-1-1806. Requests for proposals - evaluation and award of integrated project delivery contracts. (1) An agency shall prepare and, where it has not published a notice of request for qualifications pursuant to section 32-1-1805 (1), publish a notice of request for proposals for each IPD contract that may contain the following elements and such other elements as may be requested by the agency:

- (a) The procedures to be followed for submitting proposals;
- (b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;
- (c) The procedures for making awards;
- (d) Required performance standards as defined by the participating entity;
- (e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;
- (f) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;
- (g) The proposed project scheduling; and

(h) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 32-1-1805 (2) but whose proposals are not selected for award of the IPD contract.

(2) After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals in accordance with the requirements of subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(3) With respect to performance under each IPD contract, the participating entity shall comply with all laws applicable to public projects.

(4) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract is not required to be licensed or registered to provide professional services as defined in section 24-30-1402 (6), C.R.S., if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

Source: L. 2007: Entire part added, p. 1821, § 4, effective August 3.

32-1-1807. Supplemental provisions. The governing body of an agency may establish supplemental provisions that are designed to implement the provisions of this part 18.

Source: L. 2007: Entire part added, p. 1822, § 4, effective August 3.

MULTIPURPOSE DISTRICTS

ARTICLE 2

Metropolitan Recreation Districts

32-2-101 to 32-2-134. (Repealed)

Source: L. 81: Entire article repealed, p. 1628, § 42, effective July 1.

Editor's note: This article was numbered as article 12 of chapter 89, C.R.S. 1963. For amendments to this article prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 3

Metropolitan Districts (1947 Act)

32-3-101 to 32-3-133. (Repealed)

Source: L. 81: Entire article repealed, p. 1628, § 42, effective July 1.

Editor's note: This article was numbered as article 3 of chapter 89, C.R.S. 1963. For amendments to this article prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

WATER AND SANITATION DISTRICTS**ARTICLE 4****Water and Sanitation Districts****PART 1****WATER AND SANITATION DISTRICTS**

32-4-101 to

32-4-140. (Repealed)

PART 2**DOMESTIC WATERWORKS DISTRICT:
UNINCORPORATED TERRITORY
(1913 ACT)**

32-4-201 to

32-4-231. (Repealed)

PART 3**DOMESTIC WATERWORKS DISTRICT -
CITIES OF 10,000 OR MORE**

32-4-301 to

32-4-341. (Repealed)

PART 4**METROPOLITAN WATER DISTRICTS**

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PART 1

WATER AND SANITATION DISTRICTS

32-4-101 to 32-4-140. (Repealed)

Source: L. 81: Entire part repealed, p. 1628, § 42, effective July 1.

Editor's note: This part 1 was numbered as article 5 of chapter 89, C.R.S. 1963. For amendments to this part 1 prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 2

DOMESTIC WATERWORKS DISTRICT:
UNINCORPORATED TERRITORY
(1913 ACT)**32-4-201 to 32-4-231. (Repealed)**

Source: L. 81: Entire part repealed, p. 1628, § 42, effective July 1.

Editor's note: This part 2 was numbered as article 1 of chapter 89, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

DOMESTIC WATERWORKS DISTRICT -
CITIES OF 10,000 OR MORE**32-4-301 to 32-4-341. (Repealed)**

Source: L. 81: Entire part repealed, p. 1628, § 42, effective July 1.

Editor's note: This part 3 was numbered as article 7 of chapter 89, C.R.S. 1963. For amendments to this part 3 prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 4

METROPOLITAN WATER DISTRICTS

32-4-401. Legislative declaration. (1) It is hereby declared that to provide for the conservation of all water resources of the state of Colorado and for the greatest beneficial use of all waters, surface and subsurface, within this state, the organization of metropolitan water districts and the construction of works as defined in this part 4 by such districts are a public use and will:

(a) Be essentially for the public benefit and advantage of the people of the state of Colorado;

(b) Indirectly benefit all industries of the state;

(c) Indirectly benefit the state of Colorado in the increase of its taxable property valuation;

(d) Directly benefit municipalities by providing adequate supplies of water for domestic use;

(e) Directly benefit lands to be irrigated from works to be constructed;

(f) Directly benefit lands under irrigation by stabilizing the flow of water in streams and by increasing flow and return of water to such streams; and

(g) Promote the comfort, safety, and welfare of the people of the state of Colorado.

(2) It is therefore declared to be the policy of the state of Colorado:

(a) To investigate, acquire, control, and apply to beneficial use waters, surface and subsurface, originating in this state; and to provide for the direct and supplemental use of such waters for domestic, manufacturing, irrigation, power, and other beneficial uses;

(b) To obtain from waters, surface and subsurface, originating in Colorado the highest duty for domestic uses and irrigation of lands in Colorado within the terms of interstate compacts;

(c) To cooperate with the United States under the federal reclamation laws and with other agencies of the United States government for the construction and financing of works in the state of Colorado as defined in this part 4 and for the operation and maintenance thereof; and

(d) To promote the greater prosperity and general welfare of the people of the state of Colorado by encouraging the organization of metropolitan water districts as provided in this part 4.

Source: L. 55: p. 578, § 1. CRS 53: § 89-13-1. C.R.S. 1963: § 89-13-1.

32-4-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "District" means a metropolitan water district organized under this part 4 either as originally organized or as changed from time to time.

(1.5) "Eligible elector" has the meaning specified in section 32-1-103 (5).

(2) "Governing body" means the city council of a city, the board of trustees of an incorporated town, or the board of directors of a water and sanitation district, or any organization by law authorized to obligate itself for the purposes contemplated by this part 4.

(3) "Municipality" means city, incorporated town, or water or water and sanitation districts; but in no event shall the word "municipality" include or refer to a city with a population in excess of three hundred thousand. The population of municipalities or unincorporated areas shall be determined by the latest federal census or state census or a local census directed by a city or a metropolitan water district.

(4) "Ordinance" means a resolution in the case of water and sanitation districts.

(5) "Publication" has the meaning specified in section 32-1-103 (15).

(6) (a) "Taxpaying elector" means "taxpaying elector" as defined in section 32-1-103 (23).

(b) (Deleted by amendment, L. 92, p. 890, § 130, effective January 1, 1993.)

Source: L. 55: p. 579, § 2. CRS 53: § 89-13-2. C.R.S. 1963: § 89-13-2. L. 70: p. 279, § 72. L. 77: (1.5) added and (5) and (6) R&RE, p. 1502, §§ 48, 49, effective July 15. L. 81: (1.5) and (5) amended, p. 1623, § 22, effective July 1, 1981. L. 92: (1.5) and (6) amended, p. 890, § 130, effective January 1, 1993.

32-4-403. Purpose, boundaries, and powers. Metropolitan water districts may be organized under this part 4 for any one or more of the purposes set out in section 32-4-401 and may be formed of any two or more municipalities, if such municipalities are located in the same county or in adjacent or nearby counties. Unincorporated territory may become a part of a district as provided for in this part 4. When so organized, each such district shall be a governmental subdivision of the state of Colorado and a quasi-municipal corporation

with such powers as are expressly granted in this part 4, together with such powers as are reasonably implied therefrom and necessary and proper to carry out the purpose of such district.

Source: L. 55: p. 580, § 3. CRS 53: § 89-13-3. C.R.S. 1963: § 89-13-3.

32-4-404. Organization. (1) A metropolitan water district shall be organized in the following manner:

(a) The governing body of any municipality may enact an ordinance of a municipal corporation, and if other government subdivision a resolution, declaring that the public convenience and necessity require the organization of a metropolitan water district, which ordinance or resolution shall set forth the names of the municipalities to be in the proposed district and the name of the proposed district and boundary lines thereof, which boundaries shall be effective only for the six-month period under section 32-4-408 (5), and shall in no way limit future boundaries of the district as provided in this part 4.

(b) Within ninety days after receipt of a copy of such ordinance from the initiating governing body, the governing body of any municipality which is named in the ordinance providing for the proposed district desiring to become a part of the district shall enact a similar ordinance, setting forth the same municipalities, name, and boundary.

(c) Before final reading and enactment of such an ordinance, the governing body of each such municipality shall hold a public hearing thereon, notice of which shall be given by publication in at least one newspaper of general circulation within such city at least five days before the hearing. Each governing body in determining whether to enact the ordinance and become a part of the proposed district shall consider the existing water supply of said municipality and its adequacy or inadequacy for the present and future needs of such municipality and future additions thereto. Determination as to need by the governing body shall be final and conclusive.

(d) The clerk of each governing body, upon the taking effect of such ordinance, shall forthwith transmit a certified copy thereof to the governing body of each other municipality named in the original ordinance to be a part of the proposed district and to the division of local government in the department of local affairs.

(e) The director of the division of local government, upon a receipt of a copy of such ordinance from the governing body of each municipality named in the original ordinance to be a part of the proposed district, shall forthwith issue a certificate reciting that the district named in the ordinance has been duly organized according to the laws of the state of Colorado and setting forth the names of the municipalities which have certified an ordinance to his office as above provided. The organization of any district shall be deemed effective upon the date of issuance of such certificate, and the validity of the organization of any such district shall be incontestable in any suit or proceeding which has not been commenced within three months from such date. The director of said division shall forthwith transmit to the governing body of each municipality which has certified an adopting ordinance as provided in this section a copy of such certificate, and the clerk of each such governing body shall forthwith record such copy in the offices of the clerk and recorder of the county or counties in which the municipality is wholly or partly located. But, in no event shall the organization of any metropolitan water district be deemed effective nor shall the director of said division issue a certificate as above provided unless more than one-half of the municipalities named in the initiating ordinance have certified an ordinance to the director of said division as provided in paragraph (d) of this subsection (1).

(f) Only such municipalities as do enact an ordinance to become a part of the district shall be joined therein.

Source: L. 55: p. 581, § 4. CRS 53: § 89-13-4. C.R.S. 1963: § 89-13-4. L. 76: (1)(d) and (1)(e) amended, p. 598, § 12, effective July 1.

32-4-405. Board of directors. (1) All powers, privileges, and duties vested in or imposed upon any district incorporated under this part 4 shall be exercised and performed

by and through a board of directors; but the exercise of any executive, administrative, and ministerial powers may be by said board of directors delegated and redelegated to any of the offices created or by the board of directors acting under this part 4.

(2) The board of directors shall consist of one member from each municipality which is within the boundaries of the district for each twenty-five thousand of population in the municipality, plus one member for each additional twenty-five thousand of population, or fraction thereof, from any municipality or unincorporated territory, which population shall be based upon the latest census. A board member from a municipality shall be appointed by the governing body of the municipality. A board member from unincorporated territory shall be appointed by the board of county commissioners of the county in which the unincorporated territory is located, but not more than one board member shall be appointed for each twenty-five thousand or fraction thereof of population within the unincorporated territory within the district in any one county. Board members shall be eligible electors residing within the district and within the municipality or unincorporated territory from which they are appointed.

(3) The term of each member shall be two years, except that the terms of the members of the first board of directors shall be adjusted so that the terms of one-half the members shall expire one year after their appointment. At the first meeting of the board of directors of a newly formed district, the directors shall determine by lot which shall serve for one year terms and which shall serve for two year terms. At the expiration of a director's term a new appointment shall be made by the appropriate governing body and any member may be appointed to succeed himself.

(4) A change of residence of a member of the board of directors to a place outside the area which the member represents shall automatically create a vacancy on the board of directors as to that area. Vacancies which may occur on the board of directors through death or resignation of one of the members or for any other reason shall be filled in the same manner as original members.

(4.5) Each member of the board may receive as compensation for his services a sum not to exceed nine hundred sixty dollars per annum, payable at a rate not to exceed thirty-five dollars per meeting.

(5) The board of directors has the following powers:

(a) To fix the time and place at which its regular meetings shall be held; to provide for the calling and holding of special meetings; and to organize, adopt bylaws and rules for procedure, and select a chairman and pro tem chairman. Notice of the time and place designated for all regular meetings shall be posted in at least three public places within the limits of the district, and, in addition, one such notice shall be posted in the county courthouse in the county or counties in which the district is located. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special meetings may be called by any officer or member of the board by informing the other members of the date, time, and place of such special meeting, and the purpose for which it is called, and by posting as provided in this section at least three days previous to said meeting. All business of the board shall be conducted only during said regular or special meetings, and all said meetings shall be open to the public. All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this paragraph (a) governing the location of meetings may be waived only if the following criteria are met:

(I) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(II) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this paragraph (a) and further stating the date, time, and place of such meeting.

(b) To make and pass resolutions and orders not repugnant to the constitution of the United States or of the state of Colorado, or to the provisions of this part 4, necessary for the government and management of the affairs of the district for the execution of the powers vested in the district and for carrying into effect the provisions of this part 4. On all

resolutions the roll shall be called and the ayes and noes recorded. Resolutions and orders may be adopted by viva voce vote but on demand of any member the roll shall be called. No resolution shall be adopted unless it has been introduced and discussed at a meeting previous to the time of such adoption.

(c) All resolutions, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board of directors and the clerk. All resolutions shall be published in the official newspaper within ten days of date of passage and adoption and shall become effective upon the date of publication.

(d) No business shall be transacted unless a quorum of two-thirds of the total membership of a board of directors is present at a regular or special meeting; except that concerning all questions involving inclusion or exclusion of territories, or authorizing any expenditures in excess of ten thousand dollars, a majority vote of the entire membership shall be required.

(e) To fix the location of the principal place of business of the district and the location of all offices and departments maintained under this part 4;

(f) To prescribe by resolution a system of business administration and to create all necessary offices, and to establish and reestablish the powers and duties and compensation of all officers and employees and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the district;

(g) To delegate and redelegate, by resolution, to officers of the district, power to employ clerical, legal, and engineering assistance and labor, and under such conditions and restrictions as shall be fixed by the directors, power to bind the district by contract;

(h) To prescribe a method of auditing and allowing or rejecting claims and demands and a method for the letting of contracts on a fair and competitive basis for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies as required for the carrying out of any of the purposes of this part 4; but in cases where the amount involved is ten thousand dollars or more, the board of directors shall provide for the letting of contract to the lowest responsible bidder, after publication in the official newspaper of notices inviting bids, subject to the right of said board to reject any and all proposals;

(i) To constitute and appoint an official newspaper to be used for the official publications of the district, but nothing in this part 4 shall prevent the board from directing publication in additional newspapers where public necessity may so require.

(6) Whenever the board of directors of the district is required by the provisions of this part 4 to determine the validity of a petition for inclusion and exclusion, the determination of such board shall be final and conclusive.

Source: L. 55: p. 582, § 5. CRS 53: § 89-13-5. L. 61: p. 518, § 5. L. 63: p. 690, § 5. C.R.S. 1963: § 89-13-5. L. 70: p. 279, § 73. L. 77: (4.5) added, p. 1502, § 50, effective July 15. L. 90: (5)(a) amended, p. 1497, § 5, effective July 1. L. 92: (2) and (4) amended, p. 891, § 131, effective January 1, 1993.

32-4-406. Powers of districts. (1) Any district has the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued and be a party to suits, actions, and proceedings;

(d) To enter into contracts and agreements affecting the affairs of the district, including but not limited to contracts with the United States and the state of Colorado and any of their agencies or instrumentalities;

(e) To borrow money and incur indebtedness and to issue bonds and other evidence of the indebtedness; but no indebtedness shall be created in excess of the revenue which may reasonably be expected to be available to the district for the repayment thereof in the fiscal year in which the indebtedness is to be created without first submitting, at an election held for that purpose, the proposition of creating the indebtedness. Any election may be held separately or may be held jointly or concurrently with any primary or general election held under the laws of the state of Colorado. The resolution calling the election shall recite the

objects and purposes for which the indebtedness is proposed to be incurred, the amount of principal of the indebtedness, the maximum net effective interest rate to be paid on such indebtedness, and the terms of repayment. The resolution shall also designate the date upon which such election shall be held and the form of the ballot. The election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S.

(f) To purchase, trade, exchange, acquire, buy, sell, and otherwise dispose of and encumber real and personal property, water, water rights, water works and plants, and any interest therein, including leases and easements;

(g) To refund any bonded indebtedness of the district without an election. The terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds.

(h) In addition to all other means of providing revenue, as provided in this part 4, to levy and collect ad valorem taxes on and against all taxable property within the district. The board of directors, in each year, shall determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which shall not exceed six mills which, when levied upon every dollar of the valuation for assessment of taxable property within the district and with other revenue, will raise the amount required by the district annually to supply funds for the constructing, operating, and maintaining of the works and equipment of the district and promptly to pay in full, when due, all interest on and principal of bonds and other obligations of the district, and in event of accruing defaults or deficiencies an additional levy may be made. The board of directors, in accordance with the schedule prescribed by section 39-5-128, C.R.S., shall certify to the board of county commissioners of each county wherein the district has any territory the rate so fixed, with directions that, at the time and in the manner required by law for levying taxes for other purposes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district, in addition to such other taxes as may be levied by such board of county commissioners.

(i) To hire and retain agents, employees, engineers, and attorneys;

(j) To have and exercise the power of eminent domain and, in the manner provided by law for the condemnation of private property for public use, to take any property necessary to exercise the powers granted in this part 4, either within or without the district. In exercising the power of eminent domain, the procedure established and prescribed in articles 1 to 7 of title 38, C.R.S., shall be followed.

(k) To construct and maintain works and establish and maintain facilities within or without the district, across or along any public street or highway, or in, upon, under, or over any vacant public lands, which public lands are the property of the state of Colorado, or across any stream of water or watercourse; except that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(l) To fix and, from time to time, increase or decrease water rates and to pledge such revenue for the payment of any indebtedness of the district;

(m) To sell developed water subject to conditions determined by the board for domestic, municipal, irrigation, and industrial uses at a rate to be determined as fair and reasonable in accordance with recognized and established principles of rate determination;

(n) To appropriate revenues for the purpose of carrying on investigations and searches for the determination of potential sources of water, surface and subsurface;

(o) To invest any surplus money in the district treasury, including such money in any sinking fund established for the purpose of retiring bonds, not required for the immediate necessities of the district in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and such investment may be made by direct purchase of any such securities at the original sale of the same or by the subsequent purchase of such securities. Any securities thus purchased and held may, from time to time, be sold and the proceeds reinvested in securities, as provided in this section. Sales of any securities thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which the securities were originally purchased was placed in the treasury of the district.

(p) To manufacture and sell electrical power to public and private corporations, as incidental to the foregoing purposes;

(q) To deposit moneys of the district not then needed in the conduct of district affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board of directors may appoint, by written resolution, one or more persons to act as custodians of the moneys of the district. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

Source: L. 55: p. 584, § 6. CRS 53: § 89-13-6. C.R.S. 1963: § 89-13-6. L. 77: (1)(e) and (1)(h) amended, p. 1503, § 51, effective July 15. L. 79: (1)(q) added, p. 1624, § 34, effective June 8. L. 89: (1)(o) amended, p. 1118, § 36, effective July 1. L. 92: (1)(e) amended, p. 891, § 132, effective January 1, 1993.

32-4-407. Inclusion of territory. The boundaries of any district organized under the provisions of this part 4 may be changed in the manner prescribed in this part 4, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect or impair or discharge any contract obligation, lien, or charge for or upon which it might be liable or chargeable had such change of boundaries not been made. The incorporated areas of cities, towns, water districts, and unincorporated areas lying within the boundaries of any district organized under this part 4, as established by the original ordinances of initiating municipalities and from time to time by action of the board of directors, may be added to the district.

Source: L. 55: p. 587 (Art. II). CRS 53: § 89-13-7. C.R.S. 1963: § 89-13-7.

32-4-408. Unincorporated territory. (1) Territory shall be eligible for inclusion in a district, as provided for in this part 4, if such territory is not embraced within a municipality and is within the area encompassed by the district at the time of its organization, or is a territory which may feasibly become a part of the district, as determined by the board of directors.

(2) Proceedings for inclusion in a district of territory eligible, as defined in subsection (1) of this section, may be initiated by a written petition presented to the board of directors of the district to which it is proposed to join. The petition must meet the following requirements:

(a) It shall be signed by the owners of more than fifty percent of the area of such territory proposed to be included.

(b) It shall be signed by more than fifty percent of the owners of the area proposed to be included, whether the owners are residents or nonresidents of such area.

(c) The circulator of each petition, which may consist of one or more sheets, shall sign an affidavit attesting that each signature is the signature of the person whose name it purports to be.

(d) Each signature shall be accompanied by the resident address of the signer, the date of signature, and a description of the property owned by the signer.

(e) It shall contain the verified statement of petitioner(s):

(I) That the proposed area is eligible for inclusion, as provided in this section; as to the number of owners of the entire area proposed to be included; and that the petition complies with the requirements contained in this section; and

(II) A request for inclusion into the district.

(f) No petition shall be valid for the purposes of this part 4 if any signature on the petition is dated more than one hundred eighty days prior to the date of the filing of the petition.

(g) No person signing the petition shall be permitted to withdraw his or her signature from the petition.

(h) The petition shall be accompanied by four copies of a map or plat of the territory showing, with reasonable certainty, the territory to be included, the boundaries thereof, and

its relationship to the then boundaries of the district, together with a certified statement of current ownership of all property proposed to be included, which certified statement is to be prepared by a licensed and bonded abstract company.

(3) If the board of directors of said district finds that the petition and the documents attached thereto meet the requirements of this section, the inclusion of such territory to such district shall be accomplished as follows:

(a) By accepting said petition and approving the inclusion of said territory;

(b) By causing to be published in the official newspaper of the district a notice of the filing of said petition, its acceptance and approval by the board of directors, and a notice of the time and place of a public hearing at which all interested persons may be heard on the proposition of including such territory in the district, such public hearing to be held not less than twenty days nor more than forty days from the date of first publication;

(c) The board of directors shall hold a public hearing at the time and place stated in the notice. In determining whether the territory shall be included in the district, the board of directors shall consider the needs and requirements of the territory proposed to be included, together with the needs and requirements of the district.

(d) If the board of directors determines to include said territory, it shall cause a resolution to be passed, and the inclusion of territory shall be completed and effective on the effective date of the inclusion resolution for all purposes except that of general taxation, in which respect it shall not become effective until on or after January first next ensuing.

(e) The board of directors shall cause a certified copy of said resolution to be forthwith transmitted to the division of local government in the department of local affairs and shall cause to be recorded a certified copy of such inclusion resolution in the office of the clerk and recorder of the county wherein such included territory is located.

(4) (a) Proceedings for inclusion in a metropolitan water district of territory eligible, as defined above, may be initiated by a written petition presented to the board of directors of the metropolitan water district to which it is proposed to join, together with a cash deposit sufficient to defray all costs of inclusion proceedings, including the election. The petition must be signed by not less than fifty taxpaying electors of the territory proposed to be included.

(b) The board of directors may then accept the petition and, by resolution, approve the inclusion of the territory in the district. The board will then transmit to the district court of the county in which the area is located, or to the district court of either of the counties if the area is located in more than one county, the original petition, a certified copy of its resolution accepting and approving the inclusion, and the cash deposit to guarantee costs.

(c) Repealed.

(d) Upon presentation of the resolution, the court shall examine it, and, if the court finds that the requirements of this section have been substantially complied with, the court shall forthwith call an election of the electors of the territory proposed to be included, to be held at some convenient place within the territory, which shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S.

(e) The notice of election shall specify the time and place of the election, shall contain a description of the boundaries of the territory proposed to be included, and shall state that the description and a map or plat thereof are on file in the office of the board of directors of the district, and shall meet the requirements for notice in section 1-5-203, C.R.S.

(f) and (g) Repealed.

(h) The court shall allow each commissioner a reasonable compensation for his services as such.

(i) If such inclusion is not approved at said election, the court shall enter its order and decree that such territory shall not be included within the area of the district. If such inclusion is approved at said election, the court by an order shall decree that such territory shall be included in the district, and certified copies of such order and decree shall be transmitted to the said district, to the office of the clerk and recorder in which said territory is located, and to the division of local government, and such inclusion shall be complete on the effective date of the court's order and decree for all purposes except that of general taxation, in which respect it shall not become effective until on and after January 1 next ensuing.

(j) All costs and expenses connected with such inclusion proceedings and including the commissioners' fees and all election expenses shall be paid by the petitioners initiating the inclusion proceedings.

(5) Any unincorporated area lying within the proposed water district, as originally organized, may file its petition for inclusion with the board of directors of said district and, if said petition is filed within six months from the date of organization of said district, such petition shall be granted. Upon receipt of such petition the board of directors shall follow procedures set forth in paragraphs (c), (d), and (e) of subsection (3) of this section.

Source: L. 55: p. 587, § 1. CRS 53: § 89-13-8. C.R.S. 1963: § 89-13-8. L. 70: p. 280, § 75. L. 71: p. 961, § 4. L. 76: (3)(e) and (4)(i) amended, p. 598, § 13, effective July 1. L. 77: (4)(c), (4)(f), and (4)(g) repealed and (4)(d) and (4)(e) amended, pp. 1516, 1503, §§ 88, 52, effective July 15. L. 92: (2), (4)(a), (4)(b), (4)(d), and (4)(e) amended, p. 891, § 133, effective January 1, 1993.

32-4-409. Inclusion of incorporated areas. (1) The municipalities as defined in this part 4 shall be eligible for inclusion in a metropolitan water district if such municipality is contiguous to the area encompassed by the district or is a territory which may feasibly become a part of the district as determined by the board of directors.

(2) The governing body of such municipality shall, before finally enacting an ordinance declaring that the public convenience and necessity, require the inclusion of a part or all of the territory within the boundaries of such municipality into such metropolitan water district. Said resolution or ordinance shall set forth boundaries of the territory proposed to be included, except that:

(a) The governing body of such municipality, before finally adopting such resolution or enacting such ordinance, shall cause a notice of public hearing to be published, which public hearing shall be held not less than twenty days nor more than forty days from the date of first publication, and shall state the time and place of such hearing, and that the matter of inclusion in a metropolitan water district will be considered.

(b) The governing body shall hold a public hearing at the time and place stated in the notice. In determining whether the territory shall be included in the district, the governing body shall consider the present and future needs and requirements of the municipality proposed to be included. Upon the effective date of such ordinance or resolution, the clerk of the governing body of such municipality shall forthwith transmit a certified copy thereof to the board of directors of such district and to the division of local government in the department of local affairs.

(3) Within sixty days after receipt of a copy of such resolution, the board of directors of such district may enact a similar resolution setting forth the same boundaries and upon the effective date of said resolution shall cause a certified copy thereof to be transmitted to the division of local government and to the clerk of the governing body of such municipality. The director of said division, upon receipt of a copy of a resolution of the board of directors of such district, shall forthwith issue a certificate reciting that the territory described in such resolution has been duly added to the district according to the laws of the state of Colorado. The inclusion of such territory shall be deemed effective upon the date of issuance of such certificate, and the validity of such inclusion shall be incontestable in any suit or proceeding which shall not have been commenced within three months from such date. The director of said division shall forthwith transmit to the governing body of such municipality and to the board of directors of such district a copy of such certificate, and the clerk of such governing body shall forthwith record such copy in the office of the clerk and recorder of the county in which such municipality is located.

Source: L. 55: p. 591, § 2. CRS 53: § 89-13-9. C.R.S. 1963: § 89-13-9. L. 76: (2)(b) and (3) amended, p. 599, § 14, effective July 1.

32-4-410. Exclusion of unincorporated areas. (1) The owner in fee of any lands constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district.

- (2) Such petition shall meet the following requirements:
 - (a) Shall be signed by the owners of more than sixty percent of the area of such territory proposed to be excluded;
 - (b) Shall be signed by more than sixty percent of the owners of the area proposed to be excluded, whether such owners are residents or nonresidents of such area.
- (3) Such petition shall be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings, together with a certified statement of current ownership of all property proposed to be included, said certificate to be prepared by an attorney, a title insurance company, or title insurance agent authorized to do business in this state.

Source: L. 55: p. 592, § 1. CRS 53: § 89-13-10. C.R.S. 1963: § 89-13-10. L. 83: (3) amended, p. 512, § 2, effective May 16.

32-4-411. Exclusion election. Upon receipt of the petition, the board of directors shall certify, by proper resolution, the petition to the district court of the county in which the territory is located, and the district court shall thereupon proceed to the appointment of a designated election official to hold an election, as provided in section 32-4-408 (4). On the effective date of the ordinance or resolution, the clerk of the governing body of the municipality shall forthwith transmit a certified copy thereof to the board of directors of the district and to the division of local government in the department of local affairs.

Source: L. 55: p. 593, § 2. CRS 53: § 89-13-11. C.R.S. 1963: § 89-13-11. L. 76: Entire section amended, p. 599, § 15, effective July 1. L. 92: Entire section amended, p. 2180, § 46, effective June 2; entire section amended, p. 893, § 134, effective January 1, 1993.

Editor's note: Amendments to this section by House Bill 92-1359 and House Bill 92-1333 were harmonized.

32-4-412. Exclusion of incorporated areas. (1) The governing body of any municipality, which is partly or wholly within the boundaries of the district, may adopt a resolution or enact an ordinance declaring that the public convenience and necessity require the exclusion of the territory within the boundaries of the municipality from the district, which resolution or ordinance shall set forth the boundaries of the territory proposed to be excluded.

(2) If the district has an outstanding bonded indebtedness, the governing body of the municipality, before finally adopting the resolution or enacting the ordinance, shall submit to the electors of the territory proposed to be excluded from the district, at an election held for that purpose, the proposition of excluding the territory from the district. Any election may be held separately or may be held jointly or concurrently with any primary, general, or regular election held under the laws of the state of Colorado. The election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S., with the governing body of the municipality following the procedures and performing the functions of the board of directors of the district pursuant to the provisions of articles 1 to 13 of title 1, C.R.S. The resolution or ordinance calling the election shall recite the objects and purposes for which the indebtedness of the district was incurred, the remaining amount of principal of the indebtedness, and the terms of repayment. The resolution or ordinance shall also designate the date upon which the election shall be held. The form of the ballot shall be as follows: "For Exclusion" and "Against Exclusion". After the results have been surveyed, the clerk of the municipality shall certify the results to the governing body of the municipality who shall certify the results to the board of directors of the district.

(3) In the event that the district has no outstanding indebtedness, the governing body of the municipality, before finally adopting the resolution or enacting the ordinance, shall hold a public hearing thereon, notice of which shall be given by publication in at least one newspaper of general circulation within the municipality or county.

(4) Within sixty days after receipt of a copy of the resolution or certification of survey of votes showing that the exclusion has been approved, the board of directors of the district may enact a resolution setting forth the same boundaries and, upon the taking effect of its resolution, shall forthwith transmit a certified copy of the resolution to the division of local government in the department of local affairs.

(5) The director of the division of local government, upon receipt of a copy of the resolution of the board of directors of the district, shall forthwith issue a certificate reciting that the territory described in the resolution has been duly excluded from the district named, according to the laws of the state of Colorado. The exclusion of the territory shall be deemed effective upon the date of issuance of the certificate, and the validity of the exclusion shall be incontestable in any suit or proceeding which has not been commenced within three months from that date. The division shall forthwith transmit to the governing body of such municipality and to the board of directors of the district a copy of the certificate, and the clerk of the governing body shall forthwith record the copy in the office of the clerk and recorder of the county in which the municipality is located.

Source: L. 55: p. 593, § 1. CRS 53: § 89-13-12. C.R.S. 1963: § 89-13-12. L. 70: p. 281, § 76. L. 71: p. 961, § 5. L. 76: (4) and (5) amended, p. 600, § 16, effective July 1. L. 77: (2) amended, p. 1504, § 53, effective July 15. L. 92: Entire section amended, p. 893, § 135, effective January 1, 1993.

32-4-413. Liability of property included. Property situated within the boundaries of territory added to a metropolitan water district shall be subject to all taxes levied by such district after the inclusion of such territory, and shall be subject to all the bonded indebtedness of such district whether incurred by the district prior to or subsequent to such inclusion.

Source: L. 55: p. 594, § 1. CRS 53: § 89-13-13. C.R.S. 1963: § 89-13-13.

32-4-414. Liability of property excluded. Property situated within the boundaries of territory excluded from a metropolitan water district shall remain subject to that portion of all taxes levied by such district necessary for the payment of principal and interest of any bonded indebtedness of the district outstanding at the time of such exclusion.

Source: L. 55: p. 595, § 2. CRS 53: § 89-13-14. C.R.S. 1963: § 89-13-14.

32-4-415. Budget law. The provisions of the local government budget law shall apply to metropolitan water districts.

Source: L. 55: p. 595, § 1. CRS 53: § 89-13-15. C.R.S. 1963: § 89-13-15.

32-4-416. Dissolution of district. Any metropolitan water district may be dissolved in the manner provided in part 7 of article 1 of this title; except that the question of dissolution or the plan for dissolution shall be submitted to the eligible electors of the district. The election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S.

Source: L. 70: p. 312, § 10. C.R.S. 1963: § 89-13-16. L. 77: Entire section amended, p. 1504, § 54, effective July 15. L. 81: Entire section amended, p. 1623, § 23, effective July 1. L. 92: Entire section amended, p. 894, § 136, effective January 1, 1993.

PART 5

METROPOLITAN SEWAGE DISPOSAL DISTRICTS

32-4-501. Legislative declaration. It is declared that the organization of metropolitan sewage disposal districts having the purposes and powers provided in this article will serve a public use and will promote the public health, safety, and general welfare.

Source: L. 60: p. 162, § 1. CRS 53: § 89-15-1. C.R.S. 1963: § 89-15-1.

32-4-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Acquisition" or "acquire" means the purchase, construction, reconstruction, lease, gift, transfer, assignment, option to purchase, grant from the federal government, from any public body, or from any person, endowment, bequest, devise, installation, condemnation, other contract, or other acquirement, or any combination thereof, of facilities, other property, any project, or an interest therein authorized in this part 5.

(2) "Board of directors" or "board" means the board of directors of a metropolitan sewage disposal district.

(3) "Clerk" means that official of a municipality or a district who performs duties ordinarily performed by a city clerk, town clerk, or a secretary of a corporation.

(4) "Compensating reservoir" means the structures, facilities, and appurtenances for the impounding, transportation, and release of water for the replenishment or replacement in periods of drought or at other necessary times of all or a part of waters in or bordering the state diverted into any sewer, sewer system, intercepting sewer, or sewage disposal system appertaining to a district.

(5) "Condemnation" or "condemn" means the acquisition by the exercise of the power of eminent domain of property for any facilities, other property, project, or an interest therein, authorized in this part 5. A district may exercise in the state the power of eminent domain, either within or without the district, and in the manner provided by law for the condemnation of private property for public use may take any property necessary to carry out any of the objects or purposes hereof, whether such property is already devoted to the same use by any municipality or other public body or otherwise, and may condemn any existing works or improvements used in the district. The power of eminent domain vested in the board shall include the power to condemn, in the name of the district, either the fee simple or any lesser estate or interest in any real property which the board by resolution determines is necessary for carrying out the purposes of this part 5. A district shall not abandon any condemnation proceedings subsequent to the date upon which it has taken possession of the property being acquired. In the event the construction of any sewage disposal system or project authorized in this part 5, or any part thereof, makes necessary the removal and relocation of any public utilities, whether on private or public right-of-way, the district shall reimburse the owner of such public utility facility for the expense of such removal and relocation, including the cost of any necessary land or rights in land.

(6) "Cost" or "cost of any project", or words of similar import mean in addition to the usual connotations thereof, the cost of acquisition or improvement and equipment of all or any part of a sewage disposal system and of all or any property, rights, easements, privileges, agreements, and franchises deemed by the district to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, cost of issuance of bonds, engineering and inspection costs, and legal expenses, cost of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses of the district prior to and during such acquisition or improvement and equipment, and additionally during a period of not exceeding one year after the completion thereof, as may be estimated and determined by the board in any resolution authorizing the issuance of any securities or other instrument appertaining thereto or in any contract with any municipality, or otherwise, and all such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of said sewage disposal system or part thereof and the placing of the same in operation, and also such provision or reserves for working capital, operation, maintenance, or replacement expenses

or for payment or security of principal of or interest on any securities during or after such acquisition or improvement and equipment as the district may determine, and also reimbursements to the district or any municipality or person of any moneys theretofore expended for the purposes of the district or to any municipality or other public body or the federal government of any moneys theretofore expended for or in connection with sanitation facilities.

(7) "Disposal" or "dispose" means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract, or other disposition, or any combination thereof, of facilities, other property, any project, or an interest therein authorized in this part 5.

(8) "District" means a metropolitan sewage disposal district formed under the provisions of this part 5 or as changed from time to time. A district formed under this part 5 shall not be considered a political subdivision for the purposes of section 8-3-104 (12), C.R.S.

(9) "Engineer" means any engineer regularly employed by the district or any competent engineer or firm or association of engineers employed by the district in connection with any facility, property, project, or power authorized in this part 5.

(10) "Equipment" or "equip" means the furnishing of all necessary or desirable, related or appurtenant, machinery and other facilities, or any combination thereof, appertaining to any property, project, or interest therein authorized in this part 5.

(11) "Executive" means the chief executive elected official of a municipality as defined in subsection (19) of this section by whatever name he may be designated.

(12) "Federal government" means the United States, or any agency, instrumentality, or corporation thereof.

(13) "Governing body" means the city council of a city or of a city and county, the board of trustees of an incorporated town, the board of directors of a sanitation district or of a water and sanitation district, or the governing body of any other municipality by law authorized to impose the obligations contemplated by this part 5, regardless of how the governing body may be designated.

(14) "Herein", "hereby", "hereunder", "hereof", "hereto", "hereinabove", "hereinbefore", and "hereinafter" refer to this metropolitan sewage disposal district law and not solely to the particular portion thereof in which such word is used.

(15) "Improvement" or "improve" means the extension, betterment, alteration, reconstruction, replacement, repair, or other improvement, or any combination thereof, of facilities, other property, any project, or an interest therein authorized in this part 5.

(16) "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resource.

(17) "Intercepting sewer" is considered as only such sewer and appurtenances thereto as may be necessary to intercept and transport the outfalls from the sewer systems of the municipalities included within the boundaries of the district.

(18) "Metropolitan sewage disposal district" means a district organized under this part 5 either as originally organized or as changed from time to time.

(19) "Municipality" means a city, a city and county, an incorporated town, a sanitation district, or a water and sanitation district, and any other political subdivision or public entity created under the laws of the state of Colorado having specific boundaries within which it is authorized to provide sewer service for the area within its boundaries, other than a metropolitan sewage disposal district.

(20) "Ordinance" means the formal action taken by a "governing body", as defined in subsection (13) of this section, whether it is in the form of an ordinance, resolution, or other form.

(21) "Person" means any individual, association, corporation, or the federal government, or any public body other than a municipality, and excluding a district.

(22) "Pollution" or "pollute" means the condition of water resulting from the introduction therein of substances of a kind and in quantities rendering it detrimental or immediately or potentially dangerous to the public health, or unfit for public or commercial use.

(23) "Project" means any public structure, facility, or undertaking or sewage disposal system which a district is authorized in this part 5 to acquire, improve, equip, maintain, and

operate. A project may consist of all kinds of personal and real property. Any project of a district shall appertain to a sewage disposal system as defined in subsection (31) of this section and authorized by this part 5.

(24) "Property" means real property and personal property.

(25) "Public body" means the state of Colorado, or any agency, instrumentality, or corporation thereof, or any county, municipality, or other city or town, or other type of quasi-municipal district, or any other political subdivision of the state, excluding a metropolitan sewage disposal district and excluding the federal government.

(26) "Publication" means three consecutive weekly publications in at least one newspaper having general circulation in the district. It shall not be necessary that an advertisement be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(27) "Real property" means:

- (a) Land, including land under water;
- (b) Buildings, structures, fixtures, and improvements on land;
- (c) Any property appurtenant to or used in connection with land;
- (d) Water and water rights appertaining to any project;

(e) Every estate, interest, privilege, easement, franchise, and right in land, legal or equitable, including, without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(28) "Securities" means any bonds, interim receipts or certificates, warrants, debentures, notes, or other obligations of a district or any public body appertaining to any project, or interest therein, authorized in this part 5, or otherwise.

(29) "Service charges" are the rents, rates, fees, tolls, or other charges for direct or indirect connection with, or the use or services of, a sewage disposal system or sewer system, as more specifically provided in section 32-4-522 and elsewhere in this part 5.

(30) "Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, apartments, schools, hospitals, industrial establishments, or any other public or private building, together with such surface or groundwater and industrial wastes as are present.

(31) "Sewage disposal system" includes any one or all or any combination of the following: Any sewage treatment plant, sewage treatment works, sewage disposal facilities, connections and outfalls, intercepting sewers, outfall sewers, force mains, conduits, pipelines, water lines, pumping and ventilating plants or stations, compensating reservoirs, other plants, structures, facilities, equipment, and appurtenances useful or convenient for the interception, transportation, treatment, purification, or disposal of sewage, liquid wastes, solid wastes, night soil, and industrial wastes, and all necessary lands, interest in lands, easements, and water rights.

(31.5) "Sewer connection" means any physical connection to a sewage disposal system or sewer system, whether direct or indirect, of a residence building, dwelling, dwelling unit, or other building, including individual units of multiple unit dwellings such as condominiums, townhouses, multiplexes, and apartment buildings.

(32) "Sewer system" means a system provided by a municipality to provide sewer service to its inhabitants to the point of its connection with a sewage disposal system as defined in subsection (31) of this section which intercepts, receives, transports, treats, and disposes of the outfalls from such sewer systems.

(32.5) "Single-family equivalent" means the capacity of sewer service or water service required for a single-family household. For a multiple unit dwelling, each single-family household within such a dwelling shall be considered as having one single-family equivalent.

(33) "State" means the state of Colorado, or any agency, instrumentality, or corporation thereof.

(34) "Taxation" or "tax" means general ad valorem taxes.

(35) “Taxpaying elector” and “eligible elector” of a district have the meanings, respectively, as specified in section 32-1-103; except that, to qualify as a taxpaying elector or as an eligible elector for the purposes of this part 5, a person must also be a resident of a municipality, as defined in subsection (19) of this section.

Source: L. 60: p. 162, § 12. CRS 53: § 89-15-2. L. 62: pp. 180, 182, §§ 1, 2. C.R.S. 1963: § 89-15-2. L. 70: p. 286, § 84. L. 81: (31.5) and (32.5) added, p. 1637, § 1, effective May 18; (35) amended, p. 1624, § 24, effective July 1. L. 92: (35) amended, p. 894, § 137, effective January 1, 1993.

32-4-503. Liberal construction. This part 5 being necessary to secure and preserve the public health, safety, and general welfare, the rule of strict construction shall have no application to this part 5, but it shall be liberally construed to effect the purposes and objects for which this part 5 is intended.

Source: L. 60: p. 179, § 18. CRS 53: § 89-15-18. L. 62: p. 199, § 12. C.R.S. 1963: § 89-15-18.

32-4-504. Sufficiency of part 5. (1) This part 5, without reference to other statutes of the state, shall constitute full authority for the exercise of powers granted in this part 5, including but not limited to the authorization and issuance of securities under this part 5. No other act or law with regard to the authorization or issuance of securities that provides for an election requires an approval, or in any way impedes or restricts the carrying out of the acts in this part 5 authorized to be done, shall be construed as applying to any proceedings taken under this part 5 or acts done pursuant hereto, except for laws to which reference is made in this part 5 specifically or by necessary implication. The provisions of no other law, either general or local, except as provided in this part 5, shall apply to doing of the things in this part 5 authorized to be done, and no board, agency, bureau, commission, or official, other than the board of directors of a metropolitan sewage disposal district or the governing body of a municipality, has any authority or jurisdiction over the doing of any of the acts in this part 5 authorized to be done.

(2) No notice, consent, or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any securities or the making of any contract or the exercise of any other power under this part 5, except as provided in this part 5. The powers conferred by this part 5 shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this part 5 shall not affect the powers conferred by, any other law.

(3) Nothing in this part 5 shall repeal or affect any other law or part thereof, except to the extent that this part 5 is inconsistent with any other law, it being intended that this part 5 shall provide a separate method of accomplishing its objectives, and not an exclusive one; and this part 5 shall not be construed as repealing, amending, or changing any such other law except to the extent of such inconsistency.

Source: L. 60: p. 179, § 19. CRS 53: § 89-15-19. L. 62: p. 199, § 13. C.R.S. 1963: § 89-15-19.

32-4-505. Limitation on scope of part 5. Nothing in this part 5 shall be construed as affecting in any manner the operation, improvement, or enlargement, or any combination thereof, of a privately owned sewage disposal system which exists outside the boundaries of a municipality as they existed on or after February 21, 1962.

Source: L. 62: p. 220, § 14. C.R.S. 1963: § 89-15-38.

32-4-506. Purpose, boundaries, and powers. (1) Metropolitan sewage disposal districts may be organized under this part 5 for the purpose of acquiring, by construction or otherwise, owning, holding, and operating a sewage disposal system to intercept, receive,

transport, treat, and dispose of the outfalls of sewer systems of municipalities. A district may be composed of territory included within the corporate boundaries of any two or more municipalities, which need not be contiguous and which need not be located in the same county. When so organized each such district shall be a governmental subdivision of the state of Colorado with such powers as are expressly granted in this part 5 together with such powers as are reasonably implied therefrom and necessary or proper to carry out the objects and purposes of such district.

(2) It is the purpose of this part 5 that the municipalities within a district shall retain full power to provide sewer service to its inhabitants and to authorize a district to intercept, receive, transport, treat, and dispose of the outfalls from the sewer systems of the municipalities within the district.

Source: L. 60: p. 164, § 3. CRS 53: § 89-15-3. C.R.S. 1963: § 89-15-3.

32-4-507. Powers of public bodies. (1) The governing body of any municipality or other public body, upon its behalf and in its name, for the purpose of aiding and cooperating in any project authorized in this part 5, upon the terms and with or without consideration and with or without an election, as the governing body determines, has power under this part 5:

(a) To sell, lease, loan, donate, grant, convey, assign, transfer, and otherwise dispose to the district of sewers, sewage facilities, and sewer improvements, or any combination thereof;

(b) To make available for temporary use or otherwise dispose of to the district any machinery, equipment, facilities, and other property, and any agents, employees, persons with professional training, and any other persons, to effect the purposes of this part 5. Any such property owned and persons in the employ of any public body while engaged in performing for the district any service, activity, or undertaking authorized in this part 5, pursuant to contract or otherwise, shall have all the powers, privileges, immunities, rights, and duties of, and shall be deemed to be engaged in the service and employment of, such public body, notwithstanding such service, activity, or undertaking is being performed in or for a district.

(c) To enter into any agreement or joint agreement between or among the federal government, the district, and any other public body, or any combination thereof, which is mutually agreed thereby, notwithstanding any law to the contrary, respecting action or proceedings appertaining to any power granted in this part 5, and the use or joint use of any facilities, project, or other property authorized in this part 5;

(d) To sell, lease, loan, donate, grant, convey, assign, transfer, or pay over to a district any facilities or any project authorized in this part 5, or any part thereof, or any interest in real or personal property, or any funds available for acquisition, improvement, or equipment purposes, including the proceeds of any securities issued for acquisition, improvement, or equipment purposes which may be used by the district in the acquisition, improvement, equipment, maintenance, or operation of any facilities or project authorized in this part 5;

(e) To transfer, grant, convey, or assign and set over to a district any contracts which have been awarded by the public body for the acquisition, improvement, or equipment of any project not begun, or if begun, not completed;

(f) To budget and appropriate, and each municipality or other public body is required and directed to budget and appropriate, from time to time, general ad valorem tax proceeds, service charges, and other revenues legally available therefor to pay all obligations arising from the exercise of any powers granted in this part 5 as such obligations accrue and become due, including, without limiting the generality of the foregoing, service charges fixed by the district;

(g) To prescribe and enforce reasonable rules and regulations, not in conflict with any such rule or regulation of the district, for the availability of service from, the connection with, the use of, and the disconnection from the sewer system of the public body or other sanitation or sewer facilities thereof;

(h) To provide for an agency, by any agreement authorized in this part 5, to administer or execute that or any collateral agreement, which agency may be one of the parties to the agreement, or a commission or board constituted pursuant to the agreement;

(i) To provide that any such agency shall possess the common power specified in the agreement, and may exercise it in the manner or according to the method provided in the agreement. Such power is subject to the restrictions upon the manner of exercising the power of any one of the contracting parties, which party shall be designated by the agreement.

(j) To continue any agreement authorized in this part 5 until rescinded or terminated, which agreement may provide for the method by which it may be rescinded or terminated by any party.

(2) All of the powers, privileges, immunities, and rights, exemptions from laws, ordinances, and rules and all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any such district or public body when performing their respective functions within the territorial limits of their respective public agencies shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under this part 5.

Source: L. 62: p. 200, § 14. **C.R.S. 1963:** § 89-15-20. **L. 90:** (2) amended, p. 572, § 65, effective July 1. **L. 93:** (1)(c) and (1)(j) amended, p. 21, § 1, effective March 4.

32-4-508. Organization. (1) A district shall be organized in the following manner:

(a) The governing body of any municipality may enact an ordinance declaring that the public health, safety, and general welfare require the organization of a district, which ordinance shall set forth, among other things, the following:

(I) The name of the proposed district;

(II) The municipalities proposed to be included in the proposed district;

(III) The municipalities which shall be required to take action to be included within the district before the district becomes organized. This requirement may be met by designating by name those municipalities which are required to take action to be included within the district before the district shall be organized or by designating alternative groups of municipalities which are required to take action to be included within the district before the district shall be organized, or by designating a percentage of those municipalities named which shall be required to take action to be included within the district before the district shall be organized.

(IV) The time limit within which action must be taken by the municipalities so named to be included within the district, which time shall not exceed six months from the final adoption of the initiating ordinance.

(b) Upon the final adoption of an initiating ordinance, the clerk of the governing body shall mail a certified copy thereof to each municipality named therein and to the division of local government in the department of local affairs.

(c) After receipt of a copy of such ordinance from the initiating governing body, the governing body of any municipality, which is named in the ordinance proposing the district, and which desires to include such municipality within the district, may enact an ordinance setting forth:

(I) A copy of the initiating ordinance;

(II) That such a district will serve a public use and will promote the public health, safety, and general welfare;

(III) That the municipality shall be included in said district if and when the same is organized as set forth in the initiating ordinance.

(d) Before final adoption of any ordinance under paragraphs (a) to (c) of this subsection (1), the governing body of each such municipality shall hold a public hearing thereon, notice of which shall be given by publication, which publication shall be complete at least ten days before the hearing.

(e) The clerk of each governing body, upon the final adoption of such ordinance, shall forthwith transmit a certified copy thereof to the governing body of every other municipality

named in the initiating ordinance, including the municipality which adopted the initiating ordinance, and to the division of local government.

(f) (I) The division of local government, upon receipt of a certified copy of such ordinance from the clerk of the governing body of each of those municipalities which satisfy the requirements for organization as set forth in the initiating ordinance, shall forthwith issue a certificate reciting that the district named in the ordinance has been duly organized according to the laws of the state of Colorado, and setting forth the names of the municipalities which are included within the district. The organization of any district shall be deemed effective upon the date of issuance of such certificate, and the validity of the organization of any such district shall be incontestable in any suit or proceeding which shall not be commenced within three months from such date.

(II) The division of local government shall forthwith transmit to the governing body of each municipality which has certified an adopting ordinance three copies of such certificate, and the clerk of each such governing body shall forthwith record a copy in the offices of the clerk and recorder of the county or counties in which the municipality is wholly or partly located and shall forthwith file a copy of said certificate in the office of the county assessor and county treasurer of each county in which said municipality is located. Additional copies of such certificate shall be issued by said division upon request.

(g) Only such municipalities as enact an ordinance to become a part of the district shall be joined therein. No district shall be deemed to have been organized unless those municipalities which are required by the initiating ordinance to take action to be included within the district take such action within the limit of time specified in the initiating ordinance.

Source: L. 60: p. 164, § 4. **CRS 53:** § 89-15-4. **C.R.S. 1963:** § 89-15-4. **L. 76:** (1)(b), (1)(e), and (1)(f) amended, p. 600, § 17, effective July 1.

32-4-509. Board of directors. (1) All powers, rights, privileges, and duties vested in or imposed upon any district organized under this part 5 shall be exercised and performed by and through a board of directors; but the exercise of any executive, administrative, and ministerial powers may be, by said board of directors, delegated and redelegated to officials and employees of the district; and the board of directors is authorized to create an executive committee of the board of directors and to delegate to such committee all of such power and authority to act on behalf of the district as the district board may determine by resolution or in the bylaws of the district.

(2) (a) The members of the board from each municipality shall be appointed by the executive of each such municipality with the approval of the governing body of such municipality. In districts having eleven or more member municipalities, the board shall consist of one member from each municipality included within the district for each seventy-five thousand of population, or fraction thereof, in such municipality, plus one member for each additional seventy-five thousand of population, or fraction thereof, in any such municipality; except that no municipality shall be entitled to more than one-half of the total membership or representation upon the board; and further except that any municipality that has fifty percent or more of the total population of the district shall have one-half of the total membership or representation on the board. In districts having ten or less member municipalities, the board shall consist of one member from each municipality included within the district, plus two additional members for any municipality having fifty percent of the total district population, plus one additional member for any municipality having eighty percent of the total district population.

(b) In determining population for the purpose of apportioning and reapportioning representation on the board of directors of the district, the population of a city or of a city and county or of an incorporated town shall be the latest estimate made by the division of planning.

(c) For the purpose of apportioning or reapportioning representation on the board of directors, the population of a sanitation district, water and sanitation district, or other political subdivision shall be determined by the governing body thereof by multiplying by 2.8 either the number of single-family equivalent water taps or the number of single-family

equivalent sewer connections within the said water and sanitation district or other political subdivision or by multiplying by 2.8 the number of single-family equivalent sewer connections within the said sanitation district.

(d) The representation on the board shall be reapportioned every four years after the creation of a district in the month in which the division of local government in the department of local affairs issued a certificate of organization in the year of the district's organization upon the basis set forth in this subsection (2).

(e) After a district is organized, the inclusion thereafter of additional municipalities within the district shall entitle the included municipalities to representation on the board of directors of the district on the same basis as other municipalities. Should the addition of such membership to the board result in a municipality which has fifty percent or more of the population of the district having less than fifty percent of the total membership or representation on the board of directors, that municipality's representation shall be increased simultaneously so that it shall have one-half of the total membership or representation on said board. This paragraph (e) shall not apply to districts having, after the addition of such municipality, ten or less municipalities.

(3) Board members shall be qualified electors who are qualified to vote at general elections in this state and who reside within the district and within the municipality from which they are appointed. The term of each member shall be two years; except that the terms of the members of the first board of directors shall be adjusted so that the terms of one-half of the members shall expire one year thereafter. In each calendar year any term of office then terminating shall expire as soon as the incumbent's successor has been appointed and qualifies after the last day of the month next following the month in which the division of local government issued a certificate of organization in the year of the district's organization. At the first meeting of the board of a newly formed district, the directors shall determine by lot who shall serve for one-year terms and who shall serve for two-year terms. At the expiration of a director's term a new appointment shall be made by the appropriate executive, with the approval of the governing body, and any member may be appointed to succeed himself. The executive, at his discretion, may remove from office any member of the board representing his municipality and appoint a successor with the approval of the governing body.

(4) A change of residence of a member of a board of directors to a place outside the area which he represents shall constitute an automatic resignation and shall create a vacancy on the board. Vacancies which occur on the board through death or resignation or by change of residence or for any other reason shall be filled in the same manner as original appointments.

(5) Upon the creation of a district the executive of each municipality within the district shall appoint, with the approval of the governing body, the members of the board of directors of said district to which such municipality is entitled and the directors so appointed by the executive of the municipality which adopted the initiating ordinance shall fix a time and place for the first meeting of the members of the board of directors and shall cause each director to be given written notice thereof at least five days prior thereto.

(6) All special and regular meetings of the board shall be open to the public. Such meetings shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (6) governing the location of meetings may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (6) and further stating the date, time, and place of such meeting.

(7) The board of directors has the following powers:

(a) To fix the time and place, or places, at which its regular meetings shall be held and shall provide for the calling and holding of special meetings; to adopt bylaws and rules for procedure; to select one of its members as chairman of the board and district, and another

member as pro tem chairman of the board and district; and to choose a secretary and a treasurer of the board and district, each of which positions may be filled by a person who is a member of the board and both of which may be filled by one person;

(b) To make and pass resolutions and orders not repugnant to the provisions of this part 5, necessary or proper for the government and management of the affairs of the district, for the execution of the powers vested in the district, and for carrying into effect the provisions of this part 5. On all resolutions and orders the roll shall be called and the ayes and noes recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board of directors and the secretary. Every legislative act of the board or its executive committee of a general or permanent nature shall be by resolution. The book of resolutions and orders shall be a public record.

(c) Business of the board shall be transacted at a regular or special meeting at which a quorum consisting of one-half of the total membership of the board of directors is present. Any action of the board shall require the affirmative vote of the majority of the directors present and voting, except when a weighted vote is conducted in accordance with the bylaws of the district, applicable resolutions of the board, or other laws or rules governing the procedures of the board. Questions involving inclusion or exclusion of territories or authorizing any expenditures in excess of fifty thousand dollars shall require the approval of a majority of the entire membership of the board. A majority of the entire membership of the board may authorize by resolution any project authorized in this part 5 and also thereby authorize expenditures from time to time appertaining to such project in excess of fifty thousand dollars approved by an affirmative vote of the majority of the directors present and voting at any subsequent meeting. A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide.

(d) To fix the location of the principal place of business of the district and the location of all offices and departments maintained under this part 5;

(e) To prescribe by resolution a system of business administration and to create all necessary offices, and to establish and reestablish the powers and duties and compensation of all officers and employees and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the district;

(f) To prescribe a method of auditing and allowing or rejecting claims and demands and a method for the letting of contracts on a fair and competitive basis for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies as required for the carrying out of any of the purposes of this part 5;

(g) To designate and appoint an official newspaper within each county in which the district or any portion thereof is situated to be used for the official publications of the district; but nothing contained in this subsection (7) shall prevent the board from directing publication in additional newspapers where public necessity may so require. Any official newspaper so designated and appointed shall be one which is published within the district.

(h) To appoint, by written resolution, one or more persons to act as custodians of moneys of the district for purposes of depositing such moneys as set forth in section 32-4-510 (1) (p). Such persons shall deposit, or cause to be deposited, all or part of such moneys in such depositories as shall be designated by the board and shall give surety bonds in such amounts and form and for such purposes as the board requires.

(8) Each member of the board shall receive as compensation for his or her service a sum not in excess of three thousand dollars per annum, payable at a rate not to exceed seventy-five dollars for each regular or special meeting of the board or committee of the board attended by the member. No member of the board shall receive any compensation as an agent, employee, engineer, or attorney of the district.

(9) No member of the board, nor officer, employee, or agent of a district shall be interested in any contract or transaction with the district except in his official representative capacity or as provided in his contract of employment with the district. Neither the holding of any office or employment in the government of any municipality or other public body of the federal government, nor the owning of any property within the state shall be deemed a disqualification for membership on the board or membership in or employment by a district,

nor a disqualification for compensation for services as a member of the board or as an officer, employee, or agent of the district, except as provided in subsection (8) of this section.

Source: L. 60: p. 166, § 5. CRS 53: § 89-15-5. L. 62: p. 185, § 3. C.R.S. 1963: § 89-15-5. L. 65: p. 880, § 1. L. 70: p. 286, § 85. L. 71: pp. 975, 976, §§ 1, 2, 3. L. 76: (2)(d) and (3) amended, p. 601, § 18, effective July 1. L. 77: (8) R&RE, p. 1505, § 55, effective July 15; (8) R&RE, p. 1521, § 1, effective January 1, 1978. L. 79: (7)(h) added, p. 1624, § 35, effective June 8. L. 81: (2)(a), (2)(c), and (8) amended, p. 1637, § 2, effective May 8; (2)(e) amended, p. 1637, § 2, effective May 18. L. 90: (6) amended, p. 1498, § 6, effective July 1. L. 2007: (2)(a), (2)(d), and (8) amended, p. 160, § 1, effective March 22. L. 2010: (7)(c) amended, (SB 10-053), ch. 22, p. 94, § 1, effective August 11.

ANNOTATION

Meanings of “municipality” and “city”. The words “municipality” in subsection (2)(a) and “city” in subsection (2)(b) must be accorded their usual meanings even where a mem-

ber municipality provides sewer treatment for less than all of its inhabitants. *Crestview Water & San. Dist. v. Bd. of Dirs.*, 640 P.2d 265 (Colo. App. 1981).

32-4-510. Powers of the district. (1) Any district has the following powers:

(a) To have powers, privileges, immunities, rights, liabilities, no-rights, disabilities, and duties appertaining to a public body politic and corporate constituting a quasi-municipal district and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety, and general welfare; and to have perpetual existence and succession;

(b) To adopt, have, and use a corporate seal, and to alter the same at pleasure;

(c) To sue and to be sued;

(d) To enter into contracts and agreements including but not limited to contracts with the federal government and the state;

(e) To borrow money and to issue securities evidencing any loan to or amount due by the district, to provide for and secure the payment of any securities and the rights of the holders thereof, and to purchase, hold, and dispose of securities, as provided in this part 5;

(f) To purchase, trade, exchange, lease, buy, sell, encumber, and otherwise acquire and dispose of real and personal property and interests therein, including water and water rights;

(g) To refund any bonded indebtedness of the district without an election;

(h) In addition to all other means of providing revenue as provided in this section, during the first five years of the district's existence, to levy general ad valorem taxes on all taxable property within the district; but the total tax levy for the five-year period shall not exceed an aggregate total of three-fourths of one mill. When the district, within said period of five years, has levied taxes to the total of three-fourths of one mill, or when the district has been organized for a full five-year period, whichever occurs first, the district shall have no further power to levy general ad valorem taxes. Nothing in this part 5 shall be construed as preventing the collection of the proceeds in full of any tax levies authorized in this part 5, including but not limited to any delinquencies, as provided in this paragraph (h) and paragraph (m) of this subsection (1), and in section 32-4-511. The board, if it desires to levy in any year all or any portion of the mill levy tax authorized in this paragraph (h), shall, in accordance with the schedule prescribed by section 39-5-128, C.R.S., certify to the body having authority to levy taxes within each county wherein the district has any territory the rate so fixed, in order that, at the time and in the manner required by law for the levying of taxes, such body having authority to levy taxes shall levy such tax upon the valuation for assessment of all taxable property within the district. The levy and collection of taxes shall be as provided in section 32-4-511.

(i) To hire and retain officers, agents, employees, engineers, attorneys, and any other persons, permanent or temporary, necessary or desirable to effect the purposes hereof, to defray any expenses incurred thereby in connection with the district, and to acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and

occupancy insurance, workers' compensation insurance, property damage insurance, public liability insurance for the district and its officers, agents, and employees, and other types of insurance, as the board may determine. No provision in this part 5 authorizing the acquisition of insurance shall be construed as waiving any immunity of the district or any director, officer, or agent thereof, and otherwise existing under the laws of the state.

(j) To condemn property for public use;

(k) To acquire, hold, operate, maintain, equip, improve, and dispose of a sewage disposal system and appurtenant works or any interest therein, wholly within the district, or partially within and partially without the district, and wholly within, wholly without, or partially within and partially without any public body all or any part of the area of which is situated within the district; to acquire and, subject to mortgages, deeds of trust, or other liens, or otherwise, to hold, operate, maintain, equip, improve, and dispose of property of every kind appertaining to any such sewage disposal system and any improvements thereto, and necessary or convenient to the full exercise of any power provided in this part 5; to pay or otherwise defray the cost of any project; to pay or otherwise defray and to contract so to pay or defray, without an election, the principal of, any interest on, and any other charges appertaining to any securities or other obligations of any municipality or person incurred in connection with any such property so acquired by the district; and to establish and maintain facilities within or without the district, across or along any public street, highway, bridge, viaduct, or other public right-of-way, or in, upon, under, or over any vacant public lands, which public lands are the property of the state, or across any stream of water or watercourse, without first obtaining a franchise from the municipality, county, or other public body having jurisdiction over the same, but the district shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct, or other public right-of-way to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to impair completely or unnecessarily the usefulness thereof;

(l) To fix and from time to time increase or decrease rates and charges to municipalities within the district for the services provided by the district, including the power to fix and determine minimum charges and charges for availability of service; to pledge such revenue for the payment of any securities of the district; and to enforce the collection of such rates and charges by civil action or by any other means provided by law;

(m) To enforce the collection of rates and charges made by the district to any municipality which fails to pay any such rates and charges within ninety days after said rates and charges become due and payable, in addition to the foregoing powers and not in limitation thereof, by an action in the nature of mandamus or other suit, action, or proceeding at law or in equity to compel the levy without limitation as to rate or amount by the governing body of the municipality and the collection of general ad valorem taxes on and against all taxable property within the municipality sufficient in amount to pay such delinquent rates and charges, together with the expenses of collection, including but not necessarily limited to reasonable penalties for delinquencies, interest on the amount due from any date due at a rate of not exceeding one percent per month, or fraction thereof, court costs, reasonable attorneys' fees, and any other costs of collection. Nothing in this part 5 shall be so construed as to prevent the governing body of any municipality from levying such taxes sufficient for the payment of such rates and charges as the same become due and payable, nor from applying therefor any other funds that may be in the treasury of the municipality and available for that purpose, whether derived from any rates and charges imposed for the use of or otherwise in connection with its sewer system or sewer facilities, or from any other source, and upon such payments being made, the general ad valorem tax levy provided in this part 5 may thereupon to that extent be diminished. Except to that extent, there shall be levied without limitation of rate or amount by the governing body of each municipality, in addition to all other taxes, direct annual general ad valorem taxes on all taxable property within the municipality sufficient in amount to pay said rates and charges of the district promptly as the same respectively become due. The levy and collection of taxes shall be as provided in section 32-4-511.

(n) To sell and otherwise dispose of any by-products resulting from the operation and activities of the district;

(o) To appropriate revenues for the purpose of carrying on investigations and research in the treatment and disposal of sewage and industrial wastes;

(p) To deposit any moneys of the district in any banking institution within or without the state or in any depository authorized in section 24-75-603, C.R.S., and to invest any surplus money in the district treasury, including such money in any sinking fund established for the purpose of retiring any securities of the district, not required for the immediate necessities of the district in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and such investment may be made by direct purchase of any such securities at the original sale of the same or by the subsequent purchase of such securities. Any securities thus purchased and held may be sold, from time to time, and the proceeds reinvested in securities, as provided in this paragraph (p). Sales of any securities thus purchased and held shall be made, from time to time, in season so that the proceeds may be applied to the purposes for which the money with which the securities were originally purchased was placed in the treasury of the district.

(q) To accept contributions or loans from the federal government for the purpose of financing the planning, construction, maintenance, and operation of any enterprise in which the district is authorized to engage, and to enter into contracts and cooperate with, and accept cooperation from, the federal government in the planning, construction, maintenance, and operation, and in financing the planning, construction, maintenance, and operation, of any such enterprise in accordance with any legislation which congress may adopt, under which aid, assistance, and cooperation may be furnished by the federal government in the planning, construction, maintenance, and operation, or in financing the planning, construction, maintenance, and operation, of any such enterprise, including, without limiting the generality of the foregoing, costs of engineering, architectural, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action preliminary to the acquisition, improvement, or equipment of any project; and to do all things necessary in order to avail itself of such aid, assistance, and cooperation under any federal legislation enacted;

(r) (I) To enter, without an election, into joint operating or service contracts and agreements, acquisition, improvement, or disposal contracts or other arrangements with any municipality or person concerning sewage facilities, sewers, sewer systems, intercepting sewers, project or sewage disposal systems, and any water and water rights appertaining thereto, whether acquired by the district or by any public body or other person, and to accept grants and contributions from any public body or other person in connection therewith; and when determined by the board to be in the public interest and necessary for the protection of the public health, to enter into and perform, without an election, contracts and agreements with any municipality or person for the provision and operation by the district of sewage facilities, sewers, sewer systems, intercepting sewers, and a project or sewage disposal system to abate or reduce the pollution of waters or other nuisance caused by discharges of sewage, liquid wastes, solid wastes, night soil, and industrial wastes by the municipality or person, and for the payment periodically by the municipality or person to the district of amounts at least sufficient, in the determination of the board, to compensate the district for the cost of providing, operating, and maintaining the sewage facilities, sewers, sewer system, intercepting sewers, project, or sewage disposal system serving such municipality or person.

(II) Subject to the rights and privileges of the holder or holders of any bonds or other securities of the district, any such joint operating or service contract between the district and ten or more municipalities may be amended, from time to time, by written agreement, duly authorized and signed by representatives of two-thirds of the parties thereto. This subparagraph (II) shall apply to any existing as well as any future joint operating or service contract entered into with such municipalities.

(s) To enter into and perform, without an election, contracts and agreements with any municipality or person for or concerning the planning, construction, lease, or other acquisition, operation, maintenance, improvement, equipment, disposal, and the financing of any project;

(t) To enter upon any land, to make surveys, borings, soundings, and examinations for the purposes of the district, in order to locate the necessary works of any project and any

roadways and other rights-of-way appertaining to any project authorized in this part 5; to acquire all property necessary for the acquisition or improvement of said works, including lands for compensating reservoirs, and all necessary appurtenances;

(u) To carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods, and use of water, sewage facilities, and any project, both within and without the district;

(v) To have the right to provide from revenues or other available funds an adequate fund for the improvement of a sewage disposal system or of any parts of the works and properties of the district;

(w) To prescribe and enforce reasonable rules and regulations for the availability of service from, the connection with, the use of, and the disconnection from a sewage disposal system, any other facilities, project, or other property of the district authorized in this part 5, and the operation of a sewage disposal system and any sewer system;

(x) To make and keep records in connection with any project or otherwise concerning the district;

(y) To arbitrate any differences arising in connection with any project or otherwise concerning the district;

(z) To have the management, control, and supervision of all the business and affairs appertaining to any project authorized in this part 5, or otherwise concerning the district, and of the acquisition, improvement, equipment, operation, and maintenance of any such project;

(aa) To prescribe the duties of officers, agents, employees, and other persons, and fix their compensation, but the compensation of employees and officers shall be established at prevailing rates of pay for equivalent work;

(bb) To enter into contracts of indemnity and guaranty, in such form as may be approved by the board, relating to or connected with the performance of any contract or agreement which the district is empowered to enter into under the provisions of this part 5 or of any other law of the state;

(cc) To provide, by any contract, without an election:

(I) For the joint use of personnel, equipment, and facilities of any district and public bodies, including sewer systems, sewage disposal plants, and public buildings constructed by or under the supervision of the board of a district or the governing body of the public body concerned, upon such terms and agreements, and within such areas within the district, as may be determined, for the promotion and protection of health, comfort, safety, life, welfare, and property of the inhabitants of the district and public bodies;

(II) For the joint employment of clerks, stenographers, and other employees appertaining to any sewer system or sewage disposal system, or both, now existing or hereafter established in any district, upon such terms and conditions as may be determined for the equitable apportionment of the expenses therefrom resulting;

(dd) To obtain financial statements, appraisals, economic feasibility reports, and valuations of any type appertaining to any project or any property pertaining thereto;

(ee) To adopt any resolution authorizing a project or the issuance of securities, or both, or otherwise appertaining thereto, or otherwise concerning the district;

(ff) To make and execute a mortgage, deed of trust, indenture, or other trust instrument appertaining to a project or to any securities authorized in this part 5, or to both, except as provided in paragraph (gg) of this subsection (1) and in section 32-4-524 (8);

(gg) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this part 5, or in the performance of the district's covenants or duties, or in order to secure the payment of its securities, if no encumbrance, mortgage, or other pledge of property, excluding any money, of the district is created thereby, and if no property, excluding money, of the district is liable to be forfeited or taken in payment of said securities;

(hh) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 5. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 5.

(ii) To exercise all or any part or combination of the powers granted in this part 5.

Source: L. 60: p. 169, § 6. CRS 53: § 89-15-6. L. 62: pp. 188, 192, §§ 4, 5. C.R.S. 1963: § 89-15-6. L. 67: p. 535, § 8. L. 71: p. 1214, § 10. L. 77: (1)(h) amended, p. 1505, § 56, effective July 15. L. 79: (1)(p) amended, p. 1624, § 36, effective June 8. L. 81: (1)(r) amended, p. 1638, § 3, effective May 8. L. 89: (1)(p) amended, p. 1118, § 37, effective July 1. L. 90: (1)(i) amended, p. 572, § 66, effective July 1. L. 93: (1)(k), (1)(r)(I), (1)(s), and IP(1)(cc) amended, p. 21, § 2, effective March 4.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

Sewage disposal district under contract with city and county has same disposition rights as city and county. When sewage disposal district treats sewage under contract with city and county, the nature and extent of city and county's control over resulting effluent is same as if city and county had treated it, and whatever disposition city and county may make of effluent, sewage disposal district can make; whatever disposition city and county cannot make is proscribed to district. *Metro. Denver Sewage Disposal Dist. No. 1 v. Farmers Reservoir & Irrigation Co.*, 179 Colo. 36, 499 P.2d 1190 (1972).

Sewage disposal districts not exempt from municipal building codes. While this section exempts sewage disposal districts from obtaining a municipal franchise, nothing in the statutory scheme evinces a legislative intent to ex-

clude the districts organized thereunder from the application of municipal building codes. *Metro. Denver Sewage v. Commerce City*, 745 P.2d 1041 (Colo. App. 1987).

Labor Peace Act does not limit or constrain the law on metropolitan sewage disposal districts concerning the determination of prevailing rates of pay. Such a district is not required to negotiate or engage in collective bargaining in fixing employee compensation at prevailing rates for equivalent work. *Local 1 v. Metro Wastewater Reclamation*, 876 P.2d 82 (Colo. App. 1994).

Compensation, as used in this section, is defined as "remuneration and other benefits received in return for services rendered", therefore, sick leave is included in the term "compensation". *Denver Local 2-477 v. Metro Wastewater Reclamation Dist.*, 7 P.3d 1042 (Colo. App. 1999).

32-4-511. Levy and collection of taxes. (1) It is the duty of the body having authority to levy taxes within each county to levy the taxes provided in this part 5. It is the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other general ad valorem taxes are collected and when collected to pay the same to the district or municipality ordering its levy and collection. The payment of such collection shall be made monthly to the treasurer of the district or municipality levying the tax and be paid into the depository thereof to the credit of such district or municipality. All general ad valorem taxes levied under this part 5, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general ad valorem taxes.

(2) If the general ad valorem taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest, and penalties, in the manner provided by the statutes of the state of Colorado for selling real property for the nonpayment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the county, and the county shall account to the district or municipality to which the tax is due in the same manner as provided by law for accounting for school, town, and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

Source: L. 60: p. 173, § 7. CRS 53: § 89-15-7. L. 62: p. 194, § 6. C.R.S. 1963: § 89-15-7.

32-4-512. Boundary changes - liability of property. The boundaries of any district organized under this part 5 may be changed in the manner provided for in this part 5, but the change of boundaries of the district shall not impair or affect its organization, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge on which the district might be liable or chargeable had such change of boundaries not been made.

Source: L. 60: p. 173, § 8. CRS 53: § 89-15-8. C.R.S. 1963: § 89-15-8.

32-4-513. Inclusion of territory. (1) Any municipality shall be eligible for inclusion in a district with the consent of such municipality and the consent of the district, upon such terms and conditions as may be determined by the board of directors of the district and upon determination by the board that such municipality may feasibly be served by the facilities of the district.

(2) (a) The governing body of a municipality desiring to include such municipality within the boundaries of the district shall submit to the district a request that the district determine the feasibility of serving the municipality through the district's facilities and the terms and conditions upon which the municipality may be included within the district.

(b) Upon receipt of such a request the board of directors of the district shall cause an investigation to be made within a reasonable time to determine whether or not the municipality may feasibly be served by the facilities of the district and the terms and conditions upon which the municipality may be included within the district. Upon such determination, if it is determined that it is feasible to serve the municipality through the district's facilities, the board by resolution shall set the terms and conditions upon which the municipality may be included within the district and shall give notice thereof to the municipality. If the board determines that the municipality cannot feasibly be served through the district's facilities or otherwise determines that the municipality should not be included within the boundaries of the district, the board of directors of the district shall pass a resolution so stating and notify the municipality of the action of the board.

(3) (a) The governing body of the municipality, if it desires to include the municipality within the district upon the terms and conditions set forth by the board of directors of the district, shall adopt an ordinance declaring that the public health, safety, and general welfare require the inclusion of said municipality within the district and that the governing body desires to have said municipality included therein upon the terms and conditions prescribed by the board of directors of the district, but the governing body of such municipality shall, before final adoption of said ordinance, hold a public hearing thereon, notice of which shall be given by publication in at least one newspaper of general circulation within such municipality, which publication shall be complete at least ten days before the hearing. Upon the final adoption of said ordinance the clerk of the governing body of such municipality shall forthwith transmit a certified copy thereof to the board of directors of the district and to the division of local government in the department of local affairs.

(b) After receipt of a copy of such ordinance the board of directors of the district may pass and adopt a resolution including said municipality within the boundaries of the district and shall cause a certified copy thereof to be transmitted to the division of local government and a certified copy to the clerk of the governing body of the municipality. The director of said division, upon receipt of a certified copy of the resolution of the board of directors of the district, shall forthwith issue a certificate reciting that the municipality described in such resolution has been duly included within the boundaries of the district according to the laws of the state of Colorado. The inclusion of such territory shall be deemed effective upon the date of the issuance of such certificate, and the validity of such inclusion shall be incontestable in any suit or proceeding which has not been commenced within three months from such date. The said division shall forthwith transmit to the governing body of such municipality and to the board of directors of the district three copies of such certificate, and the clerk of such governing body shall forthwith record a copy in the office of the clerk and recorder of each county in which such municipality is located and file a copy thereof with the county assessor and county treasurer of said county in which the municipality is located. The said division shall issue additional copies of the certificate upon request.

(4) The foregoing provisions for inclusion of territory within the district shall be applicable in those cases where the municipality and the district take action to include only a portion of a municipality within the district, but in such instances the ordinance of the municipality, the resolution of the board of directors of the district, and the certificate of inclusion issued by the director of the division of local government shall specifically describe the area of the municipality which is included within the district.

Source: L. 60: p. 174, § 9. CRS 53: § 89-15-9. C.R.S. 1963: § 89-15-9. L. 76: (3) and (4) amended, p. 601, § 19, effective July 1.

32-4-514. Annexation and consolidation of territory by municipalities. (1) All territory which may be annexed to a municipality after its inclusion within the boundaries of the district and the entire consolidated territory resulting from a consolidation of a municipality included within the district with a municipality not so included shall, without further action by the municipality or the board of directors of the district, become a part of and included within the boundaries of the district; but if it is infeasible for any part of the annexed or consolidated territory to be served by the district's facilities, the municipality may, prior to or within ninety days after such annexation or consolidation is completed, petition the board of directors of the district for an exclusion of the territory which cannot feasibly be served.

(2) Upon receipt of such a petition, the board of directors shall consider the same, and, if it determines that the territory petitioned to be excluded cannot feasibly be served by the facilities of the district, the board by resolution may exclude the same from the boundaries of the district, and such exclusion shall be retroactive to the date of annexation or consolidation. A certified copy of the resolution excluding the territory shall be forthwith transmitted to the division of local government in the department of local affairs, and three certified copies shall be forthwith transmitted to the clerk of the municipality, and the clerk of the municipality shall cause a certified copy of the resolution to be recorded in the county or counties in which the municipality is located and a copy thereof delivered to the office of the county assessor and county treasurer of each county in which the excluded territory is located. Additional certified copies of such resolution shall be issued by the secretary of the district upon request.

Source: L. 60: p. 175, § 10. CRS 53: § 89-15-10. L. 62: p. 195, § 7. C.R.S. 1963: § 89-15-10. L. 76: (2) amended, p. 602, § 20, effective July 1.

32-4-515. Exclusion of territory. (1) Should the governing body of any municipality which is included within the district determine by ordinance, adopted after a public hearing called and held as provided in section 32-4-508 (1) (d), that said municipality or any portion thereof cannot feasibly be served by the district's facilities, such municipality may file with the district a certified copy of such ordinance and request that said municipality or a designated portion thereof be excluded from the district.

(2) Upon receipt of such ordinance the board of directors of the district shall cause an investigation to be made to determine whether or not the municipality or the designated portion thereof can feasibly be served by the district's facilities.

(3) (a) Upon completion of said investigation, and in any event not later than ninety days from the filing of the ordinance with the district, the board of directors of the district shall by resolution determine that the area sought to be excluded can or cannot be feasibly served by the district's facilities. If the board of directors of the district determines that the area can feasibly be served by the district's facilities, the exclusion sought shall be denied.

(b) If the board of directors of the district determines that the area sought to be excluded cannot feasibly be served by the district's facilities, the board of directors of the district shall adopt a resolution excluding the area from the district, and a certified copy of such resolution shall forthwith be filed with the director of the division of local government in the department of local affairs, who shall forthwith issue a certificate of exclusion describing the territory so excluded and shall transmit to the clerk of the municipality three

certified copies of such certificate of exclusion, and the clerk of the municipality shall forthwith record a copy of such certificate in the office of the county clerk and recorder of each county in which the municipality may be located and shall deliver a copy to the county assessor and the county treasurer of each county in which the municipality is located; but, so long as any securities of the district are outstanding, no exclusion of territory shall be made which will reduce the revenue of the district, nor shall any exclusion of territory reduce the district's minimum charges and charges for availability of service.

Source: L. 60: p. 176, § 11. CRS 53: § 89-15-11. L. 62: p. 196, § 8. C.R.S. 1963: § 89-15-11. L. 76: (3)(b) amended, p. 603, § 21, effective July 1.

32-4-516. Service of areas outside the boundaries of the district. Any municipality included within the district may discharge into the district's facilities sewage and industrial wastes received by its system from areas not within the corporate limits of the municipality, but in that case the sewage and industrial wastes so received from outside the district boundaries and discharged into the district's facilities shall be considered, for the purposes of this part 5, as being sewage and industrial waste of that municipality.

Source: L. 60: p. 177, § 12. CRS 53: § 89-15-12. C.R.S. 1963: § 89-15-12.

32-4-517. Dissolution of districts. (1) Any metropolitan sewage disposal district formed under this part 5 which has no indebtedness, securities, or other obligations outstanding or which has made full provision for their payment, may be dissolved by vote of a majority of the electors voting at an election to be held for the purpose of voting upon the dissolution of the district and which election shall be held in the manner provided for the holding of elections as set forth in section 32-4-518.

(2) An election submitting the proposition of dissolution of the district may be initiated by a resolution of the board of directors adopted by three-fourths of all of the members of the board of directors of such district calling an election for that purpose, or by the filing with the clerk of the district resolutions requesting such an election, passed and adopted by the governing bodies of three-fourths of all of the municipalities included within the boundaries of the district.

(3) In the event the vote is for dissolution, the board of directors of the district shall proceed to terminate the affairs of the district and any funds remaining in the district treasury, after all obligations of the district have been discharged and the costs of terminating the district's affairs have been paid, shall be divided among the municipalities included within the district in proportion to the population of each such municipality, as determined by the latest estimate made by the director of the division of planning.

Source: L. 60: p. 177, § 13. CRS 53: § 89-15-13. L. 62: p. 196, § 9. C.R.S. 1963: § 89-15-13. L. 70: p. 286, § 86. L. 71: p. 962, § 6.

32-4-518. Elections. (1) (a) Wherever in this part 5 an election is permitted or required, the election may be held separately or may be coordinated with any primary or general election held under the laws of the state of Colorado. The elections shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S. The board of directors shall call the election by resolution adopted pursuant to section 1-5-203, C.R.S.

(b) The board, in the case of any election not to be coordinated with a primary or general election, shall appoint a designated election official responsible for assuring that the election is held according to the provisions of articles 1 to 13 of title 1, C.R.S.

(c) (Deleted by amendment, L. 92, p. 895, § 138, effective January 1, 1993.)

(d) If the election is coordinated with a primary or general election, it shall be held according to the provisions of section 1-7-116, C.R.S.

(2) to (4) (Deleted by amendment, L. 92, p. 895, § 138, effective January 1, 1993.)

Source: L. 60: p. 178, § 14. CRS 53: § 89-15-14. L. 62: p. 196, § 10. C.R.S. 1963: § 89-15-14. L. 70: p. 287, § 87. L. 77: (3) amended, p. 1505, § 57, effective July 15.

L. 81: (1)(a) amended, p. 1624, § 25, effective July 1. **L. 82:** (1)(c) amended, p. 495, § 1, effective February 19. **L. 92:** Entire section amended, p. 895, § 138, effective January 1, 1993. **L. 93:** (1)(a), (1)(b), and (1)(d) amended, p. 1440, § 139, effective July 1.

32-4-519. Authorization. In addition to powers elsewhere conferred by law on municipalities, municipalities participating in the organization of a district and municipalities included within a district under this part 5 have every power necessary, requisite, or proper to effectuate the purposes of this part 5, including, without limitation, the power to acquire and operate a sewer system as defined in section 32-4-502 (32), and to impose, collect, and enforce rates for services rendered or made available by or through such system.

Source: **L. 60:** p. 178, § 15. **CRS 53:** § 89-15-15. **C.R.S. 1963:** § 89-15-15.

32-4-520. Correction of faulty notices. In any case where a notice is provided for in this part 5, if the board, governing body, or court having jurisdiction of the matter finds for any reason that due notice was not given, the board, governing body, or court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the board, governing body, or court shall order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: **L. 60:** p. 178, § 16. **CRS 53:** § 89-15-16. **L. 62:** p. 199, § 11. **C.R.S. 1963:** § 89-15-16.

32-4-521. Early hearings. All cases in which there may arise a question of validity of the organization of a district, or a question of the validity of any proceeding under this part 5, shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purpose of this part 5.

Source: **L. 60:** p. 179, § 17. **CRS 53:** § 89-15-17. **C.R.S. 1963:** § 89-15-17.

32-4-522. Rates and service charges. (1) (a) Every district and municipality fixing and collecting rates or charges, or both, as provided in section 32-4-510 (1) (1) and elsewhere in this part 5, or otherwise, is, in supplementation of such powers, authorized to fix and collect rents, rates, fees, tolls, and other charges, in this part 5 sometimes referred to as "service charges", for direct or indirect connection with, or the use or services of, a sewage disposal system or sewer system, respectively, including, without limiting the generality of the foregoing, minimum charges and charges for the availability of service.

(b) Such service charges may be charged to and collected in advance or otherwise by a district from any municipality within the district and by any municipality from any person contracting for such connection or use or services or from the owner or occupant, or both of them, of any real property which directly or indirectly is or has been or will be connected with the sewer system or from which or on which originates or has originated sewage or other wastes which directly or indirectly have entered or may enter the sewage disposal system and sewer system, and the municipality or owner, or occupant, of any such real property shall be liable for and shall pay such service charges to the district or municipality fixing the service charges at the time when and place where such service charges are due and payable.

(c) Such service charges of any district may accrue from any date on which its board reasonably estimates, in any resolution authorizing the issuance of any securities or other instrument appertaining thereto or in any contract with any municipality, that any sewage disposal system or project being acquired or improved and equipped will be available for service or use.

(2) (a) Such rents, rates, fees, tolls, and other charges, being in the nature of use or service charges, shall, as nearly as the district or municipality fixing the service charges

shall deem practicable and equitable, be reasonable, and shall be uniform throughout the district or municipality for the same type, class, and amount of use or service of the sewage disposal system or sewer system, and may be based or computed either: On measurements of sewage flow devices duly provided and maintained by the district or by the municipality or any user as approved by the district or municipality fixing such charges, and analyses of sewage samples procured and made by or in a manner approved by the district; or on the consumption of water in or on or in connection with the municipality or real property, making due allowance for commercial use of water and infiltration of groundwater and discharge of surface run-off to the sewer system; or on the number and kind of water outlets on or in connection with the municipality or real property, or on the number and kind of plumbing or sewage fixtures or facilities in or on or in connection with the municipality or real property; or on the number of persons residing or working in or on or otherwise connected or identified with the municipality or real property, or on the capacity of the improvements in or on or connected with the municipality or real property; or upon the availability of service or readiness to serve by the system; or on any other factors determining the type, class, and amount of use or service of the sewage disposal system or sewer system; or on any combination of any such factors, and may give weight to the characteristics of the sewage and other wastes and any other special matter affecting the cost of treatment and disposal thereof, including chlorine demand, biochemical oxygen demand, concentration of solids, and chemical composition.

(b) Reasonable penalties may be fixed for any delinquencies, including, without limiting the generality of the foregoing, interest on delinquent service charges from any date due at a rate of not exceeding one percent per month, or fraction thereof, reasonable attorneys' fees, and other costs of collection.

(3) The district or municipality fixing the service charges shall prescribe and, from time to time, when necessary revise a schedule of such service charges, which shall comply with the terms of any contract of the district or municipality fixing the service charges, and in any event shall be such that the revenues from the service charges of the district or municipality will at all times be adequate, except to the extent that the proceeds of any general ad valorem tax or other moneys are available and used, after an allowance is made for delinquencies accrued and reasonably estimated to accrue by the board or governing body fixing the service charges, for the payment of such service charges, whether resulting from any delinquency of any municipality, other public body, or other person, or from any other cause:

(a) To pay all expenses of operation and maintenance of the sewage disposal system or sewer system, including reserves, insurance, and improvements;

(b) To pay punctually the principal of and interest on any securities payable from revenues of the sewage disposal system or sewer system and issued or to be issued by the district or municipality fixing the service charges;

(c) To maintain such reserves or sinking funds therefor; and

(d) For the payment of any expenses incidental to any sewage disposal system or sewer system or any project authorized in this part 5, any contingencies, acquisitions, improvements, and equipment, and any other cost, as may be required by the terms of any contract of, or as may be deemed necessary or desirable by, the district or municipality fixing the service charges.

(4) Said schedule shall thus be prescribed and from time to time revised by the district or municipality. A public hearing thereon may be, but is not required to be, held by the district or municipality at least seven days after such published notice is given, as the district or municipality may determine to be reasonable. The district or municipality shall fix and determine the times when and the places where such service charges shall be due and payable and may require that such service charges shall be paid in advance for a period of not more than one year. A copy of such schedule of service charges in effect shall at all times be kept on file at the principal office of the district or municipality fixing the service charges and shall at all reasonable times be open to public inspection.

(5) The legislature has determined and declared that the obligations arising from time to time of any municipality or person to pay service charges fixed in connection with any sewage disposal system or sewer system shall constitute general obligations of the munic-

ipality or person charged with their payment; but as such obligations accrue for current services and benefits from and use of any such system, the obligations shall not constitute an indebtedness of the municipality or other public body within the meaning of any constitutional, charter, or statutory limitation or other provision restricting the incurrence of any debt.

(6) No board, agency, bureau, commission, or official, other than the board of the district or the governing body of the municipality fixing the service charges, has authority to fix, prescribe, levy, modify, supervise, or regulate the making of service charges, nor to prescribe, supervise, or regulate the performance of services appertaining to a sewage disposal system or sewer system, as authorized in this part 5; but this subsection (6) shall not be construed to be a limitation on the contracting powers of the board of any district or the governing body of any municipality within the district.

Source: L. 62: p. 202, § 14. C.R.S. 1963: § 89-15-21.

32-4-523. Form of borrowing. (1) Upon the conditions and under the circumstances set forth in this part 5, a district, to carry out the purposes of this part 5, from time to time may borrow money to defray the cost of any project, or any part thereof, as the board may determine, and issue the following securities to evidence such borrowing: Debentures, warrants, bonds, interim receipts, temporary certificates, temporary bonds, and notes.

(2) A district is authorized to borrow money without an election in anticipation of taxes or other revenues, or both, and to issue debentures to evidence the amount so borrowed.

(3) A district is authorized to defray the cost of any services, supplies, equipment, or other materials furnished to or for the benefit of the district by the issuance of warrants to evidence the amount due therefor, without an election, in anticipation of taxes or other revenues, or both.

(4) Debentures and warrants may mature at such time or times not exceeding five years from the date of their issuance as the board may determine. They shall not be extended or funded except by the issuance of bonds or notes in compliance with subsection (5) or (7) of this section.

(5) A district is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. With the exception of a district that qualifies as an enterprise in accordance with section 20 (2) (d) of article X of the state constitution, no bonded indebtedness shall be created by a district, without first submitting a proposition of issuing such bonds, and the maximum net effective interest rate at which such bonds may be issued, to the electors of the district and being approved, at an election held for that purpose, in accordance with section 32-4-518. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine.

(6) A district is authorized to issue interim receipts or temporary certificates or temporary bonds, pending preparation of definitive bonds and exchangeable for the definitive bonds when prepared, as the board may determine. Each holder of any such temporary security shall have all the rights and remedies which he would have as a holder of the definitive bonds.

(7) A district is authorized to borrow money and to issue notes evidencing "construction" or short-term loans for the acquisition or improvement and equipment of a sewage disposal system or any project in supplementation of long-term financing and the issuance of bonds, as provided in section 32-4-535 and elsewhere in this part 5.

(8) Nothing in this part 5 shall be construed as creating or authorizing the creation of an indebtedness on the part of any municipality included in the district.

Source: L. 62: p. 205, § 14. C.R.S. 1963: § 89-15-22. L. 70: p. 287, § 88. L. 81: (4) amended, p. 1639, § 4, effective May 8. L. 2002: (5) amended, p. 46, § 1, effective August 7.

32-4-524. Payment of securities. (1) All securities issued by the district shall be authorized by resolution.

(2) The district may pledge its full faith and credit for the payment of any securities authorized in this part 5, the interest thereon, any prior redemption premiums, and any charges appertaining thereto. Such securities may constitute the direct and general or special obligations of the district. Their payment may be secured by a specific pledge of tax proceeds and other revenues of the district, in this part 5 sometimes referred to as "revenues" of the district, as the board may determine.

(3) The board, in connection with such additionally secured securities, in the resolution authorizing their issuance or other instrument appertaining thereto may pledge all or a portion of such revenues, subject to any prior pledges, as additional security for such payment of said securities, and at its option may deposit such revenues in a fund created to pay the securities or created to secure additionally their payment.

(4) Any such revenues pledged directly or as additional security for the payment of securities of any one issue or series which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the securities of one or more issues or series subsequently authorized.

(5) All securities of the same issue or series shall, subject to the prior and superior rights of outstanding securities, claims, and other obligations, have a prior, paramount, and superior lien on the revenues pledged for the payment of the securities over and ahead of any lien there against subsequently incurred of any other securities; but, the resolution authorizing, or other instrument appertaining to, the issuance of any securities may provide for the subsequent authorization of bonds or other securities, the lien for the payment of which on such revenues is on a parity with the lien thereon of the subject securities upon such conditions and subject to such limitations as said resolution or other instrument may provide.

(6) All securities of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of securities, of sale, of execution, or of delivery, by a lien on said revenues in accordance with the provisions of this part 5 and the resolution authorizing, or other instrument appertaining to, said securities, except to the extent such resolution or other instrument shall otherwise specifically provide.

(7) Each such security issued under this part 5 shall recite in substance that said security and the interest thereon are payable solely from the revenues or other moneys pledged to the payment thereof. Securities specifically pledging the full faith and credit of the district for their payment shall so state.

(8) The payment of securities shall not be secured by an encumbrance, mortgage, or other pledge of property of the district, except for revenues, income, tax proceeds, and other moneys pledged for the payment of securities. No property of the district, subject to said exception, shall be liable to be forfeited or taken in payment of the securities.

Source: L. 62: p. 206, § 14. C.R.S. 1963: § 89-15-23.

32-4-525. Incontestable recital in securities. Any resolution authorizing, or other instrument appertaining to, any securities under this part 5 may provide that each security therein authorized shall recite that it is issued under authority of this part 5. Such recital shall conclusively impart full compliance with all of the provisions of this part 5, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 62: p. 207, § 14. C.R.S. 1963: § 89-15-24.

32-4-526. Security details. (1) Any securities in this part 5 authorized to be issued shall bear such date, shall be in such denomination, shall mature at such time but in no event exceeding forty years from their date, shall bear interest at a rate such that the net effective interest rate of the issue of securities does not exceed the maximum net effective interest

rate authorized, which interest may be evidenced by one or two sets of coupons, payable annually or semiannually; except that the first coupon appertaining to any security may represent interest for any period, not in excess of one year, as may be prescribed by resolution or other instrument; and said securities and any coupons shall be payable in such medium of payment at any banking institution or such other place within or without the state, including but not limited to the office of the treasurer of any county in which the district is located wholly or in part, as determined by the board, and said securities at the option of the board may be in one or more series, may be made subject to prior redemption in advance of maturity in such order or by lot or otherwise at such time without or with the payment of such premium, not exceeding six percent of the principal amount of each security so redeemed, as determined by the board.

(2) Any resolution authorizing the issuance of securities or other instrument appertaining thereto may capitalize interest on any securities during any period of construction estimated by the board and one year thereafter and any other cost of any project, by providing for the payment of the amount capitalized from the proceeds of the securities.

(3) Securities may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and where interest accruing on the securities is not represented by interest coupons, the securities may provide for the endorsing of payments of interest thereof; and the securities generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants and conditions, and with such other details, as may be provided by the board in the resolution authorizing the securities, or other instrument appertaining thereto, except as otherwise provided in this part 5.

(4) Any resolution authorizing the issuance of securities or any other instrument appertaining thereto may provide for their reissuance in other denominations in negotiable or nonnegotiable form and otherwise in such manner and form as the board may determine.

(5) Subject to the payment provisions specifically provided in this part 5, said debentures, warrants, bonds, any interest coupons thereto attached, and such interim receipts or temporary certificates or temporary bonds, and notes shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the board may otherwise provide; and each holder of such security, or of any coupon appertaining thereto, by accepting such security or coupon shall be conclusively deemed to have agreed that such security or coupon, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of said article.

(6) Notwithstanding any other provision of law, the board in any proceedings authorizing securities under this part 5:

(a) May provide for the initial issuance of one or more securities, in this subsection (6) called "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds;

(d) May further make provision in any such proceedings for the manner and circumstances in which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(7) If lost or completely destroyed, any security may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the board: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security and any coupons; and payment of the cost of preparing and issuing the new security.

(8) Any security shall be executed in the name of and on behalf of the district and signed by the chairman of the board, with the seal of the district affixed thereto and attested by the secretary of the district.

(9) Except for any bonds which are registrable for payment of interest, interest coupons payable to bearer and appertaining to the bonds shall be issued and shall bear the original or facsimile signature of the chairman of the board.

(10) Any one of said officers, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature any security authorized in this part 5, but such a filing is not a condition of execution with a facsimile signature of any interest coupon, and provided that at least one signature required or permitted to be placed on each such security, excluding any interest coupon, shall be manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

(11) The secretary of the district may cause the seal of the district to be printed, engraved, stamped, or otherwise placed in facsimile on any security. The facsimile seal has the same legal effect as the impression of the seal.

(12) The securities and any coupons bearing the signatures of the officers in office at the time of the signing thereof shall be binding obligations of the district, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

(13) Any officer in this part 5 authorized or permitted to sign any security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the security or coupons appertaining thereto, or upon both the security and such coupons.

(14) The securities may be repurchased by the district out of any funds available for such purpose from the project to which they pertain at a price of not more than the principal amount thereof and accrued interest, plus the amount of the premium, if any, which might on the next redemption date of such securities be paid to the holders thereof if such securities should be called for redemption on such date pursuant to their terms, and all securities so repurchased shall be cancelled.

(15) The resolution authorizing the securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing securities, including, without limiting the generality of the foregoing, covenants designated in section 32-4-529.

Source: L. 62: p. 207, § 14. C.R.S. 1963: § 89-15-25. L. 70: p. 287, § 89. L. 75: (5) amended, p. 220, § 68, effective July 16.

32-4-527. Sale of securities. (1) Any securities authorized in this part 5, except for warrants not issued for cash, and except for interim receipts or certificates or temporary bonds issued pending preparation of definitive bonds, shall be sold at public or private sale for not less than the principal amount thereof and accrued interest, or at the board's option, below par at a discount not exceeding six percent of the principal amount thereof and at a price such that the net effective interest rate of the issue of securities does not exceed the maximum net effective interest rate authorized. For any securities the issuance of which does not require approval at an election pursuant to this part 5, the maximum net effective interest rate shall be established by the board prior to the time such securities are sold and issued.

(2) No discount, except as provided in this part 5, or commission shall be allowed or paid on or for any security sale to any purchaser or bidder, directly or indirectly; but nothing contained in this part 5 shall be construed as prohibiting the board from employing legal, fiscal, engineering, and other expert services in connection with any project or facilities authorized in this part 5, and with the authorization, issuance, and sale of securities.

Source: L. 62: p. 210, § 14. C.R.S. 1963: § 89-15-26. L. 70: p. 288, § 90.

32-4-528. Application of proceeds. (1) All moneys received from the issuance of any securities authorized in this part 5 shall be used solely for the purposes for which issued and the cost of any project thereby delineated.

(2) Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the securities, or both interest and principal, or shall be deposited in a reserve therefor, as the board may determine.

(3) Any unexpended balance of such security proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purposes for which such securities were issued shall be paid immediately into the fund created for the payment of the principal of said securities and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise appertaining to their issuance, or in a reserve therefor.

(4) The validity of said securities shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the securities are issued.

(5) The purchasers of the securities shall in no manner be responsible for the application of the proceeds of the securities by the district or any of its officers, agents, and employees.

Source: L. 62: p. 211, § 14. C.R.S. 1963: § 89-15-27.

32-4-529. Covenants in security proceedings. (1) Any resolution or trust indenture authorizing the issuance of securities or any other instrument appertaining thereto may contain covenants and other provisions, notwithstanding such covenants and provisions may limit the exercise of powers conferred by this part 5, in order to secure the payment of such securities, in agreement with the holders and owners of such securities, as to any one or more of the following:

(a) The service charges, and any general taxes to be fixed, charged, or levied, and the collection, use, and disposition thereof, including but not limited to the foreclosure of liens for delinquencies, the discontinuance of services, facilities, or commodities, or use of any sewage disposal system or project, prohibition against free service, the collection of penalties and collection costs, including disconnection and reconnection fees, and the use and disposition of any revenues of the district derived, or to be derived, from any source;

(b) The acquisition, improvement, or equipment of all or any part of the sewage disposal system or of any project;

(c) The creation and maintenance of reserves or sinking funds to secure the payment of the principal of and interest on any securities or of operation and maintenance expenses of any sewage disposal system or any project, or part thereof, and the source, custody, security, use, and disposition of any such reserves or funds, including but not limited to the powers and duties of any trustee with regard thereto;

(d) A fair and reasonable payment by the district from its general fund or other available moneys to the account of a designated project for any facilities or commodities furnished or services rendered thereby to the district or any of its departments, boards, or agencies;

(e) The purpose to which the proceeds of the sale of securities may be applied, and the custody, security, use, expenditure, application, and disposition thereof;

(f) The payment of the principal of and interest on any securities, and the sources and methods thereof, the rank or priority of any securities as to any lien or security for payment, or the acceleration of any maturity of any securities, or the issuance of other or additional securities payable from or constituting a charge against or lien upon any revenues pledged for the payment of securities and the creation of future liens and encumbrances there against, and limitations thereon;

(g) The use, regulation, inspection, management, operation, maintenance, or disposition, or any limitation or regulation of the use, of all or any part of the sewage disposal system or any facilities or project;

(h) The determination or definition of revenues from the sewage disposal system or any project or of the expenses of operation and maintenance of such system or project, the use and disposition of such revenues and the manner of and limitations upon paying such expenses;

(i) The insurance to be carried by the district and use and disposition of insurance moneys, the acquisition of completion or surety bonds appertaining to any project or funds, or both, and the use and disposition of any proceeds of such bonds;

(j) Books of account, the inspection and audit thereof, and other records appertaining to a sewage disposal system, sewer system, or any project authorized in this part 5;

(k) The assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of a sewage disposal system or of any project or any securities having or which may have a lien on any part of any revenues of the district;

(l) Limitations on the powers of the district to acquire or operate, or permit the acquisition or operation of, any plants, structures, facilities, or properties which may compete or tend to compete with the sewage disposal system or any project;

(m) The vesting in a corporate or other trustee such property, rights, powers, and duties in trust as the district may determine, which may include any of the rights, powers, and duties of the trustee appointed by the holders of securities, and limiting or abrogating the right of such holders to appoint a trustee, or limiting the rights, duties, and powers of such trustee;

(n) The payment of costs or expenses incident to the enforcement of the securities or of the provisions of the resolution or of any covenant or contract with the holders of the securities;

(o) The procedure, if any, by which the terms of any covenant or contract with, or duty to, the holders of securities may be amended or abrogated, the amount of securities the holders of which must consent thereto, and the manner in which such consent may be given or evidenced;

(p) Events of default, rights, and liabilities arising therefrom, and the rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations;

(q) The terms and conditions upon which the holders of the securities, or any portion, percentage, or amount of them, may enforce any covenants or provisions made under this part 5, or duties imposed thereby;

(r) The terms and conditions upon which the holders of the securities, or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of the sewage disposal system or any project or service, operate and maintain the same, prescribe fees, rates, and charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the district itself might do;

(s) A procedure by which the terms of any resolution authorizing securities, or any other contract with any holders of securities, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and as to the amount of securities the holders of which must consent thereto, and the manner in which such consent may be given;

(t) The terms and conditions upon which any or all of the securities become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(u) All such acts and things as may be necessary or convenient or desirable in order to secure the district's securities, or, in the discretion of the board, tend to make the securities more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this part 5, it being the intention hereof to give a district power to do all things in the issuance of securities and for their security, except as specifically limited in this part 5.

Source: L. 62: p. 211, § 14. C.R.S. 1963: § 89-15-28.

32-4-530. Remedies of security holders. (1) Subject to any contractual limitations binding upon the holders of any issue or series of securities, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, and subject to any prior or superior rights of others, any holder of securities, or trustee therefor, has the right, for the equal benefit and protection of all holders of securities similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the district and its board and any of its officers, agents, and employees, and to require and compel the district or its board or any such officers, agents, or employees to perform and carry out their duties, obligations, or other commitments under this part 5 and their covenants and agreements with the holder of any security;

(b) By action or suit in equity to require the district and its board to account as if they were the trustee of an express trust;

(c) By action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any system, project, or services, revenues from which are pledged for the payment of the securities, prescribe sufficient fees derived from the operation thereof, and collect, receive, and apply all revenues or other moneys pledged for the payment of the securities in the same manner as the district itself might do in accordance with the obligations of the district;

(d) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any security, and bring suit thereupon.

(2) If a resolution of a district authorizing or providing for the issuance of the securities of any series or any proceedings appertaining thereto contains a provision authorized by section 32-4-529 (1) (r) and shall further provide in substance that any trustee appointed pursuant to said section shall have the powers provided by that section, then such trustee, whether or not all of the bonds of such series have been declared due and payable, shall be entitled as of right to the appointment of a receiver of the sewage disposal system, and such receiver may enter upon and take possession of the sewage disposal system and, subject to any pledge or contract with the holders of such securities, shall take possession of all moneys and other property derived from or applicable to the acquisition, operation, maintenance, or improvement of the sewage disposal system and proceed with such acquisition, operation, maintenance, or improvement which the district is under any obligation to do, and operate, maintain, equip, and improve the sewage disposal system, and fix, charge, collect, enforce, and receive the service charges and all systems revenues thereafter arising, subject to any pledge thereof or contract with the holders of such securities relating thereto, and perform the public duties and carry out the contracts and obligations of the district in the same manner as the district itself might do and under the direction of the court.

(3) Neither the members of the board of directors of a district nor any person executing securities issued pursuant to this part 5 shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to this part 5 shall not be in any way a debt or liability of the state or of any municipality or other public body and shall not create or constitute any indebtedness, liability, or obligation of the state or of any such municipality or other public body, either legal, moral, or otherwise, and nothing in this part 5 contained shall be construed to authorize any district to incur any indebtedness on behalf of, or in any way to obligate, the state or any municipality or other public body, except the district, and except as in this part 5 otherwise expressly stated or necessarily implied.

Source: L. 62: p. 214, § 14. C.R.S. 1963: § 89-15-29.

32-4-531. Cancellation of paid securities. Whenever the treasurer of the district redeems and pays any of the securities issued under the provisions of this part 5, he shall cancel the same by writing across the face thereof or stamping thereon the word "Paid", together with the date of the payment, sign his name thereto, and transmit the same to the secretary of the district, taking his receipt therefor, which receipt shall be filed in the records of the district. The secretary shall credit the treasurer on his books for the amount so paid.

Source: L. 62: p. 216, § 14. C.R.S. 1963: § 89-15-30.

32-4-532. Interest after maturity. No interest shall accrue on any security authorized in this part 5 after it becomes due and payable if funds for the payment of the principal of and interest on the security and any prior redemption premium due are available to the paying agent for such payment without default.

Source: L. 62: p. 216, § 14. C.R.S. 1963: § 89-15-31.

32-4-533. Refunding bonds. (1) Any bonds issued under this part 5 may be refunded, without an election, pursuant to a resolution adopted by the board in the manner provided in this part 5 for the issuance of other securities, subject to any contractual limitations, to refund, pay, or discharge all or any part of the district's outstanding bonds, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds for any sewage disposal system or project.

(2) Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this part 5 for the sale of other bonds.

(3) No bonds may be refunded under this part 5 unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. No maturity of any bonds refunded may be extended over fifteen years. The rate of interest on such refunding bonds shall be determined by the board. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded.

(4) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation therefor. Any escrowed proceeds, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient to pay the bonds refunded as they become due at their respective maturities or due at prior redemption dates as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom.

(5) Refunding revenue bonds may be made payable from any revenues derived from the operation of any sewage disposal system or project, or any other source, notwithstanding that the pledge of such revenues for the payment of the outstanding bonds issued by the district which are to be refunded is thereby modified.

(6) Bonds for refunding and bonds for any other purpose authorized in this part 5 may be issued separately or issued in combination in one series or more.

(7) Except as in this section specifically provided or necessarily implied, the relevant provisions in this part 5 pertaining to bonds shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes, and service charges, and other aspects of the bonds.

(8) The determination of the board that the limitations under this part 5 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 62: p. 216, § 14. C.R.S. 1963: § 89-15-32. L. 70: p. 288, § 91. L. 89: (4) amended, p. 1118, § 38, effective July 1.

32-4-534. Cumulative rights of security holders. (1) No right or remedy conferred upon any holder of any security or any coupon appertaining thereto or any trustee for such holder, by this part 5 or by any proceedings appertaining to the issuance of such security or coupon, is exclusive of any other right or remedy, but each such right or remedy is

cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 5 or by any other law.

(2) The failure of any holder of any security or coupon so to proceed as provided in this part 5 or in such proceedings shall not relieve the district, its board, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

Source: L. 62: p. 217, § 14. C.R.S. 1963: § 89-15-33.

32-4-535. Issuance of notes and pledge of bonds as collateral security.

(1) (a) Notwithstanding any limitation or other provision in this part 5, whenever a proposal to issue bonds has been approved and the district authorized to issue bonds in the manner required by this part 5 for any purpose authorized in this part 5, the district is authorized to borrow money without any other election in anticipation of taxes, the receipt of the proceeds of said bonds or any other revenues of the district, or any combination thereof, and to issue notes to evidence the amount so borrowed. Notes may mature at such times not exceeding a period of time equal to the estimated time needed to effect the purposes for which the bonds are so authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this section, notes shall be issued as provided in this part 5 for securities in sections 32-4-524 to 32-4-532 and section 32-4-534. Taxes, other revenues of the district, including, without limiting the generality of the foregoing, proceeds of bonds to be thereafter issued or reissued, or bonds issued for the purpose of securing the payment of notes, may be pledged for the purpose of securing the payment of the notes.

(b) Any bonds pledged as collateral security for the payment of any notes shall mature at such times as the board may determine but in no event exceeding forty years from the date of either any of such bonds or any of such notes, whichever date is earlier. Any such bonds pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the note secured by a pledge of such bonds, nor shall they bear interest at any time which, with any interest accruing at the same time on the note so secured, exceeds the maximum net effective interest rate approved at the election held to authorize the issuance of said bonds under this part 5.

(2) No note issued pursuant to the provisions of this section shall be extended or funded except by the issuance or reissuance of a bond in compliance with subsection (3) of this section.

(3) For the purpose of funding any note, any bond pledged as collateral security to secure the payment of such note may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election for a purpose the same as or encompassing the purpose for which the notes were issued may be issued for such a funding. Notwithstanding any other provision of law, any bond to be issued for the purpose of funding any note by a district that qualifies as an enterprise in accordance with section 20 (2) (d) of article X of the state constitution may be issued without an election. Any such bonds shall mature at such times as the board may determine but in no event exceeding forty years from the date of either any of the notes so funded or any of the bonds so pledged as collateral security, whichever date is the earlier. Bonds for funding, including but not necessarily limited to any such reissued bonds, and bonds for any other purpose authorized in this part 5, may be issued separately or issued in combination in one series or more. Except as otherwise provided in this section, any such funding bonds shall be issued as is provided for refunding bonds in subsections (1), (2), (4), (5), (7), and (8) of section 32-4-533 and provided for securities in sections 32-4-524 to 32-4-532 and section 32-4-534.

Source: L. 62: p. 218, § 14. C.R.S. 1963: § 89-15-34. L. 70: p. 288, § 92. L. 2002: (3) amended, p. 46, § 2, effective August 7.

32-4-536. Connections with existing drains and pumping stations. In order to carry out and effectuate its purposes, every district is authorized to enter upon and use and

connect with any existing public drains, sewers, conduits, pipe lines, pumping and ventilating stations, and treatment plants or works, or any other public property of a similar nature within the district, and, if deemed necessary by the district, close off and seal outlets and outfalls therefrom. No district shall, in the absence of a contract so authorizing take permanent possession or make permanent use of any such treatment plant or works unless it acquires the same as provided in this part 5.

Source: L. 62: p. 219, § 14. **C.R.S. 1963:** § 89-15-35.

32-4-537. Connections with drains serving property - service charges. (1) Each municipality within the district, and every person owning or operating any sewer or drain or any system of water distribution serving three or more parcels of real property in the district, shall at the request of the district, make available to the district any of its maps, plans, specifications, records, books, accounts, or other data or things deemed necessary by the district for its purposes.

(2) Each municipality shall promptly pay to any district all service charges which the district may charge to it, and shall provide for the payment thereof in the same manner as other obligations of such municipality. Except to the extent the proceeds of general ad valorem taxes and other revenues are made available, each municipality shall fix and collect service charges in connection with its sewer system sufficient in amount to produce revenues annually to pay the service charges levied by the district and all other claims to be defrayed therewith, as provided in section 32-4-522.

(3) Each person owning or operating any sewer or drain which serves three or more parcels of real property in a municipality in the district and which discharges sewage into waters in or bordering the state shall, upon notice from the municipality of its availability and a proposed point of connection with the sewer system of the municipality, cause such sewer or drain to be connected with the system at such point and in such manner as the municipality may specify and shall thereafter cause said sewer or drain to discharge into the sewer system.

(4) Each municipality and any person owning or operating any system of water distribution serving three or more parcels of real property in the district shall, from time to time after request therefor by the district, deliver to the district copies of the records made by it in the regular course of business of the amount of water supplied by it to every such parcel of real property in the district. Such copies shall be delivered to the district within sixty days after the making of such records, and the district shall pay the reasonable cost of preparation and delivery of such copies.

Source: L. 62: p. 219, § 14. **C.R.S. 1963:** § 89-15-36.

32-4-538. Construction of other sewage disposal systems prohibited. It is hereby declared that a district shall be the exclusive agency for the acquisition and operation of a sewage disposal system within a district, except as in this part 5 otherwise provided or authorized, and that no sewage disposal system or other facility for the collection, treatment, or disposal of sewage arising within a district, including any sewage treatment or disposal facilities of a municipality, shall be acquired or improved after a district is organized, unless the district gives its consent thereto and approves the plans and specifications therefor, except for any acquisition or improvement of any sewer collection facilities or sewer system, but not sewage treatment or disposal facility or sewage disposal system, or any part thereof, owned by a municipality at any point above the connection of such collection facilities or sewer system with any sewage disposal system or other project of the district. Each district is empowered by this part 5 to give such consent and approval, subject to the terms and provisions of any agreement with any holder of securities.

Source: L. 62: p. 220, § 14. **C.R.S. 1963:** § 89-15-37.

32-4-539. Publication of resolution or proceedings - effect - right to contest legality - time limitation. (1) In its discretion the board may provide for the publication once in full of any resolution or other proceedings adopted by the board ordering the issuance of any securities or, in the alternative, publication of notice, which resolution, other proceedings, or notice so published shall state the fact and date of such adoption and the place where such resolution or other proceedings has been filed for public inspection and also the date of the first publication of such resolution, other proceedings, or notice, and also state that any action or proceeding of any kind in any court questioning the validity of the creation and establishment of the district, or the validity or proper authorization of securities provided for by the resolution or other proceedings, or the validity of any covenants, agreements, or contracts provided for by the resolution or other proceedings, shall be commenced within twenty days after the first publication of such resolution, other proceedings, or notice.

(2) If no such action or proceedings is commenced within twenty days after the first publication of such resolution, other proceedings, or notice, then all residents and taxpayers and owners of property in the district and users of the sewage disposal system and all public bodies and all other persons whomsoever shall be forever barred and foreclosed from commencing any action or proceeding in any court, or from pleading any defense to any action or proceedings, questioning the validity of the establishment of the district, the validity or proper authorization of such securities, or the validity of any such covenants, agreements, or contracts, and said securities, covenants, agreements, and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

Source: L. 62: p. 220, § 14. C.R.S. 1963: § 89-15-39.

32-4-540. Confirmation of contract proceedings. (1) (a) In its discretion, the board may file a petition at any time in the district court in and for any county in which the district is located wholly or in part, praying for a judicial examination and determination of any power conferred or of any tax or rates or charges levied, or of any act, proceeding, or contract of the district, whether or not said contract has been executed, including proposed contracts for the acquisition, improvement, equipment, maintenance, operation, or disposal of any project for the district. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding, or contract is founded and shall be verified by the chairman of the board.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this part 5. Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned, may be examined. The notice shall be served by publication in at least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the district is located, and by posting the same in the office of the district at least thirty days prior to the date fixed in said notice for the hearing on said petition. Jurisdiction shall be complete after such publication and posting.

(c) Any owner of property in the district or person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail to appear.

(2) The petition and notice shall be sufficient to give the court jurisdiction and upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto, and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty days after the time of the rendition of such judgment, or within such additional time as may be allowed by the court within thirty days. The Colorado rules of civil

procedure shall govern in matters of pleading and practice where not otherwise specified in this part 5. The court shall disregard any error, irregularity, or omission which does not affect the substantial right of the parties.

Source: L. 62: p. 221, § 14. C.R.S. 1963: § 89-15-40.

ANNOTATION

General assembly did not intend section to override the constitutional authority of Colorado courts to decline the exercise of jurisdiction in a non-justiciable case. The hypothetical

issue presented to the district court was not ripe for resolution. *Metro Wastewater v. Nat'l Union Fire Ins. Co.*, 105 P.3d 653 (Colo. 2005).

32-4-541. Preliminary expenses. (1) The district may provide for the payment of all necessary preliminary expenses actually incurred in the making of surveys, estimates of costs and revenues, the employment of engineers, architects, fiscal agents, attorneys at law, clerical help, other agents or employees, the making of notices, taking of options, and all other expenses necessary or desirable to be made and paid prior to the authorization for or the issuance of such securities, and any other cost of any project.

(2) No such expenditures shall be made or paid unless an appropriation has been budgeted and made therefor in the same manner as is required by law, or unless the proceeds of securities or other moneys are available to defray such expenses.

(3) Any funds so expended by the district for preliminary expenses incurred in connection with the same purpose as that for which securities are issued may be fully reimbursed and repaid to the district out of the proceeds derived from the sale of such securities.

(4) The amount so advanced by the district to pay such preliminary expenses may, by a resolution authorizing the issuance of such securities, be made a first charge against such security proceeds until the same has been repaid as provided in this part 5, and in such event said amount shall be paid therewith before any other disbursements are made therefrom.

Source: L. 62: p. 222, § 14. C.R.S. 1963: § 89-15-41.

32-4-542. Tax exemption. (1) The effectuation of the powers authorized in this part 5 shall be in all respects for the benefit of the people of the state, including, but not necessarily limited to, those residing in any district exercising any power under this part 5, for the improvement of their health and living conditions, and for the increase of their commerce and prosperity.

(2) No district exercising any power granted in this part 5 shall be required to pay any general ad valorem taxes upon any property appertaining to any project authorized in this part 5 and acquired within the state, nor the district's interest therein.

(3) Securities issued under this part 5 and the income therefrom shall forever remain free and exempt from taxation by the state, the district, and any other public body, except transfer, inheritance, and estate taxes.

Source: L. 62: p. 223, § 14. C.R.S. 1963: § 89-15-42.

32-4-543. Freedom from judicial process. (1) Execution or other judicial process shall not issue against any property in this part 5 authorized of the district nor shall any judgment against the district be a charge or lien upon its property.

(2) This section does not apply to or limit the right of the holder of any security, his trustee, or any assignee of all or part of his interest, the federal government when it is a party to any contract with the district, or any other obligee under this part 5 to foreclose, otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the district on the proceeds of taxes, service charges, or other revenues.

Source: L. 62: p. 223, § 14. C.R.S. 1963: § 89-15-43.

32-4-544. Legal investments in securities. It shall be legal for any bank, trust company, banker, savings bank, or banking institution; any building and loan association, savings and loan association, or investment company; any other person carrying on a banking or investment business; any insurance company, insurance association, or other person carrying on an insurance business; and any executor, administrator, curator, trustee, or other fiduciary to invest funds or moneys in their custody in any of the securities authorized to be issued pursuant to the provisions of this part 5. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such securities shall be authorized security for all public deposits. Nothing in this section with regard to legal investments shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

Source: L. 62: p. 223, § 14. C.R.S. 1963: § 89-15-44. L. 89: Entire section amended, p. 1131, § 71, effective July 1.

32-4-545. Misdemeanors and civil rights. (1) Any person who wrongfully or purposely fills up, cuts, damages, injures, or destroys, or in any manner impairs, the usefulness of any reservoir, canal, ditch, lateral, drain, dam, intercepting sewer, outfall sewer, force main, other sewer, sewage treatment works, sewage treatment plant, sewer system, sewage disposal system, or any part thereof, or other work, structure, improvement, equipment, or other property acquired under the provisions of this part 5, or wrongfully and maliciously interferes with any officer, agent, or employee of the district in the proper discharge of his duties, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) The district damaged by any such act may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

Source: L. 62: p. 224, § 14. C.R.S. 1963: § 89-15-45.

32-4-546. Validation. All securities issued or purportedly issued and other contracts executed or purportedly executed of districts prior to February 21, 1962, all district bond elections held and carried, or purportedly held and carried prior to that date, and all acts and proceedings had or taken, or purportedly had or taken, by or on behalf of districts under law or under color of law prior to that date, preliminary to and in the creation and any reorganization of each such district, or the modification of its corporate boundaries, the designation and qualification of directors, officers, employees, and other agents of each such district, the authorization, execution, sale, and issuance of all securities, the authorization and execution of all other contracts, and the exercise of other powers in the metropolitan sewage disposal district law, are validated, ratified, approved, and confirmed, except as provided in section 32-4-547, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such securities, acts, and proceedings, in such authorization, execution, sale, and issuance, and in such exercise of powers; and such securities and other contracts are and shall be binding, legal, valid and enforceable obligations of the district to which they appertain in accordance with their terms and their authorization proceedings.

Source: L. 62: p. 224, § 15. C.R.S. 1963: § 89-15-46.

32-4-547. Effect of and limitations upon validation. This part 5 shall operate to supply such legislative authority as may be necessary to validate any securities issued, other contracts executed by districts, and any acts and proceedings taken prior to February 12, 1962, appertaining to the issuance of securities or execution of other contracts by districts or otherwise, which the legislature could have supplied or provided for in the law under

which such securities were issued, or such other contracts were executed and such acts or proceedings were taken; but this part 5 shall be limited to the validation of securities, other contracts, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. This part 5, shall not operate to validate, ratify, approve, confirm, or legalize any bond or other security, other contract, act, proceedings, or other matter the legality of which is being contested or inquired into in any legal proceedings pending and undetermined on February 12, 1962, and shall not operate to confirm, validate, or legalize any bond or other security, other contract, act, proceedings, or other matter which has been determined in any legal proceedings to be illegal, void, or ineffective prior to February 12, 1962.

Source: L. 62: p. 224, § 16. C.R.S. 1963: § 89-15-47.

SINGLE PURPOSE SERVICE DISTRICTS

ARTICLE 5

Single Purpose Service Districts

32-5-101 to 32-5-346. (Repealed)

Source: L. 81: Entire article repealed, p. 1628, § 42, effective July 1.

Editor's note: This article was numbered as article 16 of chapter 36 and articles 6 and 14 of chapter 89, C.R.S. 1963. For amendments to this article prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

REGIONAL SERVICE AUTHORITIES

ARTICLE 7

Regional Service Authorities

Law reviews: For article, "The Regional Approach for Art, Culture and Library Services", see 16 Colo. Law. 1975 (1987).

32-7-101.	Short title.		tions, services, and facilities.
32-7-102.	Legislative declaration.		
32-7-103.	Definitions.	32-7-113.	General powers.
32-7-104.	Territorial requirements for service authorities.	32-7-114.	Duties related to planning powers.
32-7-105.	Petition or resolution for formation - designation of services.	32-7-115.	Ancillary powers.
		32-7-116.	Powers to be exercised without franchise - condition.
32-7-106.	Priority of petition or resolution.	32-7-117.	Revenues of service authority - collection.
32-7-107.	Court appoints an organizational commission and election committee.	32-7-118.	Levy and collection of taxes.
		32-7-119.	Levies to cover deficiencies.
32-7-108.	Service authority organizational commission.	32-7-120.	Power to issue revenue bonds - terms.
32-7-109.	Election for formation, selection of services, and initial board of directors.	32-7-121.	Power to incur indebtedness - interest - maturity - denominations.
		32-7-122.	Debt question submitted to electors - resolution.
32-7-110.	Board of directors.	32-7-123.	Effect - subsequent elections.
32-7-111.	Designation of services.	32-7-124.	Correction of faulty notices.
32-7-112.	Local authorization of func-	32-7-125.	Refunding bonds.

32-7-126.	Limitations upon issuance.	32-7-137.	Special districts - formation within service authority territory forbidden.
32-7-127.	Use of proceeds of refunding bonds.	32-7-138.	Transfer and assumption of services.
32-7-128.	Combination of refunding and other bonds.	32-7-139.	Payments for facilities acquired by regional service authority - valuation.
32-7-129.	Board's determination final.	32-7-140.	Public transportation.
32-7-130.	Anticipation warrants.	32-7-141.	Sewage collection, treatment, and disposal.
32-7-131.	Inclusion - counties - municipality - existing service authority - procedures.	32-7-142.	Urban drainage and flood control.
32-7-132.	Special taxing districts authorized.	32-7-143.	Assumption of services by a service authority in the Denver metropolitan area.
32-7-133.	Formation of special taxing districts.	32-7-144.	Dissolution.
32-7-134.	Local improvement districts authorized.	32-7-145.	Early hearings.
32-7-135.	Procedures to establish local improvement districts.	32-7-146.	Elections.
32-7-136.	Special districts - transfer of responsibility.		

32-7-101. Short title. This article shall be known and may be cited as the "Service Authority Act of 1972".

Source: L. 72: p. 452, § 1. C.R.S. 1963: § 89-25-1.

32-7-102. Legislative declaration. The general assembly hereby declares that the purpose of this article is to implement the provisions of section 17 of article XIV of the state constitution, adopted at the 1970 general election, by providing for and facilitating the formation and operation of a limited number of service authorities in the state of Colorado. It is further declared that the orderly formation and operation of regional service authorities providing authorized functions, services, and facilities and exercising powers granted by this article will serve a public use and will promote the health, safety, security, and general welfare of the inhabitants thereof and the people of the state of Colorado. It is further declared to be the policy of the state of Colorado to encourage the utilization of single service authorities to provide those functions, services, and facilities which transcend local government boundaries, thus reducing the duplication, proliferation, and fragmentation of local governments, and encouraging establishment of efficient, effective, and responsive regional government. To these ends, this article shall be liberally construed.

Source: L. 72: p. 452, § 1. C.R.S. 1963: § 89-25-2.

Cross references: For service authorities, see § 17 of art. XIV, Colo. Const.

ANNOTATION

Power to create authority originates in constitution. The power to create a service authority originates in § 17 of art. XIV, Colo. Const. In re Rég'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Method of creation decision of general assembly. The method by which the creation of a service authority is to be accomplished is a decision within the discretion of the general assembly, subject only to constitutional restrictions and limitations. In re Rég'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Formation of authority may not be frustrated by prior filing of petition. Implicit in the policy of this section, which encourages the creation of single service authorities transcending local government boundaries in the interest of more efficiently providing services to the inhabitants thereof, is the intention that the formation of such an authority may not be frustrated by the prior filing of a petition involving one of the same counties, in the same or in any other court, which then is allowed to become dormant and thus effectively to constitute a bar to the creation of any regional service authority.

In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Filing of objections to petition contemplated by legislature. Although this article contains no express provisions for the filing of objections to a petition or resolution for the formation of a service authority, it is clear that such was within the legislative contemplation when it provided for notice and a public hearing of the pendency of a petition or resolution for the formation of the authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Those opposing authority's formation may not support petition, and vote against district's creation. Adequate political accommodation for those who may oppose the formation of a multi-governmental unit service authority lies in the option to refuse to sign or support a petition, and later in the right to vote against the creation of the district, as provided by § 32-7-109. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

32-7-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Board" means the board of directors of a service authority.
- (2) "Concurrent", when used in regard to the provision of a service by a service authority, means that a service may be provided by a service authority in accordance with the provisions of this article, but the administration of such service shall not preclude counties, municipalities, or special districts from providing the same or similar service. This definition does not prohibit counties, municipalities, or special districts from contracting with each other or with a service authority for the provision of a local service, nor does it prohibit counties, municipalities, or special districts from relinquishing control of a local service by agreement with a service authority or by vesting exclusive jurisdiction for the provision of a given service with the service authority.
- (3) "County" means a home rule or statutory county and includes a city and county.
- (3.5) "Eligible elector" of a service authority means an individual who resides within the service authority and is registered and otherwise qualified to vote in county elections in a county which is located within the service authority.
- (4) "Exclusive", when used in regard to the provision of a service by a service authority, means that the service authority shall have sole governmental responsibility and authority for the provision of such service within its boundaries, but this definition shall not prohibit a service authority from contracting with counties, municipalities, special districts, or nongovernmental persons or entities for the provision of any aspect of such service to the residents therein.
- (5) "General election" means the election held on the first Tuesday after the first Monday of November in every even-numbered year, as provided in section 1-4-201, C.R.S., for the purpose of electing members of the board and for submission of other public questions, if any.
- (6) "Local government" means a county, city and county, municipality, or special district organized pursuant to this title or pursuant to article 8 of title 29 or part 2 of article 20 of title 30, C.R.S.
- (7) "Local improvement district" means an area within a service authority in which the real property is specially benefited and constitutes the basis of assessment for all or part of the cost of the construction or installation of designated improvements within such area.
- (8) "Municipality" means a home rule or statutory city or town or a city and county.
- (9) "Population" means the population as estimated by the court, commission, secretary of state, or board, as the case may be, based upon census tract data or other officially compiled data.
- (10) "President" means the president of the board.
- (11) "Publication" or "publish" means at least one publication in at least one newspaper of general circulation in the service authority. If there is no such newspaper, publication shall be by posting in at least three public places within the service authority.
- (12) (Deleted by amendment, L. 94, p. 1642, § 66, effective May 31, 1994.)
- (13) "Secretary" means the secretary of the board.
- (14) "Service" means a function, service, or facility which a service authority is authorized to provide in accordance with this article.

(15) "Service authority" means a body corporate and political subdivision of the state formed pursuant to the provisions of section 17 of article XIV of the constitution of the state of Colorado for the purpose of providing certain functions, services, and facilities in the manner and within the limitations provided in this article.

(16) "Special election" means any election called by the board for submission of public questions, the election to be held on a Tuesday other than a general election day.

(17) "Special taxing district" means a geographical area within a service authority designated and delineated by the board to facilitate the furnishing of services and the collection of ad valorem taxes and charges for such services.

Source: L. 72: p. 453, § 1. C.R.S. 1963: § 89-25-3. L. 80: (5) amended, p. 415, § 26, effective February 21. L. 85: (12) amended, p. 1350, § 23, effective April 30. L. 92: (12) and (16) amended, p. 896, § 139, effective January 1, 1993. L. 94: (3.5) added and (12) amended, p. 1642, § 66, effective May 31. L. 2009: (6) amended, (SB 09-292), ch. 369, p. 1979, § 110, effective August 5.

32-7-104. Territorial requirements for service authorities. (1) No territory shall be included within the boundaries of more than one service authority.

(2) (a) Except as provided in paragraph (b) of this subsection (2), a service authority shall include all of the territory of at least one county and may include such additional entire counties as may be proposed, if each county has some contiguity with another county within the service authority and does not result in the formation of an enclave.

(b) In no event shall any service authority be formed in the metropolitan area of Denver which does not include that part of Adams county excluding census enumeration districts 1, 2, and 3 of the east Adams division, and that part of Arapahoe county excluding census enumeration districts 1, 2, and 3 of the east Arapahoe division, as such districts and divisions are used by the United States bureau of the census in designation of land areas for the purposes of the 1970 census, and all of the city and county of Denver, and all of Jefferson county, but an additional county or additional counties may be included.

(3) (a) Except as provided in subsection (2) (b) of this section, no county may be divided upon formation of a service authority or thereafter except in the case of a municipality having territory in two counties which are not within the same service authority, either proposed or formed, in which event the municipality may be included in either of two service authorities without regard to county boundary lines, as provided in paragraph (b) of this subsection (3).

(b) Neither the governing body nor the residents of any such municipality shall participate in any of the procedures by which the service authority is originally formed, but, after a service authority is formed which includes the territory of either county, such municipality may be included in the service authority to which it directs its request for inclusion in the manner provided in section 32-7-131.

(4) The boundaries of any service authority shall not be such as to create any enclave.

Source: L. 72: p. 454, § 1. C.R.S. 1963: § 89-25-4. L. 75: (2) and (3)(a) amended, p. 1296, § 1, effective June 16. L. 94: (2)(a) amended, p. 573, § 1, effective April 7.

32-7-105. Petition or resolution for formation - designation of services. (1) The formation of a service authority shall be initiated by a petition signed by eligible electors of the proposed service authority in number not less than five percent of the votes cast in the proposed service authority for all candidates for the office of governor at the last preceding general election or by resolution adopted by a majority of the governing bodies of the counties and municipalities having territory within the boundaries of the proposed service authority. The petition or resolution shall be filed with the district court of the county within the proposed service authority which has the largest population and a copy thereof delivered to the organizational commission upon its appointment by the court.

(1.5) Local governing bodies in their resolution for formation or the people in their petition for formation may designate which services listed in section 32-7-111 are to be

initially administered by the proposed service authority, subject to the approval of the registered electors as provided in section 17 of article XIV of the state constitution, and the manner in which such services are to be submitted to the electors and may provide that such services shall be voted on separately or in combination with one or more other services. If such provisions are not set forth in the resolution or petition, the organizational commission shall make such determinations.

(2) (a) The petition or resolution shall state the name proposed for the service authority and shall list the counties to be included within the service authority and any municipality to be excluded from the authority pursuant to section 32-7-104.

(b) Upon filing of the petition or resolution, the court shall fix a time not less than twenty nor more than forty days after the petition or resolution is filed for a hearing thereon. At least seven days prior to the hearing date, the clerk of the court shall give notice by publication of the pendency of the petition or resolution and of the time and place of hearing thereon. At the hearing, the court shall determine whether the requisite number of eligible electors have signed the petition or whether a resolution has been adopted by the requisite number of counties and municipalities. No petition with the requisite signatures nor any resolution passed by the requisite number of counties and municipalities shall be declared void on account of minor defects, and the court may, at any time, permit the petition or resolution to be amended to conform to the facts by correcting the defects.

(3) If it appears at the conclusion of the hearings that the petition or resolution conforms with the requirements of section 17 of article XIV of the state constitution and this article, the court, by order entered of record, shall appoint an organizational commission according to the procedures required under section 32-7-107.

Source: L. 72: p. 455, § 1. C.R.S. 1963: § 89-25-5. L. 75: (1) amended and (1.5) added, p. 1298, § 1, effective June 20. L. 85: (1), (1.5), and (2)(b) amended, p. 1350, § 24, effective April 30. L. 92: (1) and (2)(b) amended, p. 896, § 140, effective January 1, 1993.

Cross references: For service authorities, see § 17 of art. XIV, Colo. Const.

ANNOTATION

Power to create authority originates in constitution. The power to create a service authority originates in § 17 of art. XIV, Colo. Const. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Method of creation decision of general assembly. The method by which the creation of a service authority is to be accomplished is a decision within the discretion of the general assembly, subject only to constitutional restrictions and limitations. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Formation of authority may not be frustrated by prior filing of petition. Implicit in the policy of § 32-7-102, which encourages the creation of single service authorities transcending local government boundaries in the interest of more efficiently providing services to the inhabitants thereof, is the intention that the formation of such an authority may not be frustrated by the prior filing of a petition involving one of the same counties, in the same or in any other court, which then is allowed to become dormant and thus effectively to constitute a bar to the creation of any regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Forty-day time limitation in subsection (2)(b) is jurisdictional and compliance therewith is mandatory. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Where no hearing within forty days, court may proceed with subsequent petition. The Denver district court had jurisdiction under § 32-7-106 (1) to proceed with the formation of a regional service authority which included the city and county of Denver, and the counties of Douglas, Jefferson, Arapahoe, and Adams (metropolitan district), where a prior proceeding for the formation of a regional service authority for Douglas county (Douglas district) had been commenced in the district court of Douglas county but had not come up for hearing within 40 days, as required by this section. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Those opposing authority's formation may not support petition, and vote against district's creation. Adequate political accommodation for those who may oppose the formation of a multi-governmental unit service authority lies in the option to refuse to sign or support a petition, and later in the right to vote against the

creation of the district, as provided by § 32-7-109. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Hearing on petition not of adversary nature. Even though this article requires a public hearing, it is not to be of an adversary nature in view of the court's limited function under subsection (2)(b). In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Had the general assembly intended a hearing on a petition to establish a service authority to be of an adversary nature with designated parties and right of appellate review, it would have so provided. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Court without general jurisdiction to review petition's merits. The court is not granted any general jurisdiction in this article to review the merits of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Petitioners have right to appellate review. Because this article confers a right on the petitioners to form a regional service authority, the

petitioners have the right to an appellate review of an adverse judicial determination of the sufficiency of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Counties and municipalities have right to review of finding on formation resolution's sufficiency. Counties or municipalities, as the proponents of a resolution for formation of a service authority, have a right to appellate review of an adverse finding concerning the sufficiency of the resolution for formation. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Citizens, as qualified electors, have no standing to challenge by appellate review the findings on the sufficiency of a resolution to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

No standing to challenge petition's sufficiency. Counties and municipalities have no standing to challenge court findings on the sufficiency of a petition to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

32-7-106. Priority of petition or resolution. (1) When the district court receives a resolution adopted by a majority of the governing bodies of the counties and municipalities or receives a petition signed by the requisite number of eligible electors pursuant to section 32-7-105 for the initiation of formation of a service authority, no other proceedings shall be commenced or prosecuted in that or any other court for the creation of another service authority involving all or any one of the same counties until the question of formation of the authority pursuant to the resolution or petition has been finally determined, unless the later filing is allowed under subsection (2) of this section.

(2) A resolution filed within ten days of the date of the filing of a petition under the circumstances set forth in subsection (1) of this section shall take precedence over the petition and shall proceed to final determination before the petition may be further considered.

Source: L. 72: p. 455, § 1. C.R.S. 1963: § 89-25-6. L. 85: (1) amended, p. 1350, § 25, effective April 30. L. 92: (1) amended, p. 897, § 141, effective January 1, 1993.

ANNOTATION

Power to create authority originates in constitution. The power to create a service authority originates in § 17 of art. XIV, Colo. Const. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Method of creation is decision of general assembly. The method by which the creation of a service authority is to be accomplished is a decision within the discretion of the general assembly, subject only to constitutional restrictions and limitations. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

While proceeding pending, other proceeding involving same counties cannot be initi-

ated. While a service authority proceeding is pending, no other proceeding which involves one or more of the same counties can be initiated. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Formation of authority may not be frustrated by prior filing of petition. Implicit in the policy of § 32-7-102, which encourages the creation of single service authorities transcending local government boundaries in the interest of more efficiently providing services to the inhabitants thereof, is the intention that the formation of such an authority may not be frustrated by the prior filing of a petition involving one of the same counties, in the same or in any other court,

which then is allowed to become dormant and thus effectively to constitute a bar to the creation of any regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Forty-day time limitation in § 32-7-105 (2)(b) is jurisdictional and compliance therewith is mandatory. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Where no hearing within forty days, court may proceed with subsequent petition. The Denver district court had jurisdiction under § 32-7-106 (1) to proceed with the formation of a regional service authority which included the city and county of Denver, and the counties of Douglas, Jefferson, Arapahoe, and Adams (metropolitan district), where a prior proceeding for the formation of a regional service authority for Douglas county (Douglas district) had been commenced in the district court of Douglas county but had not come up for hearing within forty days, as required by § 32-7-105 (2)(b). In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Those opposing authority's formation may not support petition, and vote against district's creation. Adequate political accommodation for those who may oppose the formation of a multi-governmental unit service authority lies in the option to refuse to sign or support a petition, and later in the right to vote against the creation of the district, as provided by § 32-7-109. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Hearing on petition not of adversary nature. Even though this article requires a public

hearing, it is not to be of an adversary nature in view of the court's limited function under § 32-7-105 (2)(b). In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Petitioners have right to appellate review. Because this article confers a right on the petitioners to form a regional service authority, the petitioners have the right to an appellate review of an adverse judicial determination of the sufficiency of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Counties and municipalities have right to review of finding on formation resolution's sufficiency. Counties or municipalities, as the proponents of a resolution for formation of a service authority, have a right to appellate review of an adverse finding concerning the sufficiency of the resolution for formation. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Citizens, as qualified electors, have no standing to challenge by appellate review the findings on the sufficiency of a resolution to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

No standing to challenge petition's sufficiency. Counties and municipalities have no standing to challenge court findings on the sufficiency of a petition to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

32-7-107. Court appoints an organizational commission and election committee.

(1) For a service authority which is to be established in an area having a total population of less than five hundred thousand, the court shall appoint nine organizational commission members selected from the membership of the governing bodies of the county or counties and municipalities having territory within the boundaries of the proposed service authority, subject to the following limitations:

(a) If more than one county is included within the boundaries of the proposed service authority, no more than five members of the organizational commission shall be residents of any one county or any one municipality, and at least one member shall be appointed from every county.

(b) If only one county is included within the boundaries of the proposed service authority, no more than five members of the organizational commission shall be residents of any one municipality.

(2) (a) Subject to the limitations in paragraph (b) of this subsection (2), for a service authority which is to be established in an area having a total population of five hundred thousand or more, the court shall appoint fifteen organizational commission members selected from the membership of the governing bodies of the county or counties and municipalities having territory within the boundaries of the proposed service authority.

(b) If more than one county is included within the boundaries of the proposed service authority and to the extent feasible, the membership on the organizational commission shall be allocated:

(I) Among counties in proportion to the population of each county within the service authority, but each county shall have at least one member on the commission; and

(II) Among county commissioners and members of the governing bodies of municipalities within each county in proportion to the population of the incorporated and unincorporated areas of the counties.

(c) If only one county is included within the boundaries of the proposed service authority and to the extent feasible, the membership on the organizational commission shall be allocated among the county commissioners and members of the governing bodies of municipalities within the county in proportion to the population of the incorporated and unincorporated areas of the county.

(3) (a) At the hearing specified in section 32-7-105 (2) (b), the court shall appoint the county clerk and recorder of each county within the service authority as members of an election committee to administer the election provided for in the formation of the service authority and shall within seven days of the designation notify the county clerk and recorders of their appointment.

(b) A majority of the county clerk and recorders shall constitute a quorum. A chairperson shall be elected by the county clerk and recorders at their first meeting, who may call additional meetings as necessary to accomplish the purposes of the election committee.

Source: L. 72: p. 456, § 1. C.R.S. 1963: § 89-25-7. L. 92: (3) amended, p. 897, § 142, effective January 1, 1993. L. 94: (1) and (2) amended, p. 573, § 2, effective April 7.

ANNOTATION

Court without general jurisdiction to review petition's merits. The court is not granted any general jurisdiction in this article to review the merits of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Petitioners have right to appellate review. Because this article confers a right on the petitioners to form a regional service authority, the petitioners have the right to an appellate review of an adverse judicial determination of the sufficiency of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Counties and municipalities have right to review of finding on formation resolution's sufficiency. Counties or municipalities, as the proponents of a resolution for formation of a

service authority, have a right to appellate review of an adverse finding concerning the sufficiency of the resolution for formation. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Citizens, as qualified electors, have no standing to challenge by appellate review the findings on the sufficiency of a resolution to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

No standing to challenge petition's sufficiency. Counties and municipalities have no standing to challenge court findings on the sufficiency of a petition to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

32-7-108. Service authority organizational commission. (1) The service authority organizational commission appointed pursuant to section 32-7-107 shall meet within twenty days after its appointment on a date designated by the district court. The service authority organizational commission shall elect a chairman and a vice-chairman from among its membership. Further meetings of the commission shall be held upon call of the chairman or a majority of the members of the commission. All meetings shall be open to the public. A majority of the commission shall constitute a quorum. The commission may adopt such other rules for its operations and proceedings as it deems necessary or desirable. Members of the commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to law.

(2) (a) The service authority organizational commission shall, if the determination is not made in the resolution or petition for formation, determine which services listed in section 32-7-111 are to be administered and shall determine the maximum ad valorem mill levy (other than for debt purposes), if any, necessary to support each designated service by the proposed service authority upon its formation, subject to the approval of the eligible electors as provided in section 17 of article XIV of the state constitution. The maximum mill

levy limitation, if any, required by this paragraph (a) shall be included as a part of the term "services" as used in this section and section 32-7-109.

(b) Repealed.

(3) (a) Within ninety days after its initial meeting, the commission shall present to the district court a report listing services to be considered by the voters in each county included in the service authority. A majority vote of the members of the service authority organizational commission shall determine the services that shall be presented to the voters for their approval or rejection, if such services are not designated by the resolution or petition for formation.

(b) The commission report shall also divide the service authority into compact districts of approximately equal population in accordance with the provisions of section 32-7-110 for the purpose of electing candidates to the service authority board. The number of districts shall equal the number of board members to be elected from districts. Such districts shall be numbered consecutively starting with number one, and the terms of office shall be as specified in section 32-7-110.

(c) The commission shall specify the date for a special election for formation of the service authority, but if the organizational commission's report is completed not more than one hundred eighty days and not less than seventy days before the next general election, the election shall be held jointly with the next general election.

(d) The service authority organizational commission shall be dissolved as of the day on which the election is held pursuant to section 32-7-109.

Source: L. 72: p. 456, § 1. C.R.S. 1963: § 89-25-8. L. 75: (2)(a) and (3)(a) amended and (2)(b) repealed, p. 1299, §§ 2, 4, effective June 20. L. 85: (2)(a) amended, p. 1351, § 26, effective April 30. L. 92: (2)(a) and (3)(c) amended, p. 898, § 143, effective January 1, 1993.

ANNOTATION

Court without general jurisdiction to review petition's merits. The court is not granted any general jurisdiction in this article to review the merits of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Petitioners have right to appellate review. Because this article confers a right on the petitioners to form a regional service authority, the petitioners have the right to an appellate review of an adverse judicial determination of the sufficiency of the petition. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Counties and municipalities have right to review of finding on formation resolution's sufficiency. Counties or municipalities, as the proponents of a resolution for formation of a

service authority, have a right to appellate review of an adverse finding concerning the sufficiency of the resolution for formation. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Citizens, as qualified electors, have no standing to challenge by appellate review the findings on the sufficiency of a resolution to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

No standing to challenge petition's sufficiency. Counties and municipalities have no standing to challenge court findings on the sufficiency of a petition to form a regional service authority. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

32-7-109. Election for formation, selection of services, and initial board of directors. (1) (a) Within seven days after receipt of the organizational commission's report, the district court shall direct the election committee, as provided in section 32-7-107 (3), to conduct an election on the date designated by the organizational commission for the purpose of deciding whether a service authority is to be formed, to provide an opportunity for the eligible electors to approve services of the service authority, and to elect the board of directors of the service authority.

(b) The court shall direct the election committee to publish notice thereof within seven days of the directive according to the provisions of section 1-5-205, C.R.S., setting forth the list of proposed services and the requirements for nomination to the board. Independent

candidates for a district office may be nominated by filing with the election committee, on forms supplied by the committee, a nomination petition signed by at least twenty-five eligible electors of the district in which the candidate resides. Nothing in this article shall be construed to restrict a political party from making nominations to the board of directors of the service authority by conventions of delegates or by primary election or by both.

(2) The election committee shall publish a second notice of the election pursuant to section 1-5-205, C.R.S., which shall include the names of the candidates nominated for the first board of directors, and shall again list the services to be decided upon.

(3) The election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S. The question of the formation of the service authority must receive the approval of a majority of votes cast, but no service may be authorized unless approved by a majority of the eligible electors voting thereon in each county within the service authority.

(4) The election commission shall survey the returns as provided in article 10 of title 1, C.R.S., and shall certify the results to the court as provided in section 1-10-203, C.R.S. If a majority of the registered electors voting thereon vote “for” formation, the court shall declare, by order entered of record, that the service authority is formed in the corporate name designated in the petition or resolution and shall designate those services, if any, which were authorized by a majority of the registered electors voting thereon in each county at said election. Upon the filing with the court of the oath of office of members elected to the board, the court, by order entered of record, shall declare the members of the board elected and qualified and shall order the election committee to issue certificates of election pursuant to section 1-11-105, C.R.S., and the formation shall be complete. At that time the election committee shall be dissolved. The board shall be charged with administering those approved services in accordance with this article.

(5) The entry of an order forming a service authority shall finally and conclusively establish its regular formation against all persons except the state of Colorado, in an action in the nature of quo warranto, commenced by the attorney general within thirty-five days after entry of such order, and not otherwise. The formation of the service authority shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized in this section.

(6) All necessary expenses for the elections and other proceedings conducted pursuant to sections 32-7-107, 32-7-108, and this section, including the expenses and reimbursements for the organizational commission, shall be paid by the counties within or partly within the service authority in proportion to the population of the respective counties or portions thereof within the service authority, and the governing bodies thereof shall enact any necessary supplemental appropriation.

(7) Within fifteen days after the entry of the order forming a service authority, the clerk of the court shall file a copy of the decree with the board of county commissioners and the assessor of each county within the service authority and with the division of local government.

Source: L. 72: p. 457, § 1. C.R.S. 1963: § 89-25-9. L. 80: (1)(b) amended, p. 415, § 27, effective February 21. L. 85: (1)(b), (3), and (4) amended, p. 1351, § 27, effective April 30. L. 92: (1) to (4) amended, p. 898, § 144, effective January 1, 1993. L. 94: (4) amended, p. 1642, § 67, effective May 31. L. 95: (4) amended, p. 1106, § 47, effective May 31. L. 96: (2) amended, p. 1476, § 38, effective June 1. L. 98: (1)(b) amended, p. 827, § 45, effective August 5. L. 2012: (5) amended, (SB 12-175), ch. 208, p. 882, § 149, effective July 1.

Editor’s note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (5) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

ANNOTATION

Power to create authority originates in constitution. The power to create a service authority originates in § 17 of art. XIV, Colo. Const. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Method of creation is decision of general assembly. The method by which the creation of a service authority is to be accomplished is a decision within the discretion of the general assembly, subject only to constitutional restrictions and limitations. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Those opposing authority's formation may not support petition and vote against district's creation. Adequate political accommodation for those who may oppose the formation of a multi-governmental unit service authority lies in the option to refuse to sign or support a petition, and later in the right to vote against the creation of the district, as provided by this section. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

32-7-110. Board of directors. (1) The governing body of the service authority shall be a board of directors in which all legislative power of the service authority is vested. In those service authorities having a population in excess of five hundred thousand, the board shall consist of fifteen members, all of whom shall reside in and be elected by the eligible electors of the respective districts. In those service authorities having a population of at least fifty thousand but not more than five hundred thousand, the board shall consist of nine members, all of whom shall reside in and be elected by the eligible electors of the respective districts. In those service authorities having a population of less than fifty thousand, the board shall consist of five members, all of whom shall reside in and be elected by the eligible electors of the respective districts. At the formation election, the terms for representatives from odd-numbered districts shall continue until their successors are elected at the second general election thereafter and are qualified, and the terms for those elected from even-numbered districts shall continue until their successors are elected at the first general election thereafter and are qualified. Thereafter all terms shall be for four years. For the first five years after formation of any service authority, or until January 1, 1980, whichever occurs first, the members shall be eligible electors of the service authority and shall be elected from among the mayors, councilpersons, trustees, and county commissioners holding office at the time of their election in municipalities and counties within or partially within the authority. Thereafter, any eligible elector of the service authority shall be eligible to hold office. Notwithstanding any provision in the charter of any municipality or county to the contrary, mayors, councilpersons, trustees, and county commissioners may additionally hold elective office with the service authority and be compensated as provided in this section.

(2) At least ninety days prior to the first general election after the formation of the service authority, the board may change the boundary of any board of director district within the service authority. Thereafter such boundaries may be changed no more frequently than every four years or after announcement of the results of a decennial census. The board shall redistrict only by resolution passed by a majority of the members elected to the board, and any such redistricting shall be such as to provide compact districts of approximately equal population. No redistricting shall extend or shorten the term of office of any member of the board.

(3) The board has power, by appointment, to fill all vacancies on the board, and the person so appointed shall hold office until the next general election and until a successor is elected and qualified. Any person so appointed shall reside in the district in which the vacancy occurred. If the term of the member creating the vacancy extends beyond the next general election, the appointment shall be for the unexpired term.

(4) The board shall elect a president, vice-president, secretary, and such other officers as it deems necessary. The president and vice-president must be members of the board. The board may appoint a chief administrator, who shall serve at the pleasure of the board. The board shall prescribe by resolution the duties of said officers pursuant to the powers granted in this article. In addition to other powers provided by resolution, the president shall preside over meetings of the board and shall vote as a member of the board. All special and regular

meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (4) governing the location of meetings may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (4) and further stating the date, time, and place of such meeting.

(5) The board may provide by resolution for the compensation of its members in the amount of fifty dollars for each day a member is necessarily engaged in the business of the authority, in addition to the reasonable and necessary expenses incurred by each member while so engaged. Except for the initial board, the compensation of a member shall not be increased nor diminished during his term of office.

(6) Except as specifically provided otherwise, a majority of board members shall constitute a quorum, and a majority of the members of the board shall be necessary for any action taken by the board except that a majority of a quorum may adjourn from day to day.

(7) In addition to any acts of the board specifically required to be accomplished by resolution, any action adopting or revising a budget, appropriating funds, establishing the administrative organization and structure, or promulgating regulations enforceable by fine or penalty shall be passed by resolution. Resolutions promulgating regulations enforceable by fine or penalty shall be published one time prior to final passage and within fourteen days after passage; publication after final passage may be by reference. At least six days shall elapse between introduction and final passage of a resolution. Such resolution shall not take effect and be enforced until the expiration of thirty days after final passage except resolutions calling for special elections or those necessary to the immediate preservation of the public health or safety, which shall contain the reasons making the same necessary in a separate section. The excepted resolutions shall take effect in five days, if passed by an affirmative vote of three-fourths of the members of the board. All other actions of the board may be accomplished by motion.

(8) Any board member may be recalled from office pursuant to the provisions and subject to the conditions of part 1 of article 12 of title 1, C.R.S.

(9) Any resolution may be referred to or initiated by the eligible electors in accordance with the provisions and subject to the conditions of sections 31-11-104 and 31-11-105, C.R.S.

(10) It is the duty of the board to comply with the provisions of parts 1, 5, and 6 of article 1 of title 29, C.R.S. It is the further duty of the board to publish the results of its annual audit statement or report which shall be certified by the person making the audit, or by the governing body, if unaudited, in one issue of a newspaper of general circulation in the service authority. Such publication shall be no later than thirty days following completion of the audit statement or report.

(11) The fiscal and budget year for all service authorities organized or operating under the provisions of this article shall be from January 1 through December 31 of each year.

Source: L. 72: p. 459, § 1. C.R.S. 1963: § 89-25-10. L. 81: (8) amended, p. 1624, § 26, effective July 1. L. 85: (1) and (9) amended, p. 1352, § 28, effective April 30. L. 90: (4) amended, p. 1498, § 7, effective July 1. L. 92: (1), (3), (8), and (9) amended, p. 899, § 145, effective January 1, 1993. L. 93: (9) amended, p. 699, § 8, effective May 4. L. 95: (9) amended, p. 442, § 29, effective May 8.

Cross references: For the budget law, see part 1 of article 1 of title 29; for the local government uniform accounting law, see part 5 of article 1 of title 29; for the local government audit law, see part 6 of article 1 of title 29.

32-7-111. Designation of services. (1) Subject to local authorization as provided in section 32-7-112, local governing bodies, by resolution, or the people, by petition, or the

service authority organizational commission, if such services are not designated by the resolution or petition for formation prior to formation, or the board after formation, may, by resolution, initiate one or more of the following services or combinations thereof:

- (a) Domestic water collection, treatment, and distribution;
- (b) Urban drainage and flood control;
- (c) Sewage collection, treatment, and disposal;
- (d) Public surface transportation;
- (e) Collection of solid waste, but the service authority shall not collect solid waste except on a finding by the board that existing solid waste collection service is inadequate. Such finding shall be in addition to the concurrent majority requirement of section 32-7-112 (1) (a).

- (f) Disposal of solid waste;
- (g) Parks and recreation;
- (h) Libraries;
- (i) Fire protection;
- (j) Hospitals, including convalescent nursing homes, ambulance services, and any other health and medical care facilities or services;

- (k) Museums, zoos, art galleries, theaters, and other cultural facilities or services;

- (l) Housing;
- (m) Weed and pest control;
- (n) Central purchasing, computer services, equipment pool, and any other management services for local governments, including procurement of supplies; acquisition, management, maintenance, and disposal of property and equipment; legal services; special communication systems; or any other similar services to local governments which are directly related to improving the efficiency or operation of local governments;

- (o) Local gas or electric services or heating and cooling services from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat; except that no facilities of a municipally owned utility shall be combined with the facilities of another municipally owned utility without its consent and except that neither the initiation nor rendering of local gas and electric services under this paragraph (o) shall interfere with, impair, or otherwise affect any franchise, certificate of public convenience and necessity, or the services being rendered by any other supplier operating subject to the jurisdiction of the public utilities commission of the state of Colorado;

- (p) Jails and rehabilitation; and

- (q) Land and soil preservation.

(2) Unless authorized pursuant to section 32-7-112 (2), the services provided by a service authority shall be provided on a concurrent basis with local jurisdictions. This shall not prohibit a board from contracting with local governments or state government for the provision, construction, or operation of any service by the service authority or state or local government, nor does it prohibit any local government from voluntarily vesting exclusive jurisdiction for the provision of a given service with the service authority.

Source: L. 72: p. 461, § 1. C.R.S. 1963: § 89-25-11. L. 73: p. 997, § 1. L. 75: IP(1) amended, p. 1299, § 3, effective June 20. L. 81: (1)(o) amended, p. 1457, § 6, effective May 27.

32-7-112. Local authorization of functions, services, and facilities. (1) (a) No service designated in section 32-7-111 shall be provided by a service authority unless such service, together with the maximum ad valorem tax mill levy (other than for debt purposes), if any, necessary to support each such service, has been submitted to and authorized by a majority of the eligible electors voting thereon in each county within the service authority.

(b) Any service submitted to the eligible electors for their approval or rejection may be designated in general terms without limitation on concurrent or contractual arrangements among the various local governments; but, if the service is to be provided on an exclusive basis, as provided in subsection (2) of this section, the proposition submitted to the eligible electors shall state that such service is to be provided on an exclusive basis. Any mill levy

limitation submitted for authorization by the eligible electors shall be designated in specific terms, whether the services to be supported thereby are on a concurrent or exclusive basis.

(c) Any proposition initiated after formation of a service authority shall be submitted by resolution of the board, by resolution of a majority of the governing boards of counties and municipalities, or by a petition signed by eligible electors of the service authority in number not less than five percent of the votes cast in the service authority for all candidates for the office of governor at the last preceding general election.

(2) (a) At any general election following formation of a service authority, the board may submit a proposal to the eligible electors providing that any one or more services designated in section 32-7-111, including the types of services assumed pursuant to section 32-7-143, shall be provided exclusively by the service authority. The proposal may also be submitted at that time by resolution of a majority of the governing bodies of counties and municipalities or by petition signed by the eligible electors of the service authority in number not less than five percent of the votes cast in the service authority for all candidates for the office of governor at the last preceding general election.

(b) If a majority of the eligible electors voting at any general election approve the designation of one or more services as exclusive, the board shall be responsible and shall have final authority for the provision of the service within its boundaries. Counties, municipalities, and special districts organized pursuant to part 2 of article 20 of title 30, C.R.S., or article 1 or part 4 of article 4 of this title shall be prohibited from providing the services within the boundaries of the service authority. The designation shall not preclude a service authority from contracting with local governments or the state government for any service; nor shall the designation relieve local governments from the responsibility of providing the service for a period of two years or until the time that the board can provide for the orderly transfer of assets, liabilities, and obligations of the local governments to the service authority.

Source: L. 72: p. 462, § 1. C.R.S. 1963: § 89-25-12. L. 81: (2)(b) amended, p. 1624, § 27, effective July 1. L. 85: Entire section amended, p. 1352, § 29, effective April 30. L. 92: Entire section amended, p. 900, § 146, effective January 1, 1993.

32-7-113. General powers. (1) The service authority shall be a body corporate and a political subdivision of the state, and the board has the following general powers:

(a) To have and use a corporate seal;

(b) To sue and be sued and be a party to suits, actions, and proceedings; the provisions of the "Colorado Governmental Immunity Act", as set forth in article 10 of title 24, C.R.S., shall be applicable to any service authority formed under this article;

(c) To enter into contracts and agreements affecting the affairs of the service authority and to accept all funds resulting therefrom pursuant to the provisions and limitations of part 2 of article 1 of title 29, C.R.S.;

(d) To contract with private persons, associations, or corporations for the provision of any service within or without its boundaries and to accept all funds and obligations resulting therefrom;

(e) To borrow money and incur indebtedness and other obligations and to evidence the same by certificates, notes, or debentures and to issue general obligation or revenue bonds, or any combinations thereof, in accordance with the provisions of this article;

(f) To refund any bonded or other indebtedness or special obligations of the service authority without an election in accordance with the provisions and limitations of this article;

(g) To acquire, dispose of, and encumber real and personal property, including, without limitation, rights and interests in property, including leases and easements, necessary to accomplish the purposes of the service authority;

(h) To acquire, construct, equip, operate, and maintain facilities to accomplish the purposes of the service authority;

(i) To have the management, control, and supervision of all the business affairs and properties of the service authority and in any case in which it acquires two or more facilities,

the authority may use differential prices which reflect differential equities, liabilities, and operating costs for not exceeding thirty years;

(j) To hire and retain agents, employees, engineers, attorneys, and financial or other consultants and to provide for the powers, duties, qualifications, and terms of tenure thereof;

(k) To have and exercise the powers of eminent domain to take any private property necessary to the exercise of the powers granted, both within and without the service authority, in the manner provided by law for the condemnation of private property for public use;

(l) To construct, establish, and maintain works and facilities in, across, or along any easement dedicated to a public use, or any public street, road, or highway, subject to the provisions of section 32-7-116, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Colorado, and to construct, establish, and maintain works and facilities in, across, or along any stream of water or watercourse;

(m) (I) To provide for the revenues and ad valorem taxes needed to finance the service authority, subject to the limitations of this article, to fix and from time to time increase or decrease, and collect rates, fees, tolls, and other service charges pertaining to the services of the service authority, including without limitation minimum charges and charges for availability of the facilities or services relating thereto; to pledge such revenues for the payment of securities; and to enforce the collection of such revenues by civil action or by any other means authorized by law;

(II) To levy, collect, and cause to be collected ad valorem taxes and other revenues, including rates, fees, tolls, and charges, fixed within the boundaries of any special taxing district within the service authority as provided in this article;

(III) To levy, collect, and cause to be collected special assessments fixed against specially benefited real property in any improvement district within the service authority as provided in this article;

(n) To adopt and amend bylaws setting forth rules of procedure for the conduct of its affairs and providing for the administrative organization and structure, including provisions for delegation of powers and functions of the service authority, consistent with section 17 of article XIV of the state constitution and with this article;

(o) To adopt by resolution, and enforce, pursuant to section 32-7-115, regulations not inconsistent with state law which are necessary, appropriate, or incidental to any authorized service provided by the service authority;

(p) (I) To plan for the territory within the service authority, including the review of all comprehensive plans of local governments located within the boundaries of the service authority;

(II) To review all capital construction or other federal grant-in-aid projects proposed by any local governmental entity within the boundaries of the service authority and for which review is required by federal or state law;

(q) To appoint citizen advisory committees to assist and advise with respect to services and powers of the service authority;

(r) To accept on behalf of the service authority gifts, grants, and conveyances upon such terms and conditions as the board may approve;

(s) To have and exercise all rights and powers necessary or incidental to or implied from the powers granted in this article.

Source: L. 72: p. 463, § 1. C.R.S. 1963: § 89-25-13.

32-7-114. Duties related to planning powers. (1) To provide for comprehensive planning to promote the orderly and efficient development of the physical, social, and economic elements of the service authority and to encourage and assist local governments within the boundaries of the service authority to plan for the future, the board shall prepare and adopt, after such public hearings as it deems necessary, a comprehensive development guide for the service authority area, consisting of a compilation of policy statements, goals, standards, programs, maps, and those future developments that will have an impact on the entire area, including but not limited to such matters as land use, parks and open space land

needs, transportation facilities, public hospitals and health facilities, libraries, schools, other public buildings, domestic water collection, treatment, and distribution, housing, and the delivery and distribution of social services to residents of the service authority.

(2) The board shall review all comprehensive plans of each commission, board, or agency of the state of Colorado, or any local government within the service authority area, if such plan is determined by the board to affect the development of the service authority. Each such plan shall be submitted to the board for such determination before any action is taken, and, if the board finds that a plan or any part thereof is inconsistent with its comprehensive development guide for the service authority area, is detrimental to the orderly and economic development of the authority's area, or will cause inefficient or uneconomic delivery of services to inhabitants of the area, it shall, within sixty days after the filing of the plan with the service authority, notify the respective state agency or local government of noncompliance with the regional plan. If no agreement can be obtained between the board and a state agency or local government within ninety days after such notice of noncompliance, the board shall indicate the noncompliance of any such plan on the service authority's comprehensive development guide, and said plan shall take effect.

(3) The board shall review all applications of any local government in the service authority area for a loan or grant from a state or federal agency if review by a regional or areawide agency is required by federal law, by the federal agency, or by state law. Each commission, board, or agency, before submitting such application to the United States, or any agency thereof, or to the state, or any agency thereof, shall first transmit the application to the board of the service authority for its comments and recommendations with respect to whether or not the project proposed is consistent with the comprehensive development guide for the service authority area. The comments and recommendations made by the board of the service authority shall then become a part of the application, and if submitted to a state or federal agency such comments and recommendations shall also be submitted. If the board of the service authority fails to report its comments and recommendations within sixty days, the local government may forward its grant application to the appropriate agency of the state or the United States government. If, however, the local government shall forward its application to the appropriate agency of the state or the United States government after said sixty days have lapsed without obtaining the review by the service authority of its application, it shall state upon said application that it was not reviewed by the service authority acting in its capacity as the regional or areawide agency.

Source: L. 72: p. 465, § 1. C.R.S. 1963: § 89-25-14. L. 2005: (1) amended, p. 670, § 8, effective June 1.

32-7-115. Ancillary powers. (1) The board of any service authority has the power to adopt by resolution and enforce regulations not inconsistent with state law or regulations which are necessary, appropriate, or incidental to any authorized services provided by the service authority.

(2) Said regulations shall be compiled and kept by the secretary so as to be readily available for public inspection and shall be enforced by the peace officers of any municipality or county located within or partly within the boundaries of the service authority.

(3) Violations of such regulations shall be prosecuted by the district attorney or other person designated by the board in the county court of the county in which the violation occurred and shall be punishable by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment.

Source: L. 72: p. 466, § 1. C.R.S. 1963: § 89-25-15.

32-7-116. Powers to be exercised without franchise - condition. (1) The board has authority, without the necessity of a franchise, to cut into or excavate and use any easements dedicated to a public use, or any public street, road, or highway pursuant to the construction, maintenance, or provision of any service authorized to be provided by the service authority.

(2) The legislative body or other authority having jurisdiction over any such public street, road, or highway has authority to make such reasonable rules as it deems necessary in regard to any such work or use, and may require the payment of such reasonable fees by the service authority as may be fixed by said body to insure proper restoration of such streets, roads, or highways.

(3) When any such fee is paid by the service authority, it shall be the responsibility of the legislative body or other authority to promptly restore such street, road, or highway. If such fee is not fixed or paid, the service authority shall promptly restore any such street, road, or highway to its former condition, as nearly as possible.

(4) In the course of such construction, the service authority shall not impair the normal use of any street, road, or highway more than is reasonably necessary.

Source: L. 72: p. 466, § 1. C.R.S. 1963: § 89-25-16.

32-7-117. Revenues of service authority - collection. (1) In any service authority, all rates, fees, tolls, and charges shall constitute a perpetual lien on and against the property served until paid, and any such lien may be enforced and foreclosed by certification of the delinquent amounts due, within one hundred twenty days after the due date of such rates, fees, tolls, or charges, to the board of county commissioners of the county in which said property is located. The officials of said county shall collect and remit such delinquent amounts to the service authority in the manner provided by law for the collection of general property taxes.

(2) The board may discontinue service for delinquencies in the payment of such rates, fees, tolls, or charges or in the payment of taxes levied pursuant to this article and shall prescribe and enforce rules and regulations for the connection with and the disconnection from the facilities of the service authority.

Source: L. 72: p. 466, § 1. C.R.S. 1963: § 89-25-17.

32-7-118. Levy and collection of taxes. (1) To provide for the levy and collection of taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the service authority, and shall fix a rate of levy which, when levied upon every dollar of valuation for assessment of taxable property within the service authority and together with other revenues, will raise the amount required by the service authority annually to supply funds for paying the expenses of organization and the costs of constructing, operating, and maintaining the service authority and promptly to pay in full, when due, all interest on and principal of bonds and other obligations of the service authority payable from taxes, and, in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 32-7-119. The authority of the board under this section and section 32-7-113 (1) (m) is subject to mill levy limitations provided in this article; but, if the board determines that the maximum mill levy authorized under this article is insufficient to support any service of the district, the board may submit the question of an increased mill levy authorization to the eligible electors of the service authority at the next regular election of the authority.

(2) The board may apply a portion of such taxes and other revenues for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the service authority for maintenance, operating expenses, depreciation, and extension and improvement of the facilities of the service authority.

(3) The board, in accordance with the schedule prescribed by section 39-5-128, C.R.S., shall certify to the board of county commissioners of each county within the service authority, or having a portion of its territory within the service authority, the rate so fixed, in order that, at the time and in the manner required by law for levying taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property which is located within the county and the service authority.

(4) All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting same, shall constitute, until paid, a

perpetual lien on and against the property, and such lien shall be on a parity with the tax lien of other general ad valorem taxes.

(5) Property taxes provided for in this article shall be levied, assessed, collected, remitted, and accounted for in the manner provided for other general ad valorem taxes.

(6) The board may accept on behalf of the service authority any state-collected, locally-shared taxes of whatever nature or kind if such taxes are approved and enacted by the general assembly.

(7) The board has the power to deposit or to invest surplus funds in the manner and form it determines to be most advantageous; but said deposits or investments must meet the requirements and limitations of part 6 of article 75 of title 24, C.R.S. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the moneys of the district. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(8) The board has the power to accept on behalf of the service authority all funds tendered it from the state, the federal government, or any political subdivision or agency of either, which funds are specifically intended as incentive to, or assistance in, the formation, operation, or extension of service authority activities.

(9) No service authority shall levy a tax for the entire authority or for any special taxing district or special assessment district for the calendar year during which it shall have been formed unless, prior to the date specified by section 39-5-128, C.R.S., for certification of the rate of levy for such year, the assessor and board of county commissioners of each county within the service authority have received from the board a map and a legal description of such service authority, special taxing district, or special assessment district and a copy of a budget of such service authority or district as provided by section 29-1-113, C.R.S., and increased property tax levies shall be subject to the provisions of section 29-1-301, C.R.S.

Source: L. 72: p. 467, § 1. C.R.S. 1963: § 89-25-18. L. 77: (3) and (9) amended, p. 1512, § 75, effective July 15. L. 79: (7) amended, p. 1625, § 39, effective June 8. L. 85: (1) amended, p. 1353, § 30, effective April 30. L. 90: (9) amended, p. 1436, § 5, effective January 1, 1991. L. 92: (1) amended, p. 901, § 147, effective January 1, 1993.

32-7-119. Levies to cover deficiencies. The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contract, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the service authority, are not sufficient to pay punctually the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and such taxes shall continue to be levied until the indebtedness of the service authority is fully paid.

Source: L. 72: p. 468, § 1. C.R.S. 1963: § 89-25-19.

32-7-120. Power to issue revenue bonds - terms. To carry out the purposes of this article, the board is authorized to issue negotiable coupon bonds payable solely from the revenues derived, or to be derived, from the facility or combined facilities of the service authority. The terms, conditions, and details of said bonds, the procedures related thereto, and the refunding thereof shall be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited. Revenue bonds issued under this article shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation or other provision. Each bond issued under this section shall recite in substance that said bond, including the interest thereon, is payable solely from the revenues pledged for the payment thereof and that said bond does not constitute a debt of the service authority within the meaning of any constitutional or statutory limitations or

provisions. Such revenue bonds may be issued to mature at such time, not exceeding the estimated life of the facility to be acquired with the bond proceeds, as determined by the board, but in no event beyond thirty years from their respective dates.

Source: L. 72: p. 468, § 1. **C.R.S. 1963:** § 89-25-20.

32-7-121. Power to incur indebtedness - interest - maturity - denominations.

(1) To carry out the purposes of this article, the board is authorized to issue general obligation negotiable coupon bonds of the service authority. Said bonds shall bear interest at a rate such that the net effective interest rate of the issue of said bonds does not exceed that maximum net effective interest rate authorized, and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than thirty years from the date of issuance. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, said bonds may be redeemable prior to maturity with or without payment of a premium, not exceeding three percent of the principal thereof. In any event, said bonds shall be subject to call not later than fifteen years from date. Said bonds shall be executed in the name and on behalf of the service authority and signed by the chairman of the board with the seal of the service authority affixed thereto and attested by the secretary of the board. Said bonds shall be issued in such denominations as the board determines, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the president of the board.

(2) Bonds voted for different purposes by separate propositions submitted at the same or different bond elections may, at the discretion of the board, be combined and issued as a single issue of bonds so long as the security therefor is the same.

Source: L. 72: p. 469, § 1. **C.R.S. 1963:** § 89-25-21.

32-7-122. Debt question submitted to electors - resolution. (1) Whenever the board determines by resolution that the interest of the service authority and the public interest or necessity demand the acquisition, construction, installation, or completion of any works or other improvements or facilities or the making of any contract to carry out the objects or purposes of the service authority which requires the creation of any indebtedness of the service authority, the board shall order the submission of the proposition of incurring such indebtedness to the eligible electors of the service authority at an election held for that purpose. Any election may be held separately or may be held jointly or concurrently with any other election authorized by this article.

(2) The declaration of public interest or necessity required and the provision for the holding of the election may be included within one and the same resolution, which resolution, in addition to the declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the principal amount of the indebtedness to be incurred, and the maximum net effective interest rate to be paid on the indebtedness. The resolution shall also fix the date upon which the election shall be held and shall appoint a designated election official to conduct the election as provided in articles 1 to 13 of title 1, C.R.S.

(3) In accordance with the provisions of section 6 (3) of article XI of the state constitution, general obligation debts contracted by a service authority for the purpose of supplying water shall be exempted from the provisions of this section.

(4) Local improvement bonds issued pursuant to section 32-7-135 shall not constitute an indebtedness within the meaning of this section and section 6 of article XI of the state constitution.

Source: L. 72: p. 469, § 1. **C.R.S. 1963:** § 89-25-22. **L. 85:** (1) amended, p. 1354, § 31, effective April 30. **L. 92:** (1) and (2) amended, p. 901, § 148, effective January 1, 1993.

32-7-123. Effect - subsequent elections. If any proposition authorized by section 32-7-122 is approved by the eligible electors, the service authority shall thereupon be authorized to incur the indebtedness or obligations, enter into contracts, or issue and sell bonds of the service authority, as the case may be, all for the purposes and objects provided for in the proposition submitted under this section, in the amount so provided, and at a price and at a rate of interest such that the maximum net effective interest rate recited in the resolution is not exceeded. Submission of the proposition of incurring the obligation or bonded or other indebtedness at an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for any legal purpose, but no new election creating an indebtedness may be held within one hundred twenty days after the date of the election at which a proposal was defeated. No more than two elections may be held within any twelve-month period.

Source: L. 72: p. 470, § 1. C.R.S. 1963: § 89-25-23. L. 92: Entire section amended, p. 902, § 149, effective January 1, 1993.

32-7-124. Correction of faulty notices. In any case where a notice is provided for in this article, if the court or the board reviewing the proceedings finds for any reason that due notice was not given, said body shall not thereby lose jurisdiction, and the proceedings in question shall not thereby be void or be abated, but said body shall order due notice to be given, shall continue the proceeding until such time as notice is properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 72: p. 470, § 1. C.R.S. 1963: § 89-25-24.

32-7-125. Refunding bonds. Any general obligation bonds issued by any service authority may be refunded without an election by the service authority issuing them, or by any successor thereof, in the name of the service authority which issued the bonds being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, by the issuance of bonds to refund, pay, and discharge all or any part of such outstanding bonds, including any interest on said bonds in arrears or about to become due, and for the purpose of avoiding or terminating any default in the payment of interest on and principal of said bonds, reducing interest costs or effecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto or for any combination of the foregoing purposes. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this article for an original issue of bonds.

Source: L. 72: p. 470, § 1. C.R.S. 1963: § 89-25-25.

32-7-126. Limitations upon issuance. No general obligation or revenue bonds may be refunded unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds refunded within said period of time. No maturity of any bond refunded may be extended over fifteen years. The interest rate on such refunding bonds shall be determined by the board. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except to the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

Source: L. 72: p. 470, § 1. C.R.S. 1963: § 89-25-26.

32-7-127. Use of proceeds of refunding bonds. The proceeds of refunding general obligation or revenue bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor; but, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for the escrow's purpose. Any moneys in escrow, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such moneys and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any refunding bond issued under sections 32-7-125 and 32-7-126 and this section shall in no manner be responsible for the application of the proceeds thereof by the service authority or any of its officers, agents, or employees.

Source: L. 72: p. 471, § 1. C.R.S. 1963: § 89-25-27. L. 89: Entire section amended, p. 1119, § 39, effective July 1.

32-7-128. Combination of refunding and other bonds. General obligation bonds for refunding and general obligation bonds for any purpose authorized in this article may be issued separately or issued in combination in one series or more by any service authority. Revenue bonds for refunding and revenue bonds for any purpose authorized in this article may be issued separately or issued in combination in one series or more by any service authority.

Source: L. 72: p. 471, § 1. C.R.S. 1963: § 89-25-28.

32-7-129. Board's determination final. The determination of the board that the limitations under sections 32-7-125 to 32-7-128 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or unless it can be shown that the board acted in an arbitrary or capricious manner.

Source: L. 72: p. 471, § 1. C.R.S. 1963: § 89-25-29.

32-7-130. Anticipation warrants. The board may defray any costs of the service authority by the issuance of notes or warrants to evidence the amount due therefor, in anticipation of taxes or revenues or both. Interest on such notes or warrants shall be governed by the provisions of section 5-12-104, C.R.S. Notes and warrants may mature at such time not exceeding one year from their date of issuance as the board may determine. If such notes or warrants are not paid during the fiscal year in which they are issued, the board shall, at the end of its fiscal year, budget the amount necessary to pay in full the amount of notes and warrants outstanding and due during the next fiscal year.

Source: L. 72: p. 471, § 1. C.R.S. 1963: § 89-25-30.

32-7-131. Inclusion - counties - municipality - existing service authority - procedures. (1) Proceedings for inclusion of an additional county, counties, or a municipality which has territory in two or more counties in a service authority shall be in accordance with the provisions of this section.

(2) (a) Inclusion of any county, counties, or a municipality specified in subsection (1) of this section may be initiated by:

(I) A petition signed by eligible electors in the respective county, counties, or municipality seeking to be included, in number not less than five percent of the votes cast in the county, counties, or municipality for the office of governor at the last preceding general election;

(II) A resolution adopted by the municipality or by a majority of the county commissioners in the county or counties; or

(III) A resolution of a majority of the governing bodies of the municipalities within the territory of the county or counties seeking to be included.

(b) Proceedings for inclusion shall be commenced by filing a verified petition or resolution with the board of directors of the service authority naming the county, counties, or municipality to be included, and shall be accompanied by a deposit of money sufficient to pay all costs of the proceedings as estimated by the board. Additional deposits may be required from time to time should the original deposit be deemed by the board to be insufficient to pay all the costs.

(3) The secretary of the board shall cause notice of a hearing on the petition to be published throughout the county or municipality. The notice shall also be mailed to the governing body of each county and the municipalities within the county, and to any municipality specified in subsection (1) of this section. The notice shall describe the nature of the petition and the purpose, date, time, and place of the hearing.

(4) At the hearing and any continuation thereof, all petitioners and county or municipal officials and any eligible elector of the service authority or of the territory proposed for inclusion shall be interested parties and may present evidence for or against the petition.

(5) Upon completion of the hearing, the board shall make the following determinations which shall be final, conclusive, and not subject to review except upon the grounds that the same are arbitrary or capricious:

(a) Whether the petition or resolution and all subsequent notices and proceedings comply with all of the requirements of this section;

(b) Whether the petition has been signed by the requisite number of eligible electors or whether the resolution was approved by the requisite number of the members of the board of county commissioners or members of the governing body or bodies of municipalities within the county having the proper qualifications; and

(c) Whether the granting of the petition or resolution, in whole or in part, is in the public interest and the interest of the service authority.

(6) Having made such determinations, the board by resolution shall grant or deny the petition or resolution, in whole or in part, as follows:

(a) If any of the determinations required by subsection (5) of this section are in the negative, the board shall deny the petition or resolution.

(b) If all of the determinations required by subsection (5) of this section are in the affirmative, the board shall order the question of including said county, counties, or municipality within the service authority to be submitted at a general or special county or municipal election, as the case may be, to a vote of the eligible electors of the county, counties, or municipality. The resolution shall name a designated election official who shall be responsible for the conducting of the election. The election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S. If the inclusion is approved at the election, the board shall, by resolution, grant the petition, in whole or in part as the case may be, and shall file a true and correct copy of its resolution with the clerk of the district court which had jurisdiction over the initial formation of the service authority and with the board of county commissioners and assessor of the county and the division of local government in the department of local affairs.

(7) The district court or the director of the division of local government shall enter an order of inclusion of the county or municipality, as the case may be, in the service authority, which order shall finally and conclusively establish such inclusion against all persons except the state of Colorado, in an action in the nature of quo warranto, commenced by the attorney general within thirty-five days after the adoption of the resolution and not

otherwise. The inclusion of the county in the service authority shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this section.

Source: L. 72: p. 472, § 1. C.R.S. 1963: § 89-25-31. L. 76: (6)(b) and (7) amended, p. 603, § 22, effective July 1. L. 85: (2)(a)(1), (4), and (6)(b) amended, p. 1354, § 32, effective April 30. L. 92: (2) to (7) amended, p. 902, § 150, effective January 1, 1993. L. 2012: (7) amended, (SB 12-175), ch. 208, p. 882, § 150, effective July 1.

Editor's note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (7) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

32-7-132. Special taxing districts authorized. (1) In accordance with the provisions of section 18 of article XIV of the state constitution, the board of a service authority may establish special taxing districts within the service authority to facilitate the furnishing of services and the collection of ad valorem taxes and charges for such services.

(2) Such special taxing districts shall be utilized when a service or level of service which a service authority is authorized to provide is to be provided in substantially less than the entire area included within the service authority, and where resulting ad valorem taxes or charges may vary from those imposed in other areas within the service authority.

(3) As long as the service is available to the included territory, a special taxing district may include any territory within a service authority. The included territory need not be contiguous, and the same territory may lie within more than one special taxing district.

(4) In the management of a special taxing district, the board of the service authority shall have all powers granted to the board by this article.

Source: L. 72: p. 473, § 1. C.R.S. 1963: § 89-25-32.

32-7-133. Formation of special taxing districts. (1) Special taxing districts may be established pursuant to the provisions of this section.

(2) The board may by resolution propose the formation of the district, which resolution shall designate the proposed boundaries thereof, specify the proposed service, and set forth the methods of financing proposed for the district.

(3) The board shall present the proposal for public hearing to be held within sixty days after introduction of the resolution with notice to be published not less than fifteen days before the date set for hearing.

(4) At the hearing any eligible elector within the service authority may be heard on the proposal, including questions of inclusion in or exclusion from the district, and all objections shall be determined by the board on the basis of the public interest, taking into consideration the needs of the service authority and the availability of the service to the territory which is the subject of any objection.

(5) The board may continue the hearing as necessary and may, after the conclusion thereof, enact the proposed resolution, with or without amendments, or may reject the proposed resolution.

(6) Decisions of the board concerning the formation of a special taxing district are not subject to review unless action is instituted by a registered elector to review such proceedings within forty-five days after passage of the resolution, and any such review shall extend only to the question of whether the board exceeded its jurisdiction or abused its discretion. If the court so finds, it shall remand the matter to the board for further proceedings, consistent with such findings.

(7) No restraining order or temporary injunction enjoining the formation, the inclusion or exclusion of territory, or the operation of the special taxing district may be issued pending final judgment of the district court. Any such final judgment which has the effect of enjoining the formation, the inclusion or exclusion of territory, or the operation of a special taxing district shall automatically be stayed upon the filing of any appeal of such decision,

and no application for supersedeas shall be necessary. Such stay shall continue in full force and effect pending final disposition of the proceedings.

(8) Changes in the boundaries or major changes in services or financing of a special taxing district may be initiated by resolution of the board or by petition signed by five percent of the eligible electors of the district, and these proposals shall be considered in the same manner as provided in this section for proposals for the original formation of a district.

Source: L. 72: p. 474, § 1. C.R.S. 1963: § 89-25-33. L. 85: (4), (6), and (8) amended, p. 1355, § 33, effective April 30. L. 92: (2) to (4) and (8) amended, p. 904, § 151, effective January 1, 1993.

32-7-134. Local improvement districts authorized. (1) The board of a service authority may establish local improvement districts within the service authority to facilitate the financing and construction or improvement of facilities within a portion or portions of a service authority. Such local improvement districts shall be established whenever any area, in the opinion of the board, will be especially benefited by the construction, installation, or improvement of any facilities.

(2) Such improvements shall be of a type to confer special benefits to real property within the boundaries of any such local improvement district and general benefits to the service authority at large or to a special taxing district within the service authority.

(3) In the management of a local improvement district, the board of the service authority shall have all powers granted to the board by this article.

Source: L. 72: p. 474, § 1. C.R.S. 1963: § 89-25-34.

32-7-135. Procedures to establish local improvement districts. (1) Local improvement districts may be established pursuant to the provisions of this section.

(2) The board of a service authority may establish local improvement districts within the boundaries of the service authority either by:

(a) Resolution of the board, subject to protest by the owners of a majority of all property benefited and constituting the basis of assessment as the board may determine; or

(b) Petition by the owners of a majority of all property benefited and constituting the basis of assessment in the proposed district.

(3) In either event, a public hearing shall be held at which all interested parties may appear and be heard. Right to protest and notice of public hearing shall be given as provided by the resolution of the board.

(4) The board has the power by resolution to prescribe the method of making such improvements, of assessing the cost thereof, and of issuing bonds for cost of constructing or installing such improvements, including the costs incidental thereto.

(5) Decisions of the board concerning the formation of a local improvement district are not subject to review unless action is instituted by an eligible elector of the service authority or owner of property within the local improvement district within forty-five days after passage of the resolution to form the improvement district, and any review shall extend only to the question of whether the board exceeded its jurisdiction or abused its discretion. If a court so finds, it shall remand the matter to the board for further proceedings, consistent with such findings.

(6) (a) Where all outstanding bonds of a local improvement district have been paid and any moneys remain to the credit of such district, they shall be transferred to a special surplus and deficiency fund, and whenever there is a deficiency in any local improvement district fund to meet the payments of outstanding bonds and interest due thereon, the deficiency shall be paid out of said surplus and deficiency fund.

(b) Whenever a local improvement district has paid and cancelled three-fourths of its bonds issued, and for any reason the remaining assessments are not paid in time to retire the remaining bonds of the district and the interest due thereon, and there are not sufficient moneys in the special surplus and deficiency fund, then the service authority shall pay said

bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due said local improvement district.

(7) (a) In consideration of general benefits conferred on the service authority at large or on a special taxing district within the service authority, as the case may be, by the construction or installation of improvements in a local improvement district, the board may levy annual taxes on all taxable property within the service authority or within the special taxing district, as the case may be, at a rate not exceeding four mills in any one year, to be disbursed as determined by the board for the purpose of paying for such general benefits, for the payment of any assessment levied against the service authority or special taxing district, as the case may be, in connection with bonds issued for local improvement districts, or for the purpose of advancing moneys to maintain current payments of interest and equal annual payments of the principal amount of bonds issued for any local improvement district.

(b) The proceeds of such taxes shall be placed in a special fund and shall be disbursed only for the purposes specified; except that, in lieu of such tax levies, the board may annually transfer to such special fund any available moneys of the service authority or of the special taxing district, as the case may be, but in no event shall the amount transferred in any one year exceed the amount which would result from a tax levied in such year as limited in this section.

Source: L. 72: p. 475, § 1. C.R.S. 1963: § 89-25-35. L. 85: (5) amended, p. 1355, § 34, effective April 30. L. 92: (5) amended, p. 904, § 152, effective January 1, 1993.

32-7-136. Special districts - transfer of responsibility. (1) The governing body of any special district organized pursuant to part 2 of article 20 of title 30, C.R.S., or article 1 or part 4 of article 4 of this title may designate the board of directors of the service authority in which the district is located to act as the board of directors of said district in the manner and within the limitations set forth in this section, if said service authority is authorized to perform the same service or services as the district is performing. Such designation may be made notwithstanding any other provision of this title (except article 8), article 8 of title 29, part 2 of article 20 of title 30, and parts 5 and 6 of article 25 of title 31, C.R.S.

(2) The designation shall be made by resolution adopted by a majority of the members of the governing board of the district. Prior to the adoption of the resolution, the district governing board shall hold a public hearing on the proposed designation giving all parties who are eligible electors of the district an opportunity to be heard with regard to the proposal. Notice by publication of the hearing shall be given.

(3) Certified copies of any resolution approving said designation, if adopted, shall be filed, not later than thirty days after adoption, with the regional service authority board, the county clerk and recorder of each county within which the district is located, the clerk of the district court by order of which said district was organized, and the division of local government.

(4) Said resolution shall be effective upon completion of said filings, and said designation shall take effect upon the date set forth in said resolution, or, if none, then on the first day of the second calendar month following the effective date of said resolution, except as provided in subsection (5) of this section.

(5) If the lesser of forty percent or two hundred of the eligible electors of the district request, by a petition filed with the district governing board not more than twenty days after adoption of the resolution, that the question of approving the designation be submitted to a vote of the eligible electors of the district at the next regular election or at a special election called for that purpose, the resolution and designation shall not take effect unless and until approved at the election. The question shall be so submitted by the district governing board at the next regular election, if held not more than one hundred twenty days nor less than sixty days after the filing of the petition. If no regular election is to be held within that period, the question shall be so submitted at a special election called for that purpose to be held within ninety days after the filing of the petition.

(6) If approved by a majority of those eligible electors of the district voting thereon, the resolution shall be filed as required by subsection (3) of this section, and the designation

shall become effective on the date set forth in the resolution or, if none, on the first day of the second calendar month following the effective date of the resolution.

(7) If at least forty percent or two hundred of the eligible electors of the district, whichever is the lesser number, request, by a petition filed with the district governing board, that the board adopt a resolution to designate the regional service authority to be and act as the board of directors, the district governing board shall, within sixty days, hold a hearing as provided in this section. The board shall, within thirty days after the hearing, adopt a resolution and make such designation or shall act to submit the question of approving the designation at a special election called for that purpose to be held within ninety days after the filing of the petition.

(8) Any resolution adopted by the board calling for a special election shall name a designated election official who shall be responsible for the conducting of the election. The election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S.

Source: L. 72: p. 476, § 1. C.R.S. 1963: § 89-25-36. L. 81: (1) amended, p. 1625, § 28, effective July 1. L. 85: (2) and (5) to (7) amended, p. 1355, § 35, effective April 30. L. 92: (2) and (5) to (7) amended and (8) added, p. 905, § 153, effective January 1, 1993.

32-7-137. Special districts - formation within service authority territory forbidden. Once a service authority is established in any given area, no new special districts may be organized pursuant to part 2 of article 20 of title 30, C.R.S., or article 1 or part 4 of article 4 of this title within the territory or any portion thereof of said service authority if the service authority is authorized to provide the same or essentially the same service or services as the special district would be authorized to perform.

Source: L. 72: p. 477, § 1. C.R.S. 1963: § 89-25-37. L. 81: Entire section amended, p. 1625, § 29, effective July 1.

32-7-138. Transfer and assumption of services. (1) Unless another date is provided in this article or the proposition for assumption of a service by a service authority or agreed to by the board and any local governmental unit from which the service is to be transferred, those services being assumed and those rights, properties, and other assets and liabilities of said local governmental unit incident to the service transferred and assumed shall be transferred to and assumed by the service authority on the second January 1 after authorization of the transfer of said service.

(2) Where a local governmental unit providing part or all of the service being transferred to and assumed by the service authority is located partly within and partly without the service authority, the board, after notice by publication and hearing, shall determine which of the rights, properties, and other assets and liabilities shall be transferred to and assumed by the service authority. The board's determination shall be based on a fair and equitable allocation of rights, properties, and other assets and liabilities. Adequate provision shall be made for payment of outstanding indebtedness as it becomes due, and no such transfer and assumption shall deprive residents of a local governmental unit of any existing services necessary for their health, welfare, and safety.

(3) The plan of distribution provided for in subsection (2) of this section shall be final and conclusive against all persons unless an action is brought by the local governmental unit from which such rights, properties, and other assets and liabilities are to be transferred in the district court having jurisdiction over formation of the service authority within thirty days after adoption of said plan. All proceedings pursuant to this subsection (3) shall be advanced as a matter of immediate public interest and concern and heard at the earliest practical moment. No such plan shall be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized in this subsection (3).

(4) Where a service is to be provided by the service authority by contract with one or more other local governmental units, any transfer to and assumption by the service authority of any rights, properties, and other assets and liabilities shall be to the extent and as provided by contract between the board and the other local governmental unit or units.

Source: L. 72: p. 477, § 1. C.R.S. 1963: § 89-25-38.

32-7-139. Payments for facilities acquired by regional service authority - valuation. (1) For any service authorized and approved under this article, the board of directors may acquire rights, properties, and other assets and liabilities of counties, municipalities, or special districts either through contract with the local governmental unit or upon resolution of the board, pursuant to section 32-1-701 (4), or upon the provision of any service on an exclusive basis as provided in section 32-7-112. Upon assuming the rights, title, and interest in any facility, the board shall become obligated to pay to the county, municipality, or special district, as the case may be, an amount, when due, equivalent to that necessary for the payment of all outstanding bonds and obligations of said jurisdictions for the acquisition, construction, and improvement of facilities acquired by the board.

(2) Upon the acquisition of facilities as provided in subsection (1) of this section, the board shall provide an offset of charges to the local jurisdiction either in service fees or ad valorem taxes in an amount equivalent to that which must be raised by the local governmental unit for the payment of outstanding obligations owed by such jurisdiction upon facilities acquired by the board.

(3) When any service authority board assumes the ownership of any existing facilities of a local governmental unit, the local governmental unit which paid part or all of the cost of such facilities, directly or by contract with another entity, may be entitled to receive a credit against any service charges or ad valorem taxes which may be apportioned or charged to the residents of such local governmental unit. Said credit may be spread over a period not exceeding thirty years. An additional credit equal to interest on the unused credit balance may be paid annually at a rate not exceeding four percent per annum. The amount of such credit shall not exceed the current value of the facilities. The board shall negotiate with the local governmental units in determining the value of any facility and the amount of credit to be granted, but the determination of the board shall be final subject to court review.

(4) In the event a local governmental unit believes that the board has been arbitrary or capricious in providing or not providing for a credit as permitted in this section, the governing board of such jurisdiction may commence an action in the district court. The court may dismiss the action or recommit the controversy to the board for further negotiation, if it determines that the action of the board was arbitrary or capricious.

Source: L. 72: p. 478, § 1. C.R.S. 1963: § 89-25-39. L. 81: (1) amended, p. 1625, § 30, effective July 1.

32-7-140. Public transportation. For the purpose of providing public surface transportation, a service authority shall have, insofar as consistent with this article, any additional special powers applicable to the provision of that specific service as provided by article 9 of this title. The mill levy limitation for ad valorem taxes imposed by said article 9 shall be applicable to the service of public surface transportation when such service is provided by a service authority. Any municipality may plan or operate a public surface transportation system, and any county or municipality may contract with a service authority for the planning or operation of such a system. In addition, any county may plan and operate such a system if such plan is made in coordination with, or is made by, a regional transportation district or a service authority.

Source: L. 72: p. 479, § 1. C.R.S. 1963: § 89-25-40.

32-7-141. Sewage collection, treatment, and disposal. (1) For the purpose of providing sewage collection, treatment, and disposal, a service authority has, insofar as consistent with this article, any additional special powers applicable to the provision of that specific service as provided in part 5 of article 4 of this title. Any municipality as defined therein participating with the service authority shall have the additional powers provided municipalities in part 5 of article 4 of this title.

(2) If the board finds that a sewer line connection is necessary for the protection of the public health, and if the sewer line of the service authority are within four hundred feet of the nearest property line of such premises, the board may compel the owner of any business,

dwelling, or other inhabited premises within the service authority to connect such premises, in accordance with the applicable plumbing code, to a sewer line. Notice to compel such connections shall be given to such owner by registered or certified mail, return receipt requested, to make such connection within twenty days after receipt of such notice, and if such connection has not begun within such period and completed with reasonable diligence by such owner, the board may thereupon make such connection, and the service authority shall, upon completion, have a first and prior lien on the premises for the cost of such connection. Such liens shall be enforced in accordance with the provisions of section 32-7-117.

Source: L. 72: p. 479, § 1. C.R.S. 1963: § 89-25-41.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

32-7-142. Urban drainage and flood control. For the purpose of providing urban drainage and flood control, a service authority shall have, insofar as consistent with this article, any additional special powers applicable to the provision of that specific service as provided by article 11 of this title. The mill levy limitation for ad valorem taxes imposed by said article 11 shall be applicable to the service of providing urban drainage and flood control, when such service is provided by a service authority.

Source: L. 72: p. 479, § 1. C.R.S. 1963: § 89-25-42.

32-7-143. Assumption of services by a service authority in the Denver metropolitan area. (1) In accordance with section 17 (3) (e) of article XIV of the state constitution, after formation of a service authority in the metropolitan area composed of at least that area as specified in section 32-7-104 (2) (b), except for any portion thereof excluded pursuant to section 32-7-104 (3), those special powers, services, rights, and properties and any assets and liabilities of the Denver regional council of governments created pursuant to the provisions of section 30-28-105, C.R.S., shall be transferred to and assumed by the service authority on the first January 1 after formation. The urban drainage and flood control district as created pursuant to article 11 of this title and the metropolitan Denver sewage disposal district no. 1 created pursuant to part 5 of article 4 of this title shall, if the services are approved by a majority of the eligible electors voting thereon in each county within the service authority, be transferred to and assumed by the service authority. The transfer shall be completed by the second January 1 after formation unless an earlier date is agreed to by the board and the respective individual entities.

(2) A service authority assuming the services provided for in this section shall be subject to the following limitations upon ad valorem tax levies incurred by the service authority in furnishing the service, unless a specified greater limit is authorized by the eligible electors of the service authority or by further action of the general assembly:

(a) For the performance of the planning function, assumed pursuant to subsection (1) of this section, a levy of two-tenths mill;

(b) For the performance of the duties of urban drainage and flood control, assumed pursuant to subsection (1) of this section, a levy of two and one-half mills as provided in section 32-11-217 (1) (d);

(c) For the performance of the duties of the metropolitan Denver sewage disposal district no. 1, assumed pursuant to subsection (1) of this section, no mill levy.

Source: L. 72: p. 480, § 1. C.R.S. 1963: § 89-25-43. L. 75: (1)(a) amended, p. 1297, § 2, effective June 16. L. 85: (1)(a) and IP(1)(b) amended, p. 1356, § 36, effective April 30. L. 92: (1)(a) and IP(1)(b) amended, p. 906, § 154, effective January 1, 1993.

Editor's note: The provisions of this section were renumbered on revision in 1997.

32-7-144. Dissolution. Except as otherwise provided in this article, a service authority may be dissolved in a manner pursuant, as nearly as practicable, to the provisions of part 7 of article 1 of this title. Dissolution may be initiated by a petition signed by at least five percent of the eligible electors of the service authority or by a resolution passed by at least three-fourths of the members of the board. No dissolution shall be effected unless approved by a majority of the eligible electors of the service authority voting thereon and unless satisfactory arrangements have been made for the continuation of any services essential for the health, welfare, and safety of residents of the dissolved service authority.

Source: L. 72: p. 480, § 1. C.R.S. 1963: § 89-25-44. L. 81: Entire section amended, p. 1625, § 31, effective July 1. L. 85: Entire section amended, p. 1357, § 37, effective April 30. L. 92: Entire section amended, p. 906, § 155, effective January 1, 1993.

32-7-145. Early hearings. All court actions involving the validity of any proceeding under this article which is a matter of immediate public interest and concern shall be advanced and heard at the earliest practical moment.

Source: L. 72: p. 480, § 1. C.R.S. 1963: § 89-25-45.

32-7-146. Elections. (1) Subject to the specific provisions of subsections (2) and (3) of this section, elections shall be conducted as nearly as practicable in the manner provided for general elections.

(2) The regular service authority election in each service authority shall be held on the date determined for general elections.

(3) Any referral of a proposition to allow a service authority to assume exclusive jurisdiction over any service shall be voted upon only on the date determined for general elections.

(4) All necessary expenses of any service authority general election subsequent to the organization of the service authority and other proceedings conducted pursuant to said election shall be paid by the counties within the service authority in proportion to the population of the respective counties within the service authority, and the governing bodies thereof shall enact any necessary supplemental appropriations. When the board calls a special election after formation of the service authority to be held at a time other than the general election, all necessary expenses for the election and other proceedings conducted pursuant to such elections shall be paid by the service authority.

Source: L. 72: p. 480, § 1. C.R.S. 1963: § 89-25-46.

SPECIAL STATUTORY DISTRICTS

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the Colorado constitution.

ARTICLE 8

Moffat Tunnel Improvement District

32-8-101.	Purpose of tunnel.	32-8-105.	Tunnel - location - construction. (Repealed)
32-8-101.5.	Definitions.	32-8-106.	Board to adopt plans - bids. (Repealed)
32-8-102.	Territory comprising district.	32-8-107.	Powers of department.
32-8-103.	Commission - election - appointment - transfer of powers to the department of local affairs.	32-8-108.	Contract for use of tunnel - repeal. (Repealed)
32-8-104.	Officers - bonds - meetings - seal and records - reports - repeal. (Repealed)	32-8-108.5.	Disposition of district property - repeal. (Repealed)
		32-8-109.	Bonds. (Repealed)

32-8-110.	Special benefits - assessments. (Repealed)	32-8-121.	Repeal - saving clause. (Repealed)
32-8-111.	Exemptions. (Repealed)	32-8-122.	Board empowered to invest funds - repeal. (Repealed)
32-8-112.	Special assessments for deficits. (Repealed)	32-8-123.	Projects within the district - distributions from Moffat tunnel fund - repeal. (Repealed)
32-8-113.	Records - filing. (Repealed)	32-8-124.	Administration of district - department of local affairs - assumption of obligations - powers - immunity.
32-8-114.	Hearings - notice - appeal - assessments conclusive evidence. (Repealed)	32-8-124.3.	Contracts for use of tunnel.
32-8-115.	Collection of assessments - fund. (Repealed)	32-8-124.5.	Rules - right to construct and repair.
32-8-116.	Accepting securities for bond. (Repealed)	32-8-124.7.	Property of Moffat tunnel improvement district.
32-8-117.	Assessments lien on property. (Repealed)	32-8-125.	Moffat tunnel improvement district - sunset.
32-8-118.	Assessments - coupons accepted in payment. (Repealed)	32-8-126.	Moffat tunnel cash fund - created.
32-8-119.	Perpetual ownership in district. (Repealed)		
32-8-120.	Construction. (Repealed)		

32-8-101. Purpose of tunnel. The purpose of this article is to facilitate transportation and communication between the eastern and western portions of the state through the efficient operation and maintenance of the existing Moffat tunnel under the continental divide and to promote the health, comfort, safety, convenience, and welfare of the people of the state, with special benefit to the property within the boundaries of the improvement district created in this article.

Source: L. 22: p. 88, § 1. C.L. § 9590. CSA: C. 138, § 200. CRS 53: § 93-1-1. C.R.S. 1963: § 93-1-1. L. 94: Entire section amended, p. 729, § 2, effective April 19. L. 96: Entire section R&RE, p. 1048, § 2, effective May 23.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

For the constitutionality of article, see *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922).

The purpose of this article is to benefit the people of the district created and to promote the public welfare, not to lend credit of the district to the Denver & S. L. Ry. *Moffat Tunnel Imp. Dist. v. Denver & S. L. Ry.*, 45 F.2d 715 (10th Cir. 1930). See *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922); *Milheim v. Moffat Tunnel Imp. Dist.*, 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).

And the article cannot be construed as a mere lending of public credit to a private enterprise, for the Colorado constitution expressly forbids such, and the effort to construct the tunnel in 1913 was abortive for that particular reason. *Moffat Tunnel Imp. Dist. v. Denver & S. L. Ry.*, 45 F.2d 715 (10th Cir. 1930).

Although it appears that the main purpose of this article was to construct the tunnel for

transportation and communication, a fair reading of the entire article supports the assertion that the general assembly intended the tunnel and its approaches to be put to the largest number of possible uses. *Denver & Rio Grande Western R. Co. v. Winter Park*, 708 P.2d 1376 (Colo. App. 1985).

Similarity of Denver housing authority. Some of the points of similarity between the Moffat tunnel district and the Denver housing authority are: (a) Both districts include the city and county of Denver as a home-rule city; (b) both are by the express terms of the acts creating them bodies corporate and politic; (c) both were created for the purpose of constructing improvements; (d) there is no express provision for either in the charter of the city and county of Denver; (e) both were created by acts of the general assembly. *People ex. rel. Stokes v. Newton*, 106 Colo. 61, 101 P.2d 21 (1940).

A municipal improvement will be considered for public use where it is open to use by all persons who have need of it. The use may be public though not many persons may enjoy it. The fact that persons using the improvement must pay for the privilege does not render it any

the less a public use, providing all can use it on substantially the same terms. *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922).

Therefore, even if this law specifically directed that the tunnel be leased to the Moffat road for railroad purposes (a just rental based on the cost of constructing and maintaining the tunnel being provided), as the tunnel would be operated by the railroad as a public highway for the carriage of passengers and freight, it would be a public improvement for public use. The test of the public character of an improvement is the

use to which it is to be put, not the person by whom it is operated. *Milheim v. Moffat Tunnel Imp. Dist.*, 262 U.S. 710, 43 S. Ct. 694, 67 L.Ed. 1194 (1923).

Any right that a lessee for use of the Moffat tunnel might have to condemn an easement or right-of-way pursuant to this section is inoperative and noneffective, as it would interfere with the independent judgment of the Moffat tunnel commission regarding the use of its property. *Denver & Rio Grande Western R. Co. v. Winter Park*, 708 P.2d 1376 (Colo. App. 1985).

32-8-101.5. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the Moffat tunnel commission created pursuant to section 32-8-103 (1).

(2) "Contract" or "contractual" means any contract, lease, license, permit, or other written authority for the use of the Moffat tunnel, its approaches, and equipment according to the terms of the underlying agreement.

(3) "Department" means the department of local affairs created in section 24-1-125, C.R.S.

(4) "District" means the Moffat tunnel improvement district created pursuant to this article.

(5) "Moffat tunnel" or "tunnel" shall include any and all portions of the Moffat railroad tunnel, its approaches, or equipment.

(6) "User" means any lessee, licensee, permittee, or other holder of any interest in, or any contractual right to use, any portion of the Moffat tunnel, but not any person claiming by, through, or under such user. "User" also includes the owner of any permanent improvements lawfully located on any portion of the Moffat tunnel or its approaches.

Source: L. 2002: Entire section added with relocated provisions, p. 1071, § 5, effective August 7.

Editor's note: This section was formerly numbered as § 24-32-2902.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 274, Session Laws of Colorado 2002.

32-8-102. Territory comprising district. (1) There is hereby created an improvement district known and designated as the Moffat tunnel improvement district. Said district is declared to be a body corporate under the laws of Colorado, and by said name may sue and defend in all actions, suits, and proceedings.

(2) Said district shall be comprised of the following territory: City and county of Denver, county of Grand, county of Moffat, county of Routt, and those portions of Eagle, Gilpin, Boulder, Adams, and Jefferson counties described as follows:

(a) Eagle County: All of township two south, ranges eighty-two and eighty-three west of the sixth principal meridian;

(b) Gilpin County: Commencing at the northwest corner of Gilpin county, thence east on the north boundary line of said county to the easterly boundary line of Gilpin county; thence southerly along said easterly boundary line to the point of intersection with the east and west center line of township two south in range seventy-two west of the sixth principal meridian; thence west along said east and west center line of township two south, to the point where the said east and west center line of township two south, intersects the westerly boundary line of Gilpin county, in range seventy-four west of the sixth principal meridian; thence northerly along said westerly boundary line to the place of beginning;

(c) Jefferson County: Commencing at the northwest corner of Jefferson county, thence east along the north boundary line of said county to the northeast corner of section four,

township two south, range sixty-nine west of the sixth principal meridian; thence south along the east lines of sections four, nine, and sixteen, township two south, range sixty-nine west of the sixth principal meridian to the southeast corner of said section sixteen; thence east along the north lines of sections twenty-two, twenty-three, and twenty-four of said township two south, range sixty-nine west, to the east line of Jefferson county; thence south along the east line of Jefferson county to the southeast corner of section thirteen, township three south, range sixty-nine west of the sixth principal meridian; thence west along the south lines of sections thirteen, fourteen, fifteen, sixteen, seventeen, and eighteen of said township three south, range sixty-nine west, to the southwest corner of said section eighteen; thence north along the west line of range sixty-nine west of the sixth principal meridian to the southeast corner of section twenty-five, township two south, range seventy west of the sixth principal meridian; thence west along the south lines of sections twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, and thirty of said township two south, range seventy west, and the south lines of sections twenty-five, twenty-six, and twenty-seven, township two south, range seventy-one west of the sixth principal meridian, to the southwest corner of section twenty-seven, township two south, range seventy-one west of the sixth principal meridian; thence north along the west lines of sections twenty-seven and twenty-two of said township two south, range seventy-one west, to the northwest corner of said section twenty-two; thence west along the south lines of sections sixteen, seventeen, and eighteen, township two south, range seventy-one west, and the east and west center line of township two south, range seventy-two west, to the west boundary line of Jefferson county; thence north along said west boundary line to the place of beginning;

(d) Adams County: All of Adams county in township three south, range sixty-eight west of the sixth principal meridian;

(e) Boulder County: Commencing at the southwest corner of Boulder county, thence easterly along the southerly boundary line of said county to the southeast corner of section thirty-one, township one south, range seventy west of the sixth principal meridian; thence north along the east lines of sections thirty-one and thirty, township one south, range seventy west of the sixth principal meridian, to the northeast corner of said section thirty; thence west along the north line of section thirty of said township one south, range seventy west, to the northwest corner of said section thirty; thence north along the east line of section twenty-four, township one south, range seventy-one west, to the northeast corner of said section twenty-four; thence west along the north lines of sections twenty-four, twenty-three, twenty-two, twenty-one, twenty, and nineteen, township one south, and ranges seventy-one, seventy-two, seventy-three, and seventy-four west, of the sixth principal meridian, to the westerly boundary line of Boulder county; thence south along said westerly boundary line to the place of beginning.

Source: L. 22: p. 89, § 2. C.L. § 9591. CSA: C. 138, § 201. CRS 53: § 93-1-2. C.R.S. 1963: § 93-1-2.

ANNOTATION

The general assembly has power to form a tunnel district involving parts of counties and cities, and to give it the right of local assessment. *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922).

And this article does not authorize the creation of an improvement district; it creates it. *Moffat Tunnel Imp. Dist. v. Denver & S. L. Ry.*,

45 F.2d 715 (10th Cir. 1930).

Contention that the Moffat tunnel improvement district, authorized by this section, is not a municipal corporation, overruled. See *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922).

32-8-103. Commission - election - appointment - transfer of powers to the department of local affairs. (1) The district was, until February 1, 1998, managed and controlled by a board of five members known as the "Moffat tunnel commission". At that

time, acting pursuant to Senate Bill 96-233, the department assumed the powers of the board.

(2) to (3.5) (Deleted by amendment, L. 2002, p. 1069, § 2, effective August 7, 2002.)

(4) (Deleted by amendment, L. 92, p. 906, § 156, effective January 1, 1993.)

(5) to (7) (Deleted by amendment, L. 2002, p. 1069, § 2, effective August 7, 2002.)

(8) The district shall be managed and controlled by the department. The department shall have the powers and duties set forth in sections 32-8-107 and 32-8-124 with respect to the district and the properties of the district.

Source: L. 22: p. 92, § 4. C.L. § 9593. L. 27: p. 491, § 1. L. 31: p. 454, § 1. CSA: C. 138, § 203. CRS 53: § 93-1-4. L. 63: p. 726, § 1. C.R.S. 1963: § 93-1-4. L. 72: p. 563, § 32. L. 76: (3) amended, p. 310, § 56, effective May 20. L. 81: (3) amended, p. 296, § 19, effective June 19. L. 82: (3) amended, p. 545, § 3, effective April 15. L. 89: (4) amended, p. 847, § 121, effective July 1. L. 91: (3) amended, p. 643, § 94, effective May 1. L. 92: (2) to (5) amended, p. 906, § 156, effective January 1, 1993. L. 93: (3) amended, p. 1441, § 140, effective July 1. L. 94: (3) amended, p. 1643, § 68, effective May 31. L. 95: (3) amended, p. 1107, § 48, effective May 31. L. 96: (3.5), (7), and (8) added, p. 1049, § 3, effective May 23. L. 2001: (7)(e) repealed, p. 1180, § 19, effective August 8. L. 2002: (1), (2), (3), (3.5), (5), (6), (7), and (8) amended, p. 1069, § 2, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1), (2), (3), (3.5), (5), (6), (7), and (8), see section 1 of chapter 274, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

For the constitutionality of section, see *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922).

The legislative intent in subsection (3) of this section was that this special purpose election be conducted within the parameters of the normal electoral process and that because of the special nature of the district, this additional voter qualification would be imposed. *Chesser v. Buchanan*, 193 Colo. 471, 568 P.2d 39 (1977).

There is no requirement that the qualifications of the members of the Moffat tunnel commission, be prescribed. That a taxpayer may act in such a case, is well established. *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922).

It certainly can be argued that the election code was meant to establish guidelines for the selection of Moffat tunnel commissioners. *Sheldon v. Moffat Tunnel Comm'n*, 335 F. Supp. 251 (D. Colo. 1971).

Therefore, payment of property tax as additional qualification for voting may no longer retain vitality. The election code utilizes different phrases, "taxpaying elector" and "qualified taxpaying elector", to describe situations in which payment of a property tax is an

additional qualification for voting. Those phrases are not used in connection with general elections. Thus, although § 32-8-103 (3) purports to add payment of a property tax to the qualifications of voters in Moffat tunnel elections conducted during or after 1964, the provisions of the election code, read against the backdrop of a legislative policy of liberality, suggest that proviso no longer retains vitality. *Sheldon v. Moffat Tunnel Comm'n*, 355 F. Supp. 251 (D. Colo. 1971).

Subsection (3) does not deprive landowners within the district who failed to pay real estate taxes of equal protection of the law since there exists a rational basis for limiting the franchise to tax paying electors within the district. *Chesser v. Buchanan*, 193 Colo. 471, 568 P.2d 39 (1977).

There is no conflict or inconsistency between the provisions of subsection (3) and the Election Code. *Chesser v. Buchanan*, 193 Colo. 471, 568 P.2d 39 (1977).

The Election Code [arts. 1 through 17 of title 1] sets forth only the basic voter qualifications for all general, primary, and special elections, and there is no statutory provision which states that in special purpose elections, such as in subsection (3) of this section, an additional voter qualification cannot be imposed. *Chesser v. Buchanan*, 193 Colo. 471, 568 P.2d 39 (1977).

32-8-104. Officers - bonds - meetings - seal and records - reports - repeal. (Repealed)

Source: L. 22: p. 95, § 5. C.L. § 9594. CSA: C. 138, § 204. CRS 53: § 93-1-5. C.R.S. 1963: § 93-1-5. L. 90: (2) amended, p. 1499, § 8, effective July 1. L. 96: (5) added, p. 1050, § 4, effective May 23; (6) added by revision, p. 1053, § 7(2).

Editor's note: Subsection (6) provided for the repeal of this section effective February 1, 1998, when the department of local affairs assumed the powers of the Moffat tunnel commission pursuant to § 32-8-103 (7). (See L. 96, p. 1053.) Said § 32-8-103 (7) was repealed in 2002.

32-8-105. Tunnel - location - construction. (Repealed)

Source: L. 22: p. 97, § 6. C.L. § 9595. CSA: C. 138, § 205. CRS 53: § 93-1-6. C.R.S. 1963: § 93-1-6. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-106. Board to adopt plans - bids. (Repealed)

Source: L. 22: p. 97, § 7. C.L. § 9596. CSA: C. 138, § 206. CRS 53: § 93-1-7. C.R.S. 1963: § 93-1-7. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-107. Powers of department. (1) The department has power on behalf of said district:

(a) To employ a chief engineer, and such other engineers, assistants, and employees as may be necessary, and to provide for their compensation;

(b) To secure the services of attorneys and provide for their compensation;

(c) To preserve, operate, and maintain, or contract for the preservation, operation, and maintenance of the Moffat tunnel and its approaches and all necessary works incidental thereto; to equip and electrify the tunnel, its approaches and connections, and to construct and maintain power plants for the lighting, equipment, and electrifying of the tunnel, its approaches and connections;

(d) To enter into and execute all contracts, leases, and other instruments in writing necessary or proper to the accomplishment of the purposes of this article;

(e) and (f) (Deleted by amendment, L. 96, p. 1050, § 5, effective May 23, 1996.)

(g) To adopt bylaws not in conflict with the constitution and laws of the state, in carrying out the purposes of this article;

(h) To exercise all powers necessary and requisite for the accomplishment of the purposes for which this district is organized and capable of being delegated by the general assembly of the state of Colorado; and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this article, nor to limit any such grant to powers of the same class as those so enumerated;

(i) To receive on behalf of the district aid or donations from any person or corporation or from the United States government for the purpose of preserving, operating, or maintaining the tunnel and its approaches and equipment;

(j) To deposit moneys of the district that are not required to be transferred to each of the counties of the district or to the city and county of Denver pursuant to section 32-8-124 and that are not needed in the conduct of district affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the moneys of the district. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(k) (Deleted by amendment, L. 2002, p. 1071, § 3, effective August 7, 2002.)

Source: L. 22: p. 98, § 8. C.L. § 9597. CSA: C. 138, § 207. CRS 53: § 93-1-8. C.R.S. 1963: § 93-1-8. L. 79: (1)(j) added, p. 1625, § 40, effective June 8. L. 94: (1)(k)

added, p. 730, § 3, effective April 19. **L. 96:** (1) amended, p. 1050, § 5, effective May 23. **L. 98:** (1)(j) amended, p. 827, § 46, effective August 5. **L. 2002:** IP(1) and (1)(k) amended, p. 1071, § 3, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending the introductory portion to subsection (1) and subsection (1)(k), see section 1 of chapter 274, Session Laws of Colorado 2002.

ANNOTATION

The general assembly delegated express powers to the board to do the things necessary and requisite for the accomplishment of the purposes for which the district was orga-

nized. *Moffat Tunnel Imp. Dist. v. City & County of Denver*, 93 Colo. 317, 25 P.2d 735 (1933); *Boynton v. Moffat Tunnel Imp. Dist.*, 57 F.2d 772 (10th Cir. 1932).

32-8-108. Contract for use of tunnel - repeal. (Repealed)

Source: **L. 22:** p. 99, § 9. **C.L.** § 9598. **CSA:** C. 138, § 208. **CRS 53:** § 93-1-9. **C.R.S. 1963:** § 93-1-9. **L. 96:** (3) added by revision, p. 1053, § 7(2).

Editor's note: Subsection (3) provided for the repeal of this section effective February 1, 1998, when the department of local affairs assumed the powers of the Moffat tunnel commission pursuant to § 32-8-103 (7). (See L. 96, p. 1053.) Said § 32-8-103 (7) was repealed in 2002.

32-8-108.5. Disposition of district property - repeal. (Repealed)

Source: **L. 96:** Entire section added, p. 1051, § 6, effective May 23; (4) added by revision, p. 1053, § 7(2).

Editor's note: Subsection (4) provided for the repeal of this section effective February 1, 1998, when the department of local affairs assumed the powers of the Moffat tunnel commission pursuant to § 32-8-103 (7). (See L. 96, p. 1053.) Said § 32-8-103 (7) was repealed in 2002.

32-8-109. Bonds. (Repealed)

Source: **L. 22:** p. 101, § 10. **C.L.** § 9599. **CSA:** C. 138, § 209. **CRS 53:** § 93-1-10. **C.R.S. 1963:** § 93-1-10. **L. 96:** Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-110. Special benefits - assessments. (Repealed)

Source: **L. 22:** p. 102, § 11. **C.L.** § 9600. **CSA:** C. 138, § 210. **CRS 53:** § 93-1-11. **C.R.S. 1963:** § 93-1-11. **L. 96:** Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-111. Exemptions. (Repealed)

Source: **L. 22:** p. 103, § 12. **C.L.** § 9601. **CSA:** C. 138, § 211. **CRS 53:** § 93-1-12. **C.R.S. 1963:** § 93-1-12. **L. 96:** Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-112. Special assessments for deficits. (Repealed)

Source: **L. 22:** p. 103, § 13. **C.L.** § 9602. **CSA:** C. 138, § 212. **CRS 53:** § 93-1-13. **C.R.S. 1963:** § 93-1-13. **L. 96:** Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-113. Records - filing. (Repealed)

Source: L. 22: p. 103, § 14. C.L. § 9603. CSA: C. 138, § 213. CRS 53: § 93-1-14. C.R.S. 1963: § 93-1-14. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-114. Hearings - notice - appeal - assessments conclusive evidence. (Repealed)

Source: L. 22: p. 104, § 15. C.L. § 9604. CSA: C. 138, § 214. CRS 53: § 93-1-15. C.R.S. 1963: § 93-1-15. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-115. Collection of assessments - fund. (Repealed)

Source: L. 22: p. 105, § 16. C.L. § 9605. L. 35: p. 707, § 1. CSA: C. 138, § 215. CRS 53: § 93-1-16. C.R.S. 1963: § 93-1-16. L. 79: (2) amended, p. 1625, § 41, effective June 8. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-116. Accepting securities for bond. (Repealed)

Source: L. 37: p. 926, § 2. CSA: C. 138, § 215(1). CRS 53: § 93-1-17. C.R.S. 1963: § 93-1-17. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-117. Assessments lien on property. (Repealed)

Source: L. 22: p. 107, § 17. C.L. § 9606. CSA: C. 138, § 216. CRS 53: § 93-1-18. C.R.S. 1963: § 93-1-18. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-118. Assessments - coupons accepted in payment. (Repealed)

Source: L. 22: p. 107, § 18. C.L. § 9607. CSA: C. 138, § 217. CRS 53: § 93-1-19. C.R.S. 1963: § 93-1-19. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-119. Perpetual ownership in district. (Repealed)

Source: L. 22: p. 107, § 19. C.L. § 9608. CSA: C. 138, § 218. CRS 53: § 93-1-20. C.R.S. 1963: § 93-1-20. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-120. Construction. (Repealed)

Source: L. 22: p. 107, § 20. C.L. § 9609. CSA: C. 138, § 219. CRS 53: § 93-1-21. C.R.S. 1963: § 93-1-21. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-121. Repeal - saving clause. (Repealed)

Source: L. 22: p. 108, § 22. C.L. § 9611. CSA: C. 138, § 220. CRS 53: § 93-1-22. C.R.S. 1963: § 93-1-22. L. 96: Entire section repealed, p. 1053, § 7(1), effective May 23.

32-8-122. Board empowered to invest funds - repeal. (Repealed)

Source: L. 43: p. 483, § 1. CSA: C. 138, § 220(1). CRS 53: § 93-1-23. C.R.S. 1963: § 93-1-23. L. 89: Entire section amended, p. 1119, § 40, effective July 1. L. 96: (2) added by revision, p. 1053, § 7(2).

Editor's note: Subsection (2) provided for the repeal of this section effective February 1, 1998, when the department of local affairs assumed the powers of the Moffat tunnel commission pursuant to § 32-8-103 (7). (See L. 96, p. 1053.) Said § 32-8-103 (7) was repealed in 2002.

32-8-123. Projects within the district - distributions from Moffat tunnel fund - repeal. (Repealed)

Source: L. 94: Entire section added, p. 728, § 1, effective April 19. L. 96: (5) added by revision, p. 1053, § 7(2).

Editor's note: Subsection (5) provided for the repeal of this section effective February 1, 1998, when the department of local affairs assumed the powers of the Moffat tunnel commission pursuant to § 32-8-103 (7). (See L. 96, p. 1053.) Said § 32-8-103 (7) was repealed in 2002.

32-8-124. Administration of district - department of local affairs - assumption of obligations - powers - immunity. (1) Annually on or before July 1, the department shall determine the amount of revenue necessary for administrative costs of the department relating to the property of the district. After setting aside sufficient revenue necessary for administrative costs, which may be paid from the available cash, securities, and other moneys of the district, not including proceeds from sales of district property, the department shall transfer all cash, securities, and other moneys of the district, including any remaining proceeds from sales of district property, to each of the counties and the city and county of Denver included, in whole or in part, in the district as specified in section 32-8-102 in such proportion as the total amount of taxes and assessments received by the district from each county or city and county of Denver and its taxpayers since the district's creation is to the total of all taxes and assessments received by the district from those sources since the district's creation.

(2) The department shall have authority over all of the property of the district to the same extent as other property of the department; except that, if this authority conflicts with or is limited by any provision of this article, the provision of this article shall apply. Except as otherwise provided in this article, the state shall not assume any liability for the acts, omissions, indebtedness, or other obligations of the board or the district and shall be immune from any action relating to the construction, operation, or maintenance of the Moffat tunnel, its approaches, or equipment, pursuant to the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 96: Entire section added, p. 1051, § 6, effective May 23. L. 2002: Entire section amended with relocated provisions, p. 1071, § 4, effective August 7.

Editor's note: Subsection (2) was formerly numbered as § 24-32-2903.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 274, Session Laws of Colorado 2002.

32-8-124.3. Contracts for use of tunnel. (1) The department shall have:

(a) The right to enforce the provisions of any contracts and to modify the contracts upon mutual agreement of the respective parties to the contracts; and

(b) The power to enter into contracts with persons and with private and public corporations for the right to use the tunnel for the transmission of power, for telephone and other communication lines, for railroad and railway purposes, and for any other purpose to which the same may be adapted. All the contracts and rights of use shall be subject and subordinate to all prior contracts and may not impair the rights of any existing legal user.

(2) Users shall be responsible for the cost of maintaining, to the extent of their use, the Moffat tunnel, its approaches, and equipment.

Source: L. 2002: Entire section added with relocated provisions, p. 1072, § 5, effective August 7.

Editor's note: This section was formerly numbered as § 24-32-2904.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 274, Session Laws of Colorado 2002.

32-8-124.5. Rules - right to construct and repair. (1) The executive director of the department is authorized to adopt reasonable rules relating to the Moffat tunnel subject to the provisions of this article and subject to existing contractual rights and obligations of the users. All rules of the board shall be repealed upon the adoption of rules by the executive director relating to the Moffat tunnel pursuant to this subsection (1).

(2) As provided through any existing contractual rights and in accordance with reasonable rules of the department, users shall have the right to construct and repair, for their own benefit and at their sole cost, betterments or improvements on or to the Moffat tunnel relating to their respective uses, as long as the betterments or improvements do not interfere with other existing uses.

Source: L. 2002: Entire section added with relocated provisions, p. 1072, § 5, effective August 7.

Editor's note: This section was formerly numbered as § 24-32-2905.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 274, Session Laws of Colorado 2002.

32-8-124.7. Property of Moffat tunnel improvement district. (1) (a) The department shall have the authority to convey or transfer ownership of all tangible property, real and personal, or any interest therein owned by the district for fair market value. Each user shall have the right to purchase, to the extent of its use, real property interests of the district at fair market value, which shall be determined pursuant to the appraisal procedures of the department. Fair market value, as used in this section, shall not include any improvements or the value of any improvements owned or paid for by the user. In addition, when determining fair market value of any portion of or interest in the real property of the district, the value or detriment of any lease, license, or permit granted for the benefit of the party acquiring such real property shall not be considered. Each user shall also have a commercially reasonable right of first refusal to purchase at the fair market value, to the extent of its use, any real property interest offered for conveyance.

(b) The purchaser of any real property or interest therein of the district, whether the purchaser is a current user or any other party, shall take the property subject to then existing leases, contracts for use, licenses, or other encumbrances on or obligations relating to the property and the right of the district, and its successors and assigns, to reasonable access across the interests conveyed for access to the tunnel.

(2) Proceeds from any conveyance shall be used first for the expenses of the conveyance. Expenses of conveyance, including administrative costs incurred by the state and legal and other costs incurred in connection with the sale of the property of the district, shall not in the aggregate exceed four percent of the purchase price of the property being conveyed. Any remaining proceeds shall be immediately transferred to the counties and the city and county of Denver included, in whole or in part, in the district as specified in section 32-8-102, in such proportion as the total amount of taxes and assessments received by the district from each county or the city and county of Denver and its taxpayers since the district's creation is to the total of all taxes and assessments received by the district from those sources since the district's creation. Proceeds may be transferred directly to the counties and the city and county of Denver in conjunction with the closing of the sale of the property of the district, or they may be credited first to the cash fund created in section 32-8-126 before being immediately transferred to the counties and the city and county of Denver.

(3) The department may adopt reasonable procedures consistent with this article for the disposition of property of the district. All dispositions shall be made at fair market value and unencumbered except to the extent provided in paragraph (b) of subsection (1) of this section. All conveyances of property shall be made in the name of the "Moffat tunnel

improvement district, by and through the department of local affairs of the state of Colorado acting as the Moffat tunnel commission under authority of section 32-8-124.7, C.R.S.”

Source: L. 2002: Entire section added with relocated provisions, p. 1073, § 5, effective August 7.

Editor’s note: This section was formerly numbered as § 24-32-2906.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 274, Session Laws of Colorado 2002.

32-8-125. Moffat tunnel improvement district - sunset. (1) At such time as the district does not own any real property, all remaining property interests, tangible and intangible, including, but not limited to, fixtures, books, documents, contracts, records of title, and other records of the district shall be transferred to the department. The executive director of the department shall execute all necessary bills of sale and instruments of conveyance or assignment to evidence the transfer of property and shall take any other actions necessary to carry out the purposes of this article.

(2) Upon the completion of all actions required by subsection (1) of this section, the executive director of the department shall certify that all such actions have been completed and that the Moffat tunnel improvement district is dissolved. The district shall be dissolved as of the effective date of such certification, and a copy of the certification shall be filed with the general assembly pursuant to the provisions of section 24-1-136 (9), C.R.S.

Source: L. 96: Entire section added, p. 1051, § 6, effective May 23.

32-8-126. Moffat tunnel cash fund - created. (1) All cash, proceeds, and other moneys collected by the department pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the Moffat tunnel cash fund, which fund is hereby created. Moneys in the fund not subject to immediate transfer pursuant to section 32-8-124.7 (2) shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article.

(2) Notwithstanding any provision of subsection (1) of this section to the contrary, on June 1, 2009, the state treasurer shall deduct eighty-six thousand seven hundred fifty-eight dollars from the Moffat tunnel cash fund and transfer such sum to the general fund.

Source: L. 96: Entire section added, p. 1051, § 6, effective May 23. **L. 2002:** Entire section amended, p. 1074, § 6, effective August 7. **L. 2009:** Entire section amended, (SB 09-279), ch. 367, p. 1930, § 19, effective June 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 274, Session Laws of Colorado 2002.

ARTICLE 9

Regional Transportation District Act

Editor’s note: For a discussion of the difference between service authorities authorized by section 17 of article XIV of the Colorado constitution and statutorily created special districts, see *Anema v. Transit Const. Authority*, 788 P.2d 1261 (Colo. 1990).

Cross references: For formation of a metropolitan district within a regional transportation district, see § 32-1-1004 (6).

32-9-101.	Short title.	32-9-106.	District area. (Repealed)
32-9-102.	Legislative declaration.	32-9-106.1.	District area.
32-9-103.	Definitions.	32-9-106.3.	Additional district areas -
32-9-104.	Liberal construction.		rights-of-way - Douglas
32-9-105.	Creation of district.		county. (Repealed)

32-9-106.4.	Additional district areas - Adams county. (Repealed)		district transfer facilities permitted - definitions.
32-9-106.5.	Additional district areas - Weld county. (Repealed)	32-9-119.9.	Limited authority to charge fees for parking - reserved parking spaces - penalties - definitions.
32-9-106.6.	Additional district areas as a result of annexation.		
32-9-106.7.	Additional district area - petition or election - required filings - definitions.	32-9-120.	Levy of taxes - limitations.
		32-9-121.	Levies to cover deficiencies.
32-9-106.8.	Additional district areas - annexation of unincorporated territory that is entirely surrounded by the district.	32-9-122.	Levying and collecting taxes - lien.
		32-9-123.	Delinquent taxes.
32-9-106.9.	District area - town of Castle Rock in Douglas county.	32-9-123.5.	Prohibition on borrowing by district.
32-9-107.	Mass transportation system.	32-9-124.	Forms of borrowing.
32-9-107.5.	Regional fixed guideway mass transit system - authorization.	32-9-125.	Issuance of notes.
		32-9-126.	Issuance of warrants.
		32-9-127.	Maturities of notes and warrants.
32-9-107.7.	Regional fixed guideway mass transit systems - construction - authorization.	32-9-128.	Incurrence of special obligations.
		32-9-128.5.	Private activity and exempt facility bonds.
32-9-108.	Authorizing election. (Repealed)	32-9-129.	Issuance of temporary bonds.
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		32-9-132.	Ranking among different issues.
32-9-110.	Initial board. (Repealed)		
32-9-111.	Election of directors - dates - terms.	32-9-133.	Ranking in same issue.
		32-9-134.	Payment recital in securities.
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		32-9-150.	Election resolution.
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		32-9-152.	Notice of election. (Repealed)
32-9-119.6.	Report to general assembly on privatization of certain management functions of the district. (Repealed)	32-9-153.	Polling places. (Repealed)
		32-9-154.	Election supplies. (Repealed)
		32-9-155.	Election returns. (Repealed)
		32-9-156.	District, tax exempted.
32-9-119.7.	Farebox recovery ratios - plans.	32-9-157.	Dissolution of district. (Repealed)
32-9-119.8.	Provision of retail and commercial goods and services at district transfer facilities - residential and other uses at	32-9-158.	Merger, consolidation, or assumption of district.
		32-9-159.	Freedom from judicial process.
		32-9-160.	Misdemeanors.

32-9-161. Eminent domain.
32-9-162. Money management.

32-9-163. Investment management.
32-9-164. Custodians.

32-9-101. Short title. This article shall be known and may be cited as the “Regional Transportation District Act”.

Source: L. 69: p. 714, § 1. C.R.S. 1963: § 89-20-1.

32-9-102. Legislative declaration. (1) The general assembly determines, finds, and declares:

(a) That the creation of the regional transportation district will promote the public health, safety, convenience, economy, and welfare of the residents of the district and of the state of Colorado; and

(b) That a general law cannot be made applicable to the district and to the properties, powers, duties, functions, privileges, immunities, rights, liabilities, and disabilities of such district as provided in this article because of a number of atypical factors and special conditions concerning same.

Source: L. 69: p. 714, § 1. C.R.S. 1963: § 89-20-2.

32-9-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Board” means the board of directors of the district.

(2) “Condemn” or “condemnation” means the exercise by the district of the power of dominant eminent domain or eminent domain, in the manner provided in articles 1 to 7 of title 38, C.R.S., to acquire mass transportation facilities and property, real or personal, or an interest therein, for the public use of the district.

(3) “Director” means a member of the board.

(3.5) “Director district” means that area within the district which is represented by one director.

(3.7) “Discovery” means physical discovery of an undocumented utility communicated by the district or its contractors, agents, or employees verbally or in writing to the utility company’s designated project representative or, if no representative has been designated, to the chief engineer or equivalent.

(4) “District” means the regional transportation district created by this article.

(5) “District securities” means bonds, temporary bonds, refunding bonds, special obligation bonds, interim notes, notes, and warrants of the district authorized to be issued by this article.

(6) “Dominant eminent domain” means that the right of the district to condemn public property, real and personal, shall be superior in public necessity to that of any city, town, city and county, county, or other public corporation except a school district, but such right shall be superior only for the purpose of acquiring existing mass transportation facilities and related real or personal property.

(6.2) “Eligible elector” means a registered elector as defined in section 1-1-104 (35), C.R.S., who resides within the geographic boundaries of the district.

(6.3) “Fixed guideway corridor” means a corridor designated by the district for the construction and operation of a fixed guideway mass transit system.

(6.4) “Fixed guideway corridor utility relocation agreement” means an agreement entered into by the district and a utility company for the purpose of performing utility relocation work necessitated by a transportation expansion plan in accordance with the requirements of section 32-9-119.1.

(6.5) “Fixed guideway mass transit system” means any public transportation system that utilizes and occupies a separate right-of-way or rail for the exclusive use of public transportation service. No such system shall intersect any road or street with an average daily traffic count of twenty thousand or greater at grade unless the municipality or county having jurisdiction over such road or street specifically requests an at grade crossing.

(6.7) “Force majeure” means fire, explosion, action of the elements, strike, interruption of transportation, rationing, shortage of labor, equipment, or materials, court action, illegality, unusually severe weather, act of God, act of war, or any other cause that is beyond the control of the party performing work on a utility relocation project and that could not have been prevented by the party while exercising reasonable diligence.

(6.9) “Major electrical facilities” shall have the same meaning as set forth in section 29-20-108 (3) (a), (3) (b), (3) (c), and (3) (d), C.R.S.

(7) (a) “Mass transportation system” or “system” means any system of the district or any other system, the owner or operator of which contracts with the district for the provision of transportation services, that transports the general public by bus, rail, or any other means of surface conveyance or any combination thereof, within the district.

(b) Such system may include facilities for transportation within or without or both within and without the district as special charter services provided to the general public. The schedule of charges for special charter service shall be equal to but not less than those charged by authorized common carriers rendering the same or similar service. The service may be performed under such terms and conditions for which facilities are made available for such charter use and in conformity with the reasonable rules and regulations provided by the board with respect to the use thereof, but the special charter service outside the district shall be limited to such rights and privileges as are obtained by the district in the acquisition of mass transportation facilities and property.

(c) The system may include facilities for the transportation of package-express shipments on routes to and from Boulder and Denver if such shipments are transported coincidentally with the transportation of the general public in scheduled service and over prescribed routes within the district. The schedule of charges for package-express service shall not be less than those charged by authorized common carriers rendering the same or similar service over the same routes and distances. The package-express service may be performed under such terms and conditions for which facilities are made available for such package-express use and in conformity with the rules and regulations established by the board with respect to the use thereof.

(8) (Deleted by amendment, L. 2000, p. 307, § 1, effective April 5, 2000.)

(9) “Operation and maintenance expenses” means all reasonable and necessary current expenses of the district, paid or accrued, of operating, maintaining, and repairing facilities of the mass transportation system of the district.

(10) “Person” means any natural person, association, partnership, company, or corporation.

(11) “Public body” means the state of Colorado, or any county, city and county, city, town, district, or any other political subdivision of the state, excluding the regional transportation district.

(12) “Publication” means the publication once a week for three consecutive weeks in at least one newspaper having general circulation in the district. Publication need not be made on the same day of the week in each of the three weeks; but not less than fourteen days shall intervene between the first day of publication and the last day of publication.

(13) “Revenues” means the tolls, fees, rates, charges, or other income and revenues derived from the operation of the mass transportation system of the district, moneys received in the form of grants or contributions from all sources, public or private, income derived from investments by the district, and any combination of the foregoing.

(14) “Taxes” or “taxation” means general ad valorem property taxes only.

(15) (Deleted by amendment, L. 92, p. 907, § 157, effective January 1, 1993.)

(15.1) “Utility company” or “utility” shall have the same meaning as set forth in 23 CFR 645.105, as amended.

(15.5) “Utility facility” means all installed equipment of a utility.

(16) “Vehicular service” means any service provided by the district that involves transporting the general public by means of any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways. “Vehicular service” does not include any service provided by the district that is part of the rail system.

Source: L. 69: p. 714, § 1. C.R.S. 1963: § 89-20-3. L. 70: p. 292, § 97. L. 71: p. 978, § 1. L. 73: p. 985, § 1. **Initiated 80:** (3.5) added, effective upon proclamation of the Governor, December 19, 1980. L. 81: (7)(a) amended and (7)(c) added, p. 1640, § 1, effective May 28; (15) amended, p. 1626, § 32, effective July 1. L. 85: (7)(a) amended, p. 1119, § 1, effective July 1. L. 87: (6.3) and (6.5) added and (7)(a) amended, p. 1246, § 2, effective May 22. L. 92: (6.2) added and (15) amended, p. 907, § 157, effective January 1, 1993. L. 93: (7)(a) amended, p. 1790, § 79, effective June 6. L. 94: (6.2) amended, p. 460, § 1, effective March 29; (6.3) amended, p. 1324, § 1, effective May 25. L. 97: (6.2) amended, p. 805, § 1, effective May 20. L. 99: (6.5) and (7)(a) amended, p. 1400, §§ 3, 4, effective June 4. L. 2000: (8) and (13) amended, p. 307, § 1, effective April 5. L. 2003: (16) added, p. 1795, § 1, effective May 21. L. 2007: (3.7), (6.4), (6.7), (6.9), (15.1), and (15.5) added, p. 717, § 1, effective May 3.

Editor's note: For the complete initiated measure and votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

Cross references: For the legislative declaration contained in the 1999 act amending subsections (6.5) and (7)(a), see section 1 of chapter 338, Session Laws of Colorado 1999.

ANNOTATION

The term "dominant eminent domain" means that the power of eminent domain is superior to that of other specific governmental subdivisions of the state, but not the state itself. Absent a contrary definition in the special district provisions, the court assumed that the general assembly intended that the term in § 32-

1-1006 (1)(f) has a similar meaning, and, therefore, town and water and sanitation district were not authorized to condemn state-owned property to determine feasibility of recreation and water storage project under that section. *Town of Parker v. Colo. Div. of Parks*, 860 P.2d 584 (Colo. App. 1993).

32-9-104. Liberal construction. This article being necessary to secure and preserve the public health, safety, and general welfare, the rule of strict construction shall have no application to this article, but it shall be liberally construed to effect the purposes and objects for which this article is intended.

Source: L. 69: p. 731, § 1. C.R.S. 1963: § 89-20-62.

ANNOTATION

Applied in *Reg'l Transp. Dist. v. Charnes*, 660 P.2d 24 (Colo. App. 1982).

32-9-105. Creation of district. There is hereby created a district to be known and designated as the "Regional Transportation District".

Source: L. 69: p. 715, § 1. C.R.S. 1963: § 89-20-4.

32-9-106. District area. (Repealed)

Source: L. 69: p. 715, § 1. C.R.S. 1963: § 89-20-5. L. 71: p. 981, § 1. L. 73: pp. 985, 988, §§ 2, 1. L. 75: Entire section amended, p. 1300, § 1, effective July 1. L. 77: (2)(a) amended, p. 287, § 60, effective June 29. L. 81: (2)(a.1) added and (2)(b)(I) amended, pp. 1641, 1644, §§ 2, 3, effective May 28. L. 86: (3) added, p. 1070, § 1, effective March 20. L. 91: (3) amended, p. 1071, § 46, effective July 1. L. 92: (1) amended and (4) added, p. 986, § 1, effective July 1; (2)(c)(I)(A) amended, p. 908, § 158, effective January 1, 1993. L. 94: (1) and (2)(d) amended, p. 1339, § 2, effective May 25. L. 96: (1) amended, p. 308, § 2, effective April 15. L. 99: (1) amended, p. 419, § 2, effective April 30. L. 2001: (1) amended and (5) and (6) added, p. 259, § 4, effective November 15. L. 2007: Entire section repealed, p. 836, § 10, effective October 1.

32-9-106.1. District area. (1) (a) Subject to the requirements of paragraph (b) of subsection (2) of this section, the area comprising the district shall consist of the following:

(I) The area within the district on July 1, 2007; and

(II) Any additional area annexed to or included in the district after July 1, 2007, as provided in sections 32-9-106.6, 32-9-106.7, and 32-9-106.8.

(b) The area specified in paragraph (a) of this subsection (1) shall not include any area removed from the district for any reason on or after July 1, 2007.

(2) (a) The board shall ensure that the entire district area shall be depicted on a map and the area's description stated in a written document. In the event of a discrepancy between the area depicted on the map and the description of the area stated in the written document, the written document shall be held to be the accurate description of the area.

(b) In depicting and describing the entire district area as specified in paragraph (a) of this subsection (2), the board shall ensure that:

(I) If the district area references an existing county boundary or an existing boundary of an annexation, the district area shall coincide with the existing county boundary or existing boundary of the annexation;

(II) Gaps in the district area shall be avoided by following the most directly referenced parcel or aliquot line;

(III) Subdivided parcels, tracts, or lots that lie fifty percent or more within the district area shall be included in the district area;

(IV) Subdivided parcels, tracts, or lots that lie less than fifty percent within the district area shall not be included in the district area; and

(V) When a previous statutory district area reference is ambiguous or unclear, the district area shall be determined to follow along the boundary of the district area as previously determined by the district.

(c) The map and written document specified in paragraph (a) of this subsection (2) shall be maintained in the district office and shall be open to public inspection and made available for copying.

(d) Copies of the map and written document specified in paragraph (a) of this subsection (2) shall be certified by the secretary of the board and shall be filed with the secretary of state, the division of local government in the department of local affairs, the department of revenue, the transportation and energy committee of the house of representatives, or any successor committee, and the transportation committee of the senate, or any successor committee.

(e) (I) The map and written document specified in paragraph (a) of this subsection (2) shall first be completed on July 1, 2007, and shall be updated no later than thirty days after any additional area is annexed or included in the district as provided for in paragraph (a) of subsection (1) of this section or after any area is removed from the district for any reason.

(II) If the map and written document specified in paragraph (a) of this subsection (2) are updated as specified in subparagraph (I) of this paragraph (e), the new map and written document shall be promptly certified by the secretary of the board and filed as provided in paragraph (d) of this subsection (2). Upon receiving a certified copy of the updated map and written document pursuant to this subparagraph (II), the department of revenue shall communicate with any retailer within the taxing jurisdictions affected by the inclusion of any additional area in or the removal of any area from the district in order to facilitate the administration and collection of taxes within the area comprising the district and to identify all retailers affected by the inclusion or removal of any area. The department shall make copies of any such written document and map available to all taxing jurisdictions in the state, including any special district that imposes a sales tax.

(III) An annexation or inclusion of additional area into the district as provided in sections 32-9-106.6, 32-9-106.7, and 32-9-106.8 shall not become effective until the board updates the map and written document specified in paragraph (a) of this subsection (2) as required in subparagraph (II) of this paragraph (e).

(3) (a) In addition to the map and written document specified in paragraph (a) of subsection (2) of this section, the district shall also ensure that the district area in each county, whether the district is included in an incorporated or unincorporated portion of each county, is depicted on a separate map and its description stated in a separate written

document. In the event of a discrepancy between the area depicted on the map and the description of the area stated in the written document, the written document shall be held to be the accurate description of the area.

(b) The map and written document specified in paragraph (a) of this subsection (3) shall be maintained in the district office and shall be open to public inspection and copying.

(c) Copies of the maps and written documents specified in paragraph (a) of this subsection (3) shall be certified by the secretary of the board and shall be recorded in the office of the county clerk and recorder of each appropriate county. Copies of the map and written document specified in paragraph (a) of this subsection (3) shall also be filed with the secretary of state, the division of local government in the department of local affairs, the department of revenue, the transportation and energy committee of the house of representatives, or any successor committee, and the transportation committee of the senate, or any successor committee.

(d) (I) The map and written document specified in paragraph (a) of this subsection (3) shall first be completed on July 1, 2007, and shall be updated no later than thirty days after any additional area in a county is annexed or included in the district as provided for in paragraph (a) of subsection (1) of this section or after any area in a county is removed from the district for any reason.

(II) If a map and written document specified in paragraph (a) of this subsection (3) is updated as specified in subparagraph (I) of this paragraph (d), the new map and written document shall be promptly certified by the secretary of the board and recorded as provided in paragraph (c) of this subsection (3).

Source: L. 2007: Entire section added, p. 831, § 1, effective May 14.

32-9-106.3. Additional district areas - rights-of-way - Douglas county. (Repealed)

Source: L. 94: Entire section added, p. 1328, § 1, effective May 25. **L. 96:** (3)(a)(II)(B) amended, p. 1079, § 2, effective May 23. **L. 2007:** Entire section repealed, p. 836, § 10, effective October 1.

32-9-106.4. Additional district areas - Adams county. (Repealed)

Source: L. 96: Entire section added, p. 306, § 1, effective April 15; (2)(a)(II)(B) amended, p. 1079, § 3, effective May 23. **L. 2006:** Entire section repealed, p. 836, § 2, effective May 4.

32-9-106.5. Additional district areas - Weld county. (Repealed)

Source: L. 98: Entire section added, p. 1269, § 1, effective June 1. **L. 2006:** Entire section repealed, p. 836, § 2, effective May 4.

32-9-106.6. Additional district areas as a result of annexation. (1) Subject to the requirements of section 32-9-106.1 (2) (e) (III), in addition to the areas described in section 32-9-106.1, the following areas are included in the district:

(a) Repealed.

(b) Area that is annexed by a municipality on or after May 25, 1994, if the municipality or part of the municipality was in the district at the time of the annexation. This annexed area shall also be included in the following districts automatically upon annexation:

(I) The Denver metropolitan major league baseball stadium district, if the municipality to which the area is annexed is in such district; and

(II) The Denver metropolitan scientific and cultural facilities district, if the municipality to which the area is annexed is in such district.

(2) Repealed.

Source: **L. 94:** Entire section added, p. 1328, § 1, effective May 25. **L. 96:** IP(2) and (2)(b) amended, p. 1080, § 4, effective May 23. **L. 2007:** IP(1) amended, p. 834, § 4, effective May 14; (1)(a) and (2) repealed, p. 836, § 10, effective October 1.

32-9-106.7. Additional district area - petition or election - required filings - definitions. (1) Subject to the requirements of section 32-9-106.1 (2) (e) (III), the following areas may be included in the district according to the terms set forth in this section:

(a) For any parcel of land thirty-five acres or more that is located in the incorporated or unincorporated portion of any county and has a boundary that is contiguous to any boundary of the district, the land may be included in the district upon presentation to the board of a petition signed by one hundred percent of the owners of the land sought to be included. The petition shall contain a legal description of the land, shall state that assent to the inclusion is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for the conveyance of land.

(b) For any area in an incorporated or unincorporated portion of any county containing multiple parcels of land, any of which is less than thirty-five acres and which area is contiguous to any boundary of the district, the area may be included in the district after one of the following conditions is met:

(I) One hundred percent of the owners of the land within the specified area, including the owners of any land constituting a planned unit development or subdivision, submit a petition to the board seeking inclusion in the district. The petition shall contain a legal description of the land, shall state that assent to the inclusion is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for the conveyance of land.

(II) (A) A petition requesting an election for the purpose of including the specified area in the district signed by at least eight percent of the eligible electors who reside within the geographic boundaries of the area is submitted to the board. The petition shall contain a legal description of the area; and

(B) The board authorizes an election to be held in the area sought to be included and a majority of those registered electors, as defined in section 1-1-104 (35), C.R.S., who reside within the geographic boundaries of the area and who vote in such election, approve the inclusion of the area in the district.

(c) (Deleted by amendment, L. 2007, p. 623, § 1, effective April 26, 2007.)

(1.5) (a) As used in this subsection (1.5), "area" means:

(I) All or any portion of a county entirely outside the boundaries of the district; or

(II) Portions of a county that are not within the boundaries of the district when other portions of the county are within the boundaries of the district.

(b) Subject to the requirements of section 32-9-106.1 (2) (e) (III), the area that is contiguous to any boundary of the district may be included in the district according to the following terms:

(I) An election is requested for the purpose of including the area in the district by one of the following methods:

(A) A petition signed by at least eight percent of the eligible electors in both incorporated and unincorporated portions of the area who reside within the geographic boundaries of the area is submitted to the board. The petition shall contain a legal description of the area to be included within the district.

(B) A resolution by the board of county commissioners of the county to hold an election for the purpose of including the area, including municipalities and home rule municipalities, in the district is submitted to the board of directors of the district. The resolution shall contain a legal description of the area to be included within the district.

(II) The board authorizes an election to be held at the same time for both the incorporated and unincorporated portions of the area seeking to be included in the district and a majority of those registered electors, as defined in section 1-1-104 (35), C.R.S., who reside within the geographic boundaries of the area and who vote in the election approve the inclusion of the area in the district.

(2) No election shall be held for inclusion of any area into the district pursuant to this section unless the board of directors of the district first resolves to accept the area if the election is successful. No petition for the inclusion of any area into the district shall be accepted except upon majority vote of the board of directors of the district.

(3) (a) A petition submitted to the voters pursuant to this section shall be filed with the board at least one hundred twenty days before the election at which the ballot question is submitted to a vote. Upon receiving such petition, the board shall designate an election official to conduct the election and provide a copy of the petition to such official. Upon declaring the petition sufficient, the board shall submit the petition along with the ballot question to the coordinated election official in accordance with section 1-7-116, C.R.S., and the coordinated election official shall conduct the election.

(b) Any ballot for any election authorized by this section shall include a description of the specified area proposed to be included in the district and the current rate of sales tax levied by the regional transportation district.

(c) The ballot shall contain the following question: "Shall the area described in the ballot be included in the regional transportation district?"

(d) An election held pursuant to this section shall be conducted in accordance with articles 1 to 13 of title 1, C.R.S., and any other requirements of this section. The election shall be run by the office of the clerk and recorder of the county containing the area seeking inclusion in the district. The ballot question shall be submitted to a vote pursuant to this section only at a state general election or, if the board so determines, at a special election held on the first Tuesday in November of an odd-numbered year. The district shall pay for all costs associated with the election.

(e) The board shall call the election authorized by this section by resolution. The resolution shall state:

- (I) The object and purpose of the election;
 - (II) A description of the area proposed to be included in the district;
 - (III) The date of the election; and
 - (IV) The name of the designated election official who is responsible for conducting the election pursuant to articles 1 to 13 of title 1, C.R.S.
- (4) Repealed.

Source: **L. 99:** Entire section added, p. 417, § 1, effective April 30. **L. 2000:** (4) added, p. 422, § 3, effective August 2. **L. 2003:** (1)(b)(II)(B) and (1)(c) amended, p. 821, § 1, effective April 1. **L. 2006:** (1.5) added, p. 835, § 1, effective May 4. **L. 2007:** (1)(a), IP(1)(b), and (1)(c) amended, p. 623, § 1, effective April 26; IP(1) and IP(1.5)(b) amended, p. 834, § 5, effective May 14; (4) repealed, p. 836, § 10, effective October 1.

32-9-106.8. Additional district areas - annexation of unincorporated territory that is entirely surrounded by the district. (1) Subject to the requirements of section 32-9-106.1 (2) (e) (III), when any unincorporated territory is entirely contained within the boundaries of the district, the board may, by resolution, annex the territory to the district. The board shall give notice of a proposed annexation resolution by publishing a copy of the resolution once a week for four successive weeks in a newspaper of general circulation in the territory proposed to be annexed. The board shall also send a copy of the proposed annexation resolution by registered mail to the board of county commissioners and county attorney of the county containing the territory to be annexed, to any special district or school district having territory within the territory to be annexed, and to the executive director of the department of revenue. The first publication of the notice and the mailing of the proposed annexation resolution shall occur at least thirty days prior to the final adoption of the resolution, and the board shall allow interested persons to testify for or against the resolution at a public hearing held prior to the final adoption of the resolution.

(2) No territory may be annexed pursuant to subsection (1) of this section if any part of the district boundary or area surrounding the territory consists of public rights-of-way, including streets and alleys, that are not immediately adjacent to the district on the side of the right-of-way opposite to the territory.

Source: L. 2001: Entire section added, p. 821, § 1, effective August 8. L. 2007: (1) amended, p. 834, § 6, effective May 14.

32-9-106.9. District area - town of Castle Rock in Douglas county. (1) In consideration of the fact that various noncontiguous parcels containing less than twenty percent of the residents of the town of Castle Rock are included in the district, the voters within the boundaries of the town of Castle Rock may elect to consolidate the status of the town of Castle Rock as completely included in or completely excluded from the boundaries of the district at an election held pursuant to subsection (3) of this section.

(2) The outcome of any election held pursuant to subsection (3) of this section shall apply to any area that is annexed by the town of Castle Rock on or after the date of such election, regardless of whether the area was included within the boundaries of the district before the annexation.

(3) Pursuant to the provisions of subsection (1) of this section, the area included within the boundaries of the town of Castle Rock may be included in or excluded from the district if the following requirements are met:

(a) Two proposals, one to include the area and one to exclude the area, are initiated by any of the following methods:

(I) Two petitions, one requesting an election for the purpose of including the area in the district and one requesting an election for the purpose of excluding the area from the district, are each signed by at least five percent of the registered electors within the town of Castle Rock and submitted to the governing body of the town of Castle Rock; or

(II) The governing body of the town of Castle Rock adopts two resolutions, one to hold an election for the purpose of including the area in the district and one to hold an election for the purpose of excluding the area from the district.

(b) An election is held and conducted in accordance with articles 1 to 13 of title 1 or article 10 of title 31, C.R.S., as applicable, and the following requirements:

(I) The election is held either at the odd-year election held on the first Tuesday in November of 2005 or any regular local district election for the town of Castle Rock held thereafter, as determined by the governing body of the town of Castle Rock. The town of Castle Rock shall pay the costs of such elections.

(II) One ballot question provides for all of the registered electors in the town of Castle Rock to vote for or against the inclusion of the proposed area in the district and one ballot question provides for all of the registered electors in the town of Castle Rock to vote for or against the exclusion of the area from the district.

(III) Each ballot question specifies that the area proposed to be included in or excluded from the district, as applicable, is all of the area within the boundaries of the town of Castle Rock.

(IV) Each ballot question contains the current rates of sales and use tax levied by the district.

(V) The ballot contains both of the following questions:

(A) "Shall the area described in the ballot be included in the regional transportation district and subject to taxation by the district?"; and

(B) "Shall the area described in the ballot be excluded from the regional transportation district and not subject to taxation by the district?";

(4) (a) In the event that either the ballot question to include all of the area within the boundaries of the town of Castle Rock in the district or the ballot question to exclude all of the area within the boundaries of the town of Castle Rock from the district is approved by a majority of the registered electors who voted in the election and the other ballot question is not approved by a majority of the registered electors who voted in the election, the ballot question that was approved by a majority of the registered electors who voted in the election shall take effect.

(b) In the event that both the ballot question to include all of the area within the boundaries of the town of Castle Rock in the district and the ballot question to exclude all of the area within the boundaries of the town of Castle Rock from the district are approved by a majority of the registered electors who voted in the election, only the ballot question that receives the larger number of votes in favor of the question shall take effect.

(c) In the event that neither the ballot question to include all of the area within the boundaries of the town of Castle Rock in the district nor the ballot question to exclude all of the area within the boundaries of the town of Castle Rock from the district is approved by a majority of registered electors who voted in the election, neither ballot question shall take effect and the boundaries of the district shall continue to include the parts of the town of Castle Rock that were included in the district before such election.

(5) In the event that the registered electors of the town of Castle Rock elect to be included within or excluded from the boundaries of the district, the town of Castle Rock shall grant the department of revenue any costs up to the amount of seventeen thousand five hundred dollars it incurs in carrying out the requirements of this section.

(6) Under no circumstance shall any moneys from the general fund be appropriated to the department of revenue or any other department to cover the costs incurred in carrying out the requirements of this section.

Source: L. 2004: Entire section added, p. 680, § 1, effective August 4.

32-9-107. Mass transportation system. The district, acting by and through the board, is authorized to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of the district.

Source: L. 69: p. 715, § 1. **C.R.S. 1963:** § 89-20-6. **L. 72:** p. 483, § 8. **L. 83:** Entire section R&RE, p. 1282, § 1, effective June 3. **L. 94:** Entire section amended, p. 1326, § 8, effective May 25.

ANNOTATION

Applied in Reg'l Transp. Dist. v. Charnes, 660 P.2d 24 (Colo. App. 1982).

32-9-107.5. Regional fixed guideway mass transit system - authorization.

(1) (a) The general assembly hereby finds, determines, and declares that:

(I) The construction of a fixed guideway mass transit system in the Denver metropolitan area is a matter of statewide concern; and

(II) Such a system is necessary for economic development, commerce, and the reduction of air pollution.

(b) The general assembly further finds and declares that the development of mass transportation systems is in the best interests of the citizens of the Denver metropolitan area. The general assembly also believes that such a system should be financed by a mixture of private funds, of federal funds which have been identified for these purposes, and of receipts from a sales tax on the residents of the district.

(c) The general assembly further declares that it is the intent of this section that long-range planning continue in order to identify fixed guideway corridors as the demand is demonstrated.

(d) The general assembly further declares that, where practicable, the board should encourage the use of Colorado residents, goods, and services in implementing this section.

(2) and (3) Repealed.

Source: L. 87: Entire section added, p. 1247, § 3, effective May 22. **L. 92:** (2)(b) and (3)(b) amended, p. 1345, § 1, effective July 1. **L. 94:** (1)(b) and (1)(c) amended and (2) and (3) repealed, pp. 1324, 1327, §§ 2, 9, effective May 25.

Cross references: For priority of civil actions arising out of the planning, development, financing, or construction of the Denver metropolitan area mass transportation system, see article 85 of title 13.

32-9-107.7. Regional fixed guideway mass transit systems - construction - authorization. (1) Any action of the board relating to the authorization of the construction of a regional fixed guideway mass transit system in any corridor shall require the affirmative vote of a two-thirds majority of the board membership. The board shall take no action relating to the construction of a regional fixed guideway mass transit system until after such system has been approved by the designated metropolitan planning organization. Each component part or corridor of such system shall be separately approved by the metropolitan planning organization. Such action shall include approval of the method of financing and the technology selected for such projects.

(2) Repealed.

Source: L. 90: Entire section added, p. 1511, § 1, effective May 23. L. 2002: (2) repealed, p. 866, § 1, effective August 7.

32-9-108. Authorizing election. (Repealed)

Source: L. 69: p. 716, § 1. C.R.S. 1963: § 89-20-7. L. 70: p. 292, § 98. L. 72: p. 482, § 6. L. 73: pp. 986, 991, §§ 3, 1. L. 80: (3) added, p. 679, § 1, effective May 1. L. 82: (3) repealed, p. 502, § 8, effective April 15. L. 83: Entire section repealed, p. 1284, § 6, effective June 3.

32-9-109. Board of directors. (Repealed)

Source: L. 69: p. 716, § 1. C.R.S. 1963: § 89-20-8. L. 70: p. 292, § 99. L. 73: p. 988, § 2.

Editor's note: This section was repealed in 1980 by initiative, effective January 1, 1983. For the complete initiated measure and votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

32-9-109.5. Board of directors - membership - powers. (1) Effective January 1, 1983, the governing body of the district shall be a board of directors consisting of fifteen persons, each of whom is an eligible elector residing within the director district.

(2) Members of the board of directors shall be elected as provided in section 32-9-111.

(3) The terms of members of the board serving on December 31, 1982, shall expire on January 1, 1983, and a new board, constituted pursuant to this section shall take office on January 1, 1983, after having been elected pursuant to section 32-9-111.

(4) All powers, duties, functions, rights, and privileges vested in the district shall be exercised and performed by the board; except that the exercise of any executive, administrative, or ministerial powers may be delegated by the board to officers and employees of the district.

Source: Initiated 80: Entire section added, effective upon proclamation of the Governor, December 19, 1980. L. 92: (1) amended, p. 908, § 159, effective January 1, 1993.

Editor's note: For the complete initiated measure and votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

32-9-110. Initial board. (Repealed)

Source: L. 69: p. 716, § 1. C.R.S. 1963: § 89-20-9. L. 70: p. 292, § 100. L. 73: p. 989, §§ 3, 4. L. 75: IP(1) and (2) amended, p. 1303, § 2, effective July 1.

Editor's note: This section was repealed in 1980 by initiative, effective January 1, 1983. For the complete initiated measure and votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

32-9-111. Election of directors - dates - terms. (1) (a) After the federal census in 1980 and each federal census thereafter, the board of directors shall apportion the composition of the board into compact and contiguous director districts so that the fifteen directors will represent, to the extent practical, the people of the district on the basis of population. Such apportionment shall be completed before March 15 of the second year following that in which the federal census is taken and shall be made only upon the affirmative vote of two-thirds of the total membership of the board. If such apportionment is not completed before March 15 of such year, the legislative council, with the assistance of the director of research of the legislative council and the director of the office of legislative legal services, shall, by April 15, apportion the composition of the board into compact and contiguous director districts so that the fifteen directors will represent, to the extent practicable, the people of the district on the basis of population. The apportionment recommended by the legislative council shall be submitted to the general assembly which shall approve or amend the apportionment before May 1 of such year.

(b) If a petition or election results in the inclusion of an area within the district pursuant to section 32-9-106.7, the board shall, within forty-five days, vote to include the new area in one or more existing adjacent director districts based, to the extent practical, on population. The vote by the board shall require a two-thirds majority.

(2) Such director districts shall be comprised of general election precincts established by the boards of county commissioners of those counties, all or part of which are within the district, and by the election commission of the city and county of Denver. No general election precinct may be split into two or more director districts.

(3) The regular district election shall be held jointly with the state general election in every even-numbered year as provided in section 1-7-116, C.R.S., and the first election shall be held in 1982. Each director shall be elected by the eligible electors residing within the director district.

(4) Except as provided in this subsection (4), the regular term of office of directors shall be four years. At the election held in 1982, eight members of the board shall be elected for two-year terms. The two-year terms shall be determined by lot at the first meeting of the board following the apportionment of director districts. Seven members shall be elected for four-year terms.

(5) (a) Except as provided in this subsection (5), nominations for an election of directors shall be made in accordance with the general election laws of the state. Nominations for directors shall be made by petition and filed in the office of the secretary of state in the manner provided for independent candidates pursuant to section 1-4-802 and part 9 of article 4 of title 1, C.R.S. The petitions shall be signed by at least two hundred fifty eligible electors residing within the director district in which the officer is to be elected.

(b) to (d) (Deleted by amendment, L. 92, p. 908, § 160, effective January 1, 1993.)

(e) It is the intent of the people of the state of Colorado that the election of directors be conducted in the most efficient and economical manner which is practicable.

(f) Every candidate for director shall comply with the provisions of article 45 of title 1, C.R.S.

(6) (Deleted by amendment, L. 92, p. 908, § 160, effective January 1, 1993.)

Source: L. 69: p. 717, § 1. C.R.S. 1963: § 89-20-10. L. 75: Entire section amended, p. 1304, § 3, effective July 1. **Initiated 80:** Entire section R&RE, effective upon proclamation of the Governor, December 19, 1980. L. 81: (1) and (5)(a)(III) amended, p. 1645, § 1, effective June 8. L. 82: (1) amended and (5)(f) added, pp. 496, 497, §§ 1, 2, effective March 25. L. 83: (6) amended, p. 1282, § 2, effective June 3. L. 88: (1)(a) amended, p. 312, § 23, effective May 23. L. 90: (1)(a) amended, p. 325, § 5, effective June 9. L. 91: (5)(a) amended, p. 799, § 1, effective March 27. L. 92: (3), (5)(a) to (5)(d), and (6) amended, p. 908, § 160, effective January 1, 1993. L. 94: (1)(b) amended, p. 1339, § 3, effective May 25; (3) amended, p. 1643, § 69, effective May 31. L. 95: (3) amended, p. 1107, § 49, effective May 31. L. 96: (1)(b) amended, p. 308, § 3, effective April 15. L. 98: (1)(b) amended, p. 1271, § 2, effective June 1. L. 99: (1)(b) amended, p. 419, § 3, effective April 30. L. 2001: (5)(a) amended, p. 1005, § 16, effective August 8. L. 2007: (1)(b) amended, p. 835, § 7, effective May 14.

Editor's note: For the complete initiated measure and the votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

32-9-112. Vacancies - appointments - recall. (1) A change of residence of a member of the board to a place outside the director district from which the member was elected shall automatically create a vacancy on the board. Upon a vacancy occurring for any reason other than normal expiration of a term, the vacancy shall be filled by appointment by the board of county commissioners of the county wherein the director district is located or, in the case of a member elected in Denver, by the mayor of the city and county of Denver, with the approval of the city council of said city and county. In the case of a director district which contains territory in two or more counties, or in the city and county of Denver and in one or more counties, the vacancy shall be filled by appointment by the board of county commissioners of the county wherein the largest number of eligible electors of the director district reside; except that, if the largest number of eligible electors of the director district reside in the city and county of Denver, the vacancy shall be filled by appointment by the mayor of the city and county of Denver, with the approval of the city council of the city and county.

(1.5) Any director appointed shall serve until the next regular election, at which time the vacancy shall be filled by election for any remaining unexpired portion of the term.

(2) Effective July 1, 1983, any member of the board may be recalled from office by the eligible electors of the director district such member represents pursuant to the provisions of part 1 of article 12 of title 1, C.R.S.

(3) Repealed.

Source: L. 69: p. 717, § 1. C.R.S. 1963: § 89-20-11. L. 70: p. 293, § 101. L. 73: p. 989, § 5. **Initiated 80:** Entire section R&RE, effective upon proclamation of the Governor, December 19, 1980. L. 81: (3) added, p. 1646, § 2, effective June 8. L. 82: (3) amended, p. 497, § 3, effective March 25. L. 83: (3) repealed, p. 2051, § 19, effective October 14. L. 92: Entire section amended, p. 909, § 161, effective January 1, 1993.

Editor's note: For the complete initiated measure and the votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

32-9-113. Fidelity bonds. Each director, before entering upon his official duties, shall give a fidelity bond to the district in the sum of ten thousand dollars with good and sufficient surety, to be approved by the governor, conditioned for the faithful performance of the duties of his office. Premiums on all fidelity bonds provided for in this section shall be paid by the district and filed in the office of the secretary of state.

Source: L. 69: p. 717, § 1. C.R.S. 1963: § 89-20-12.

32-9-114. Board's administrative powers. (1) The board has the following administrative powers:

(a) To fix the time and place at which its regular meetings, to be held at least quarterly, shall be held within the district and shall provide for the calling and holding of special meetings;

(b) To adopt and amend bylaws and rules for procedure;

(c) To elect one director as chairman of the board and another director as chairman pro tem of the board, and to appoint one or more persons as secretary and treasurer of the board;

(d) To prescribe a system of business administration, to create necessary offices, and to establish the powers, duties, and compensation of all officers, agents, and employees and other persons contracting with the district, subject to the provisions of section 32-9-117;

(e) To prescribe a method of auditing and allowing or rejecting claims and demands;

(f) To provide a method for the letting of contracts on a fair and competitive basis for the construction of works, any facility, or any project, or any interest therein, or for the performance or furnishing of labor, materials, or supplies as required in this article;

(g) To designate an official newspaper published in the district in the English language; except that nothing in this article shall prevent the board from directing publication in any additional newspaper where it deems that the public necessity may so require;

(h) To make and pass resolutions and orders necessary to carry out the provisions of this article.

Source: L. 69: p. 717, § 1. C.R.S. 1963: § 89-20-13.

32-9-115. Records of board - audits. (1) All resolutions and orders shall be recorded and authenticated by the signature of the presiding officer of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the district, and all corporate acts, which record shall also be a public record. The treasurer shall keep an account of all moneys received by and disbursed on behalf of the district, which shall also be a public record. Any public record of the district shall be open for inspection by any eligible elector of the district, or by any representative of the state, or of any county, city and county, city, or town within the district. All records are subject to audit as provided by law for political subdivisions.

(2) Repealed.

(3) In addition to the audit authorized in subsection (1) of this section and the audit required pursuant to section 29-1-603, C.R.S., at least once every five years, or more frequently in the state auditor's discretion, the state auditor shall conduct or cause to be conducted a performance audit of the district to determine whether the district is effectively and efficiently fulfilling its statutory obligations. The first performance audit shall begin on or after January 1, 2005, and be completed as soon as possible thereafter. Upon the completion of a performance audit, the state auditor shall submit a written report to the legislative audit committee. The cost of the performance audits shall be paid by the district.

Source: L. 69: p. 718, § 1. C.R.S. 1963: § 89-20-14. L. 80: Entire section amended, p. 679, § 2, effective May 1. L. 82: (2) repealed, p. 502, § 8, effective April 15. L. 92: (1) amended, p. 910, § 162, effective January 1, 1993. L. 94: (3) added, p. 1325, § 3, effective May 25. L. 2002: (3) amended, p. 866, § 2, effective August 7. L. 2004: (3) amended, p. 970, § 1, effective August 4.

32-9-116. Meetings of board. (1) All meetings of the board shall be held within the district and shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present.

(2) Repealed.

(3) Effective January 1, 1983, any action of the board shall require the affirmative vote of at least eight members present and voting.

Source: L. 69: p. 718, § 1. C.R.S. 1963: § 89-20-15. L. 82: Entire section amended, p. 497, § 4, effective March 25.

Editor's note: Subsection (2)(b) provided for the repeal of subsection (2), effective January 1, 1983. (See L. 82, p. 497.)

32-9-117. Compensation of directors. (1) Except as otherwise provided in subsection (2) of this section, effective January 1, 1983, each director shall receive a sum of three thousand dollars per annum.

(2) Effective January 1, 2009, each director elected at the 2008 general election or at any general election thereafter and each director appointed to fill a vacancy for an unexpired term of a director elected at the 2008 general election or any election thereafter shall receive

a sum of twelve thousand dollars per annum, payable at the rate of one thousand dollars per month.

(3) No director shall receive any compensation as an officer, engineer, attorney, employee, or any other agent of the district.

(4) Nothing contained in this article shall be construed as preventing the board from authorizing the reimbursement of any director for expenses incurred that appertain to the activities of the district.

Source: L. 69: p. 718, § 1. C.R.S. 1963: § 89-20-16. **Initiated 80:** Entire section R&RE, effective upon proclamation of the Governor, December 19, 1980. L. 81: Entire section amended, p. 1646, § 3, effective June 8. L. 85: Entire section amended, p. 1120, § 1, effective May 10. L. 2008: Entire section amended, p. 305, § 1, effective August 5.

Editor's note: For the complete initiated measure and the votes cast for the adoption or rejection thereof, see L. 81, pp. 2057-2060.

32-9-118. Conflicts in interest prohibited. No director, officer, employee, or agent of the district shall be interested in any contract or transaction with the district except in his official representative capacity.

Source: L. 69: p. 718, § 1. C.R.S. 1963: § 89-20-17.

32-9-119. Additional powers of district. (1) In addition to any other powers granted to the district in this article, the district has the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The district shall be a political subdivision of the state.

(b) To have perpetual existence and succession, subject to the provisions of section 32-9-158;

(c) To adopt, have, and use a seal and to alter same at pleasure;

(d) To sue and be sued;

(e) To enter into any contract or agreement not inconsistent with this article or the laws of this state;

(f) To borrow money and to issue district securities evidencing same;

(g) To refund any loan or obligation of the district and to issue refunding securities therefor;

(h) To purchase, trade, exchange, or otherwise acquire, maintain, and dispose of real property and personal property and any interest therein;

(i) To levy and cause to be collected taxes on all taxable property within the district, subject to the limitations imposed by this article and the laws of the state;

(j) To employ such officers, agents, employees, and other persons necessary to carry out the purposes of this article and to acquire office space, equipment, services, supplies, and insurance necessary to carry out the purposes of this article;

(k) To condemn property for public use;

(l) To establish, maintain, and operate a mass transportation system, subject to the provisions of section 32-9-119.5 for the operation of the district's bus operations, and all necessary facilities relating thereto across or along any public street, highway, bridge, viaduct, or other public right-of-way, or in, upon, under, or over any vacant public lands without first obtaining a franchise from the public body having jurisdiction over the same; except that the district shall cooperate with any public body having such jurisdiction and the district shall promptly restore any such street, highway, bridge, viaduct, or other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such a manner as to impair completely or unnecessarily the usefulness thereof;

(1.5) To implement the provisions of section 32-9-119.5 concerning the operation of the district's bus operations;

(m) To fix and from time to time increase or decrease the revenues for services and facilities provided by the district; to pledge revenues for the payment of special district

obligation bonds that have been issued in accordance with this article; and to enforce the collection of such revenues;

(n) To deposit any moneys of the district not then needed in the conduct of district affairs in any banking institution within or without the district or in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the moneys of the district. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(o) To invest any surplus money in the district's treasury, including moneys in a sinking or reserve fund established for the purpose of retiring any district securities, not required for immediate necessities of the district in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.;

(p) To sell from time to time such securities thus purchased and held;

(q) To accept grants or loans from the federal government, the state government, or any political subdivision thereof, to enter into contracts and cooperate with the federal government, the state government, or any political subdivision thereof, and to do all things necessary, not inconsistent with this article or the laws of this state, in order to avail itself of such aid, assistance, and cooperation under any federal or state legislation;

(r) To enter into joint operating or service contracts, and acquisition, improvement, equipment, or disposal contracts with any public body in the district concerning any mass transportation facility whether acquired by the district or by the public body; to perform such contracts; and to accept grants and contributions from any public body or any other person in connection therewith;

(s) To enter upon any land within the district to make surveys, borings, soundings, and examinations for the purposes of the district;

(t) To have the management, control, and supervision of all business and affairs relating to any mass transportation facility authorized in this article, subject to the provisions of section 32-9-119.5 for the operation of the district's bus operations, or otherwise concerning the district, and of the acquisition, improvement, equipment, operation, maintenance, and disposal of any property relating to any such mass transportation facility; except that the oversight of operations and facilities for safety purposes as required by 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight", and article 18 of title 40, C.R.S., shall be subject to the jurisdiction of the public utilities commission of the state of Colorado;

(u) To enter into contracts of indemnity and guaranty;

(v) To secure financial statements, appraisals, economic feasibility reports, and valuations of any type relating to the mass transportation system of the district or any facility therein;

(w) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this article, or in the performance of the district's covenants or duties, or in order to secure the payment of district securities;

(x) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article;

(y) To exercise all or any part or combination of the powers granted in this article.

(1.9) Repealed.

(2) (a) To provide revenue to finance the operations of the district, to defray the cost of construction of capital improvements and acquisition of capital equipment, and to pay the interest and principal on securities of the district, the board, for and on behalf of the district after approval by election held pursuant to articles 1 to 13 of title 1, C.R.S., and, with respect to any tax rate increase that takes effect on or after March 2, 2009, in accordance with section 32-9-119.3, shall have the power to levy uniformly throughout the district a sales tax at any rate that may be approved by the board, upon every transaction or other incident with respect to which a sales tax is now levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that:

(I) Such sales tax may be levied on vending machine sales of food that are otherwise exempt pursuant to section 39-26-714 (2), C.R.S., and on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S.;

(II) The board shall continue to levy a sales tax on the sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.;

(III) The sale of cigarettes shall be exempt from such sales tax.

(b) and (b.5) Repealed.

(c) Sales tax levied pursuant to this subsection (2) shall be collected, administered, and enforced as follows:

(I) The collection, administration, and enforcement of said sales tax shall be performed by the executive director of the department of revenue in the same manner as the collection, administration, and enforcement of the state sales tax imposed under article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of said tax as provided in section 39-26-105, C.R.S.

(I.5) (A) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to this subsection (2). A vendor or retailer that has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(B) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to this subsection (2) in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(II) The executive director of the department of revenue shall administer, collect, and distribute any sales tax imposed in conformity with this article. The executive director of the department of revenue shall make monthly distributions of such sales tax collections to the district. The department of revenue shall retain an amount not to exceed the net incremental cost of such administration, collection, and distribution and shall transmit such amount to the state treasurer, who shall credit the same to the general fund; except that the amount retained by the department of revenue in any given fiscal year commencing on or after July 1, 1994, shall not exceed the amount retained by the department in the 1993-94 fiscal year, as adjusted in accordance with changes in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area. The cost of such administration, collection, and distribution shall be the audited net incremental cost thereof reduced by the amount of interest earned on such sales tax collections prior to distribution to the district.

(3) to (8) Repealed.

Source: L. 69: p. 718, § 1. C.R.S. 1963: § 89-20-18. L. 71: p. 978, § 2. L. 73: p. 991, § 2. L. 79: (1)(n) amended, p. 1626, § 42, effective June 8. L. 80: (1.9) added and (2) R&RE, p. 680, §§ 3, 4, effective May 1. L. 82: (1.9), (2)(b)(II)(B), (2)(b)(VI), and (2)(b)(VII) repealed, (2)(a), (2)(b)(I), (2)(b)(II), and (2)(b)(III) amended, and (2)(b)(V) R&RE, pp. 502, 498, 500, §§ 8, 1, 2, 3, effective April 15; (2)(b)(II)(B) RC&RE, p. 643, § 3, effective June 1. L. 83: (2)(a) amended, p. 1209, § 2, effective May 1; (1)(b), (2)(b)(I), (2)(b)(II)(B), and (2)(b)(III)(A) amended, p. 1282, § 3, effective June 3. L. 87: (2)(b)(III)(A) amended and (3) to (8) added, pp. 1252, 1249, §§ 5, 4, effective May 22; (2)(c)(II) amended, p. 1240, § 1, effective January 1, 1988. L. 88: (1)(l) and (1)(t) amended and (1)(l.5) added, p. 1156, § 3, effective May 3. L. 89: (1)(o) amended, p. 1120, § 41, effective July 1. L. 91: (8) amended, p. 1919, § 45, effective June 1; (2)(b)(V) repealed, p. 883, § 1, effective June 5. L. 92: (2)(a), (2)(b)(III), and (2)(b)(IV) amended, p. 910, § 163, effective January 1, 1993. L. 94: (2)(c)(II) amended, p. 318, § 4, effective March 29; (2)(b) and (3) to (8) repealed, p. 1327, § 9, effective May 25. L. 97: (2)(b.5)

added, p. 805, § 2, effective May 20; (1)(t) amended, p. 932, § 2, effective August 6. **L. 99:** (2)(a) amended, p. 982, § 5, effective May 28; (2)(a) amended, p. 1357, § 6, effective January 1, 2000; (2)(c)(I.5) added, p. 14, § 7, effective January 1, 2000. **L. 2000:** (1)(m) amended, p. 307, § 2, effective April 5. **L. 2002:** IP(2)(a) amended, p. 714, § 4, effective August 7; IP(2)(a) amended, p. 734, § 4, effective August 7. **L. 2004:** (2)(a) amended, p. 1039, § 6, effective July 1. **L. 2009:** IP(2)(a) amended, (SB 09-108), ch. 5, p. 49, § 4, effective March 2; (2)(a)(III) added, (HB 09-1342), ch. 354, p. 1847, § 6, effective July 1.

Editor's note: (1) Subsection (2)(b.5)(II)(B) provided for the repeal of subsection (2)(b.5), effective November 4, 1997, when the registered electors of the district voted negatively on the ballot question set forth in § 32-9-119.3 (2)(b).

(2) Amendments to subsection (2)(a) by House Bill 99-1015 and House Bill 99-1271 were harmonized.

ANNOTATION

Law reviews. For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

The regional transportation district is authorized to levy a sales tax which is administered by the executive director of the department of revenue and it is immaterial whether it is called a sales tax or a use tax. *Howard Elec. v. State Dept. of Rev.*, 748 P.2d 1321 (Colo. App. 1987).

RTD sales taxes may be imposed only upon transactions subject by statute to the imposition of sales or use taxes. *Reg'l Transportation District v. Martin Marietta Corp.*, 805 P.2d 1102 (Colo. 1991).

Purchase of building supplies by construction contractor is subject to RTD sales or use

tax when contractor itself is ultimate consumer of such materials. *Howard Elec. v. State Dept. of Rev.*, 748 P.2d 1321 (Colo. App. 1987), *aff'd* in part and *rev'd* in part on other grounds, 771 P.2d 475 (Colo. 1989).

Interest can be charged on unpaid RTD sales tax just as it is for regular sales tax under § 39-21-109. *Howard Elec. v. State Dept. of Rev.*, 748 P.2d 1321 (Colo. App. 1987).

Limited waivers of limitation period will be strictly construed. Final determination after the deadline of waiver of limitation revived the statute of limitation bar. *Howard Elec. v. Dept. of Rev.*, 771 P.2d 475 (Colo. 1989).

32-9-119.1. Transportation expansion plan - utility relocation - legislative declaration - definitions. (1) The general assembly hereby finds and declares that:

(a) The district has been authorized to construct a transportation expansion plan adopted by the board and approved by the voters on November 2, 2004. The transportation expansion plan anticipates that construction will be completed on all fixed guideway corridors in a twelve-year period.

(b) The scheduling and timely performance of the transportation expansion plan partially depends on coordination with utility companies for the prompt performance of utility relocation work necessitated by construction of the transportation expansion plan.

(c) Increased coordination between the district and utility companies is in the public interest, and prompt performance of utility relocation work within the adopted plan schedule will reduce delays and costs of construction. Utility relocation work shall be undertaken in a manner that minimizes the relocation cost and the disruption of utility services.

(2) (a) The district shall negotiate with any affected utility company in each fixed guideway corridor. In coordination with the district, each utility company shall determine whether a district contractor or the utility company shall be responsible for the relocation of its utility facilities. In making such a determination, the utility company shall take into consideration the location of the utility facilities, complexity of the relocation, and timing of the need for relocation work.

(b) The district and the utility company shall make such arrangements for funding utility relocations as are specified in the easements, licenses, franchises, or other property interests and rights of use held by the district or the utility company. Nothing in this section

is intended to alter existing property agreements, licenses, or other interests of the district and utility company regarding the obligation to pay for utility relocation.

(3) (a) The district may enter into fixed guideway corridor utility relocation agreements with a utility company. Such agreements shall be for the performance of all services required to assure timely relocation of utilities according to the most current written standards and practices established by the utility company at the time the agreement is entered into, unless other standards are mutually selected by the district and the utility company.

(b) A fixed guideway corridor utility relocation agreement shall include a schedule for design, review, dispute resolution, and construction.

(c) (I) A fixed guideway corridor utility relocation agreement may provide for a utility company betterment, including, but not limited to, increased capacity and extensions of services; except that a betterment shall not materially delay project construction and shall be at the expense of the utility company.

(II) As used in this section, "betterment" means any upgrade of the utility facility being relocated that is not attributable to project construction and is made solely for the benefit of and at the election of the utility.

(d) A fixed guideway corridor utility relocation agreement may incorporate reasonable and appropriate conditions, including, but not limited to, conditions for ensuring:

(I) The prompt performance of utility relocation work by either the district, utility company, or contractor for the transportation expansion plan, as specified in the agreement;

(II) The cooperation of the utility company with the contractor for the transportation expansion plan; and

(III) The payment by the utility company of any damages caused by the company's delay in the performance of the relocation work or interference with the performance of the project by any other contractor, except when such delay or interference is caused by a force majeure.

(4) All design and construction of utility relocation shall be subject to review and approval by district and utility company engineers.

(5) (a) If the district and utility company are unable to reach a fixed guideway corridor utility relocation agreement, or if utility relocation disputes arise under an agreement, the district and utility company shall each designate an official, at no level lower than district corridor project manager and utility company chief engineer, to resolve the differences.

(b) If the differences cannot be resolved pursuant to paragraph (a) of this subsection (5), utility relocation disputes shall be heard in the following district courts for each of the following corridors and projects:

(I) For union station, Denver county district court;

(II) For the U.S. 36 corridor, Boulder county district court;

(III) For the west corridor, Jefferson county district court;

(IV) For the gold line corridor, Jefferson county district court;

(V) For the east corridor, Denver county district court;

(VI) For the I-225 corridor, Arapahoe county district court;

(VII) For the southwest corridor, Arapahoe county district court; and

(VIII) For the north corridor, Adams county district court.

(c) It shall be presumed that there will be irreparable harm to the public if an injunction is not granted to require utility relocation, regardless of a later determination as to which party is responsible for the cost of relocation.

(6) (a) The district shall provide a utility company with detailed maps, drawings, plans, and profiles of the district's proposed improvements in each fixed guideway corridor in the transportation expansion plan at:

(I) The conclusion of preliminary engineering;

(II) Sixty percent completion of final design;

(III) The conclusion of final design; and

(IV) Such other times as may be requested by the utility company.

(b) The district shall solicit information as to the location of utility facilities within the fixed guideway corridor from the utility company.

(c) For all utilities identified on any documents provided to or in the possession of the district, the district shall provide written notice to a utility company as soon as practicable of a transportation expansion plan that will require the relocation of the company's facilities.

(d) (I) Where documents have been in the possession of the district during final design of a fixed guideway corridor, the district shall provide notice to a utility company of a transportation expansion plan that will require the relocation of the company's facilities not later than one year before relocation is required for each relocation on each fixed guideway corridor.

(II) Notwithstanding subparagraph (I) of this paragraph (d), if major electrical facilities must be relocated, the district shall provide notice to a utility company at least eighteen months in advance of the required relocation date or the district shall pay the cost of any temporary relocation measures required to maintain service to utility customers. If temporary relocation measures are necessary, such measures shall be provided at the lowest possible cost during construction and relocation.

(III) For any discovery of utilities during construction that are not identified on documents provided to or in possession of the district, the district and the utility company shall confer within forty-eight hours of discovery to determine appropriate relocation procedures.

(IV) The district and utility company shall, within ten days of discovery, enter into an agreement as to the manner in which any necessary relocation will be accomplished and the party that shall perform the work.

(V) If an agreement is reached and if the utility company performs under the agreement, the utility company shall not be liable for delay damages as provided in subsection (8) of this section.

(7) (a) For purposes of ensuring continuation of required utility services to the residents of the district during and after construction of the fixed guideway corridors, the district may provide, and condemn when necessary, replacement easements for the relocation of utilities. If such replacement easements are necessary, the district shall endeavor to meet any existing standards of the utility for easements. Any necessary condemnation shall be considered a transportation project undertaken by the district. The cost of replacement easements shall be paid:

(I) By the district in those instances where the district has acquired, at no extra cost, an easement previously owned and occupied by the utility; or

(II) By the utility if the district has compensated the utility for a previously occupied easement from which the utility is being relocated.

(b) Notwithstanding any local law to the contrary, aboveground utility facilities shall be relocated aboveground and underground utility facilities shall be relocated underground. To minimize the cost of the reconfiguration of the utility facility, the replacement easement shall be acquired as close as possible to the original location of the facility that must be relocated.

(8) (a) Where the utility company has elected to perform relocation work or where there has been no agreement reached between a utility company and the district, the utility company shall be liable to the district for actual damages suffered by the district as a direct result of the utility company's delay in the performance of any utility relocation work or as a direct result of the utility company's interference with the performance of fixed guideway corridor construction by other contractors.

(b) Notwithstanding paragraph (a) of this subsection (8), a utility company shall not be liable for damages caused by the failure to timely perform the relocation work or the interference with the performance of the transportation expansion plan by another contractor when the failure to perform or the interference is caused by a force majeure.

Source: L. 2007: Entire section added, p. 718, § 2, effective May 3.

32-9-119.3. Elections for sales tax rate increase. (1) The board, in accordance with the provisions of section 20 (4) of article X of the state constitution, may submit to the registered electors of the district one or more ballot questions to increase the rate of the sales

tax levied by the district pursuant to section 32-9-119 (2) (a) to any rate approved by the board, with or without an accompanying increase in district debt, for such purposes authorized by this article as may be specified in any such ballot question.

(2) A ballot question submitted pursuant to subsection (1) of this section shall be submitted at a general election or an election held on the first Tuesday of November in an odd-numbered year that is conducted in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S. The secretary of state shall determine the identifying numbering or lettering of such a ballot question, and the question shall be printed upon the ballot immediately following any statewide amendments and propositions.

(3) If a majority of the registered electors voting on a ballot question submitted pursuant to subsection (1) of this section vote affirmatively on the question, the rate of the sales tax levied by the district pursuant to section 32-9-119 (2) (a) shall be increased to the rate specified in the ballot question and approved by the registered electors.

(4) Nothing in this section shall be construed to limit the ability of the district to seek the approval of the registered electors of the district regarding any other matter for which such approval may be sought.

Source: L. 97: Entire section added, p. 806, § 3, effective May 20. L. 2009: Entire section RC&RE, (SB 09-108), ch. 5, p. 49, § 5, effective March 2; (2) amended, (HB09-1326), ch. 258, p. 1182, § 19, effective May 15.

Editor's note: Subsection (9)(b) provided for the repeal of this section, effective November 4, 1997, when the registered electors of the district voted negatively on the ballot question set forth in § 32-9-119.3 (2)(b).

32-9-119.4. Election for a sales tax rate increase - petition requirement. (1) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution and upon receipt of a notice from the secretary of state stating that a valid petition has been filed and verified and the adoption by the board of an appropriate resolution, the board may submit to the registered electors within the geographical boundaries of the district at any general election or election held in November of an odd-numbered year, the ballot question set forth in subsection (3) of this section.

(2) A valid petition:

(a) Shall request that the board submit the ballot question set forth in subsection (3) of this section to the registered electors within the geographical boundaries of the district;

(b) Shall be signed by a number of such registered electors equal to at least five percent of the total number of votes cast within the geographical boundaries of the district for all candidates for the office of secretary of state at the previous general election; and

(c) Shall have the required signatures verified by the secretary of state in accordance with subsection (4) of this section.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), the ballot question to be submitted by the board pursuant to subsection (1) of this section shall be as follows:

"Shall regional transportation district taxes be increased (first full fiscal year dollar increase) annually and by whatever additional amounts are raised annually thereafter by increasing the rate of sales tax levied by the district by four-tenths of one percent, from the current six-tenths of one percent to one percent commencing January 1 (first calendar year that commences after the election at which the ballot question is submitted), and, in connection therewith, shall regional transportation district debt be increased (principal amount), with a repayment cost of (maximum total district cost) with all proceeds of debt and taxes to be used and spent for the construction and operation of a fixed guide way mass transit system, the construction of additional park-n-ride lots, the expansion and improvement of existing park-n-ride lots, and increased bus service, including the use of smaller buses and vans and alternative fuel vehicles as appropriate, as specified in the transit expansion plan adopted by the board of directors of the district on or before (specified date) and shall debt be evidenced by bonds, notes, or other multiple-fiscal year obligations

including refunding bonds that may be issued as a lower or higher rate of interest and including debt that may have a redemption prior to maturity with or without payment of a premium, payable from all revenues generated by said tax increase, federal funds, investment income, public and private contributions, and other revenues as the board may determine, and with such revenues raised by the sales tax rate increase and the proceeds of debt obligations and any investment income on such revenues and proceeds being exempt from the revenue and spending restrictions contained in section 20 of article X of the Colorado constitution until such time as all debt is repaid when the rate of tax will be decreased to that amount necessary for the continued operation of the system but not less than six-tenths of one percent?"

(b) The ballot question set forth in paragraph (a) of this subsection (3) may be modified by the proponents of a petition or by the district to the extent necessary to conform to the legal requirements for ballot questions and titles.

(c) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the ballot question vote affirmatively on the ballot question specified in paragraph (a) of this subsection (3), then the rate of sales tax levied by the district shall be increased by four-tenths of one percent to a rate of one percent.

(4) The provisions of article 40 of title 1, C.R.S., regarding the following subject matter shall apply to petitions that may be submitted pursuant to this section: Form requirements and approval; circulation of petitions; elector information and signatures on petitions; affidavits and requirements of circulators of petitions; and verification of signatures, including, but not limited to, cure of an insufficiency of signatures and protests regarding sufficiency statements and procedures for hearings or further appeals regarding such protests. The provisions of article 40 of title 1, C.R.S., regarding review and comment, the setting of a ballot title, including, but not limited to, the duties of the title board, rehearings and appeals, and the number of signatures required shall not apply to petitions that may be submitted pursuant to this section.

(5) Any petition shall be filed with the secretary of state at least ninety days before the election at which the ballot question specified in the petition is to be submitted to the registered electors within the geographical boundaries of the district. Notice of any question to be submitted to the registered electors within the geographical boundaries of the district after verification of the signatures on any petition filed with the secretary of state and at which election such question shall be submitted shall be filed by the board in the office of the secretary of state prior to fifty-five days before the election.

(6) Prior to the general election at which any question is to be submitted to the registered electors pursuant to subsection (1) of this section, the board shall hold at least two public hearings in each of the counties included, in whole or in part, within the district.

(7) (a) No public moneys from the state, any city, town, city and county, or county shall be expended by the public entity or by any private entity or private person to advertise, promote, or purchase commercial promotion or advertisement to urge electors to vote in favor of or against any question submitted at an election pursuant to the provisions of this section.

(b) No question submitted to eligible electors of the district pursuant to this section shall obligate any funds of the department of transportation, nor shall the approval of a question by the eligible electors be construed as creating any commitment or obligation of funds of the department.

(8) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the question vote in the affirmative on a ballot question to increase the rate of sales tax levied by the district and then, in a corresponding or subsequent election, a majority of the registered electors within the geographical boundaries of the district voting on the question vote in the affirmative to lower the rate of sales tax levied by the district, the district shall decrease the rate of the sales tax to six-tenths of one percent or to an amount necessary to repay all indebtedness of the district obligated under the approved sales tax increase, including any costs incurred with regard to necessary debt repayment brought on by a corresponding or subsequent sales tax reduction, and following such repayment to six-tenths of one percent.

Source: L. 2002: Entire section added, p. 714, § 5, effective August 7; entire section added, p. 734, § 5, effective August 7.

32-9-119.5. Competition to provide vehicular service within the regional transportation district. (1) The general assembly hereby finds, determines, and declares that: Public transportation services are provided to assist the transit-dependent and the poor, to relieve congestion, and to minimize automotive pollution; public transportation service should be provided at the lowest possible cost consistent with desired service and safety; private transportation providers have been effectively used under competitive contracts to provide public transportation services at lower costs and with lower annual cost increases; obtaining cost-competitive public transportation services requires the establishment of a mechanism for competitive contracting; facilities and vehicles purchased for public transportation service are public assets which are held in the public trust; contracting for services has historically provided opportunities for minority, women, and disadvantaged business enterprises; and it is the intent of the general assembly that disadvantaged business enterprises, as defined in part 23 of title 49 of the code of federal regulations, as amended, shall have the maximum opportunity to participate in the performance of contracts.

(2) (a) The district may implement a system under which up to fifty-eight percent of the district's vehicular service is provided by qualified private businesses pursuant to competitively negotiated contracts.

(b) (Deleted by amendment, L. 2003, p. 1795, § 2, effective May 21, 2003.)

(c) The district shall promulgate reasonable standards with respect to experience, safety records, and financial responsibility by which private providers can be qualified to provide vehicular services pursuant to this section.

(d) The district shall prepare a standard form of agreement to provide vehicular services. Such contract shall include:

(I) The specification of reasonable passenger comfort and safety characteristics of the equipment used;

(II) The specification of standards for access to vehicular services for persons with disabilities, which shall be as specified in the district's plan for such services as approved by the federal transit administration;

(III) The specification for reasonable training and safety records to be required of any driver;

(IV) A provision for reasonable insurance protecting the district from liability for the acts, negligence, or omission of the provider, its agents, and its employees;

(V) Reasonable standards for reliability and on-time performance;

(VI) Reasonable penalties for inadequate performance, including the district's right to cancel the contract;

(VII) Provisions for the use of the district's logo, transfers, transit ways, bus stops, and such other elements as are owned by the district and appropriate for use by the provider to provide coordinated service with the district;

(VIII) A provision that the provider shall retain fifty to one hundred percent of the passenger fares and remit the balance of such fares to the district;

(IX) A provision that the provider, at its sole risk and in compliance with applicable laws and regulations, shall have the right to sell additional services, including food and other services to its passengers, and to sell advertising except as prohibited by existing contracts, freight, charter, and other services using the provider's vehicles;

(X) The term of the agreement, which shall be as follows:

(A) For any agreement under which the district shall supply vehicles for use by the provider and if such vehicles have been financed under any section of the federal "Internal Revenue Code of 1986", as amended, that provides tax-free status for such vehicles, a term of not more than three years, including any renewal options;

(B) For any agreement under which the district shall supply vehicles for use by the provider and if such vehicles have not been financed under any section of the federal "Internal Revenue Code of 1986", as amended, that provides tax-free status for such vehicles, a term of not more than five years, including any renewal options; or

(C) For any agreement under which the provider shall supply its own vehicles, a term of years as negotiated by the district and the provider; and

(XI) No provision specifying wages, benefits, work rules, work conditions, or union organization of the employees of the provider beyond compliance with applicable regulation and law, including compliance with the "Federal Transit Act", 49 U.S.C. sec. 5333 (b).

(3) (a) (I) Subject to the requirements of the "Federal Transit Act", as amended, the district may request proposals from private providers to provide up to fifty-eight percent of all of the vehicular service of the district as measured by vehicle hours or vehicle hour equivalents. The district's decision as to which vehicular services are subject to requests for proposals shall be representative of the district's total vehicular service operations; except that each individual request for proposals may designate one type of vehicular service. Service provided by private businesses pursuant to this section shall be accomplished through attrition of the district's full-time employees. No layoffs shall occur solely as a result of the implementation of this section. If the director of the division of labor in the department of labor and employment orders an arbitration pursuant to section 8-3-113 (3), C.R.S., the arbitrator shall not have the power to establish a level of vehicular service to be provided by private businesses in accordance with this section.

(II) The district shall establish reasonable standards for vehicle hour equivalents for all vehicular services that are not ordinarily measured by vehicle hours.

(b) Each request for proposals shall specify the route or service area, service frequency or hours of operation, and the entire structure of maximum fares determined by the district. Such request for proposals shall include the district's estimate of passenger revenue. Each request for proposals shall also specify any federal funds available for vehicle capital assistance whether through reimbursement of eligible depreciation expenses or through lease of vehicles owned by the district.

(c) Each individual request for proposals shall reflect the district's determination as to the appropriate size for each such request in order to maximize the number of qualified providers submitting proposals without causing undue operating inefficiencies.

(c.5) Each request for proposals shall specify all of the evaluation factors to be used by the district in awarding the contract and the weight to be given by the district for each factor. The evaluation factors shall include the cost to the district, cost related factors, non-cost factors such as performance history of comparable services provided in-state or out-of-state, financial stability, managerial experience, operational plan, employee recruitment and training, and any other factors identified by the district. No award shall be made based on cost to the district alone, and in no event shall such cost be weighted more than thirty-five percent in making an award determination.

(d) Any qualified provider may respond to any request for proposals. The district shall ensure that disadvantaged business enterprises, as defined in part 23 of title 49 of the code of federal regulations, as amended, have the greatest possible opportunity to respond. Any response shall be timely if received by the district within the time specified in its request for proposals, which shall not exceed ninety days nor be less than forty-five days. Each response shall specify the least cost to the district required by the provider submitting the proposal to provide the services described in the request for proposals. If it determines the public interest requires such, the district retains the right to enter into noncompetitively awarded contracts on an interim basis for the time needed to implement the request for proposal process.

(e) (I) With respect to each request for proposals, the district shall award the contract based on a consideration of the evaluation factors established pursuant to paragraph (c.5) of this subsection (3). Each contract shall be effective not later than ninety days after its award. If the district determines that no responsive proposals are received for a request for proposals or that the proposals submitted would not be in the best interests of the district to accept, the district may reject such proposals and may, in its discretion, solicit new proposals for the designated service in accordance with the provisions of this section.

(II) (Deleted by amendment, L. 98, p. 126, § 1, effective August 5, 1998.)

(4) (Deleted by amendment, L. 2003, p. 1795, § 2, effective May 21, 2003.)

(5) Any person qualified to provide vehicular services pursuant to subsection (2) of this section who does not require a district subsidy shall be able to provide vehicular services

within the district. Such person shall execute the district's standard form of agreement to provide vehicular services; except that such person shall be free to determine and retain passenger fares. Vehicles operated pursuant to this subsection (5) shall be identified to the public as charging fares not established by the district.

(6) Fares for vehicular services provided pursuant to this section shall be exempt from sales or use taxes imposed pursuant to article 26 of title 39, C.R.S. Providers shall not otherwise be exempt from property, sales, income, excise, and other taxes.

(7) The provision of vehicular services in accordance with this section shall not be subject to regulation by the public utilities commission of the state of Colorado; except that taxi service as defined in the commission's rules shall be subject to regulation by the commission.

(8) (a) For purposes of providing legislative oversight of the operation of this section, the transportation legislation review committee shall review the district's implementation of this section and recommend any necessary changes to the general assembly.

(b) Repealed.

(9) (Deleted by amendment, L. 2007, p. 970, § 1, effective August 3, 2007.)

Source: **L. 88:** Entire section added, p. 1152, § 1, effective May 3. **L. 90:** (2)(a), (2)(d)(X), and (3)(c) to (3)(e) amended, p. 1512, § 1, effective April 9. **L. 92:** (2)(d)(II) amended, p. 1345, § 2, effective July 1. **L. 94:** (8)(a) amended, p. 622, § 2, effective April 14. **L. 96:** (3)(e) amended, p. 1883, § 1, effective June 8; (8)(b) repealed, p. 1274, § 209, effective August 7. **L. 98:** (3)(e) amended, p. 126, § 1, effective August 5. **L. 99:** (2)(a), (2)(d)(X), and (3)(a) amended, p. 940, § 1, effective May 28. **L. 2003:** (2)(a), (2)(b), (2)(c), IP(2)(d), (2)(d)(II), (2)(d)(XI), (3)(a), (3)(b), (3)(e)(I), (4), (5), (6), and (7) amended and (3)(c.5) added, p. 1795, § 2, effective May 21. **L. 2007:** (2)(a), (3)(a)(I), and (9) amended, p. 970, § 1, effective August 3.

ANNOTATION

Contract driver considered employee of RTD for purposes of respondeat superior liability. For purposes of respondeat superior liability, bus driver employed by a private company under contract to regional transportation

district is considered an employee of regional transportation district because of RTD's right to control the performance of his work. *Perkins v. Reg'l Transp. Dist.*, 907 P.2d 672 (Colo. App. 1995).

32-9-119.6. Report to general assembly on privatization of certain management functions of the district. (Repealed)

Source: **L. 88:** Entire section added, p. 1155, § 2, effective May 3. **L. 96:** Entire section repealed, p. 1274, § 211, effective, August 7.

32-9-119.7. Farebox recovery ratios - plans. (1) The general assembly hereby finds and declares that surface transportation in the Denver metropolitan area is a major problem confronting not only the citizens of the metropolitan area but also the citizens of the entire state of Colorado. The general assembly further finds that, although mass transportation is one component of an effective surface transportation system, the allocation of resources to mass transportation must be made in light of all surface transportation needs. The general assembly further finds that the district should be organized efficiently, economically, and on a demand-responsive basis and that the district should consider least-cost alternatives in discharging its responsibilities. The general assembly further finds that the farebox recovery ratio of the district must be improved so that resources once allocated for mass transportation can be made available for other surface transportation needs.

(2) For the purposes of this section, "operating costs" means all expenditures, including depreciation, except for those incurred in long-term planning and development of mass transportation and rapid transit infrastructures and those costs incurred as a result of providing transportation service mandated by the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 through 12213, and "revenues collected" means all

non-sales tax revenue generated through the operation and maintenance of the mass transit system, except for those revenues generated as a result of providing transportation service mandated by the federal "Americans with Disabilities Act of 1990".

(3) The district shall take whatever measures it deems necessary to ensure that the following percentages of its operating costs are funded by revenues collected, as follows:

- (a) For the fiscal year 1990, twenty-seven and one-half percent;
- (b) For the fiscal year 1991, twenty-eight and one-half percent;
- (c) For the fiscal year 1992, twenty-nine and one-half percent;
- (d) For the fiscal year 1993 and each fiscal year thereafter, thirty percent.

(4) The district shall prepare annual budgets based on the percentages required by subsection (3) of this section. The district shall submit copies of its annual budget to the transportation legislation review committee created in section 43-2-145, C.R.S.

(5) No later than August 1, 1989, the district shall submit to the highway legislation review committee optional plans which shall address the following objectives:

- (a) To make the mass transportation operations of the district more demand-responsive;
- (b) To demonstrate that the district has considered least-cost options for performing its service;

(c) To make recommendations regarding farebox recovery ratios; and

(d) To demonstrate improved commuter and to-and-from-work service.

(6) (Deleted by amendment, L. 2002, p. 866, § 3, effective August 7, 2002.)

(7) The district shall submit to the transportation legislation review committee any information, data, testimony, audits, or other information the committee may request.

Source: L. 89: Entire section added, p. 1318, § 1, effective June 5. L. 93: (2) amended, p. 352, § 1, effective April 12. L. 94: (4) and (7) amended, p. 622, § 3, effective April 14. L. 2002: (6) and (7) amended, p. 866, § 3, effective August 7.

32-9-119.8. Provision of retail and commercial goods and services at district transfer facilities - residential and other uses at district transfer facilities permitted - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Local zoning ordinance" means an applicable legislative act enacted by any municipality, county, or city and county in which a transfer facility is located that relates to the planning and zoning of real property.

(a.3) "Public entity" includes, but is not limited to, a public body, as that term is defined in section 32-9-103 (11), and any other governmental entity, agency, or official, including an urban renewal authority and the department of transportation.

(a.7) "Residential use or other use" means any residential use, as defined in section 38-33.3-103, C.R.S., or other use permitted by an applicable local zoning ordinance.

(b) "Transfer facility" means a public park-n-ride, bus terminal, light rail station, or other bus or rail transfer facility owned or operated by the district whether the property on which the facility is located is owned by the district or leased by the district from any other entity.

(2) Except as provided in subsection (2.5) of this section, the district may negotiate and enter into agreements with any person or public entity for the provision of retail and commercial goods and services to the public at transfer facilities or for the provision of residential uses or other uses at such facilities. The district itself shall not provide retail and commercial goods and services at transfer facilities pursuant to this section, except for the sale of mass transportation tickets, tokens, passes, and other transactions directly and necessarily related to the operation of a mass transportation system. The district may negotiate and enter into agreements with third parties to provide any of the goods and services or other uses contemplated under this section.

(2.5) The district shall notify and obtain the approval of the executive director of the department of transportation before negotiating and entering into any agreement with any person or public entity for the provision of retail and commercial goods and services to the public or the provision of residential uses or other uses at a transfer facility that is located on property that is owned by the department of transportation and leased to the district for the operation of such transfer facility.

(3) Any person obtaining the use of any portion of a transfer facility for the provision of retail or commercial goods or services or for the provision of residential uses or other uses shall be required to compensate the district by payment of rent at fair market value, or, at the discretion of the district, by the provision of services or capital improvements to facilities used in transit services, alone or in combination with rental payments, such that the total benefit to the district is not less than the fair market rental value of the property used by the person.

(4) The use of a transfer facility for the provision of retail or commercial goods or services or for the provision of residential uses or other uses shall not be permitted if the use would reduce transit services, would reduce the availability of adequate parking for the public, or, for uses involving the provision of retail or commercial goods or services, would result in a competitive disadvantage to a private business reasonably near a transfer facility engaging in the sale of similar goods or services. The provision of retail and commercial goods and services or the provision of residential uses or other uses at transfer facilities shall be designed to offer convenience to transit customers and shall be conducted in a manner that encourages multimodal access from all users.

(5) Any development of any portion of a transfer facility made available by the district for the provision of retail or commercial goods or services or for the provision of residential uses or other uses shall be subject to all applicable local zoning ordinances.

(6) Subject to subsection (2.5) of this section, section 43-3-101 (3), C.R.S., shall not bar the provision or sale of retail or commercial goods or services or the provision of residential uses or other uses conducted in accordance with the provisions of this section upon any property owned by the Colorado department of transportation and leased to the district for the operation of transfer facilities.

Source: **L. 97:** Entire section added, p. 342, § 1, effective April 19. **L. 99:** (2) and (6) amended and (2.5) added, p. 262, § 2, effective April 9. **L. 2010:** Entire section amended, (HB 10-1143), ch. 123, p. 408, § 1, effective August 11.

Cross references: For the legislative declaration contained in the 1999 act amending subsections (2) and (6) and enacting subsection (2.5), see section 1 of chapter 88, Session Laws of Colorado 1999.

32-9-119.9. Limited authority to charge fees for parking - reserved parking spaces - penalties - definitions. (1) (a) The district may charge a parking fee at a district parking facility for:

- (I) A motor vehicle registered at an address outside the district;
 - (II) A motor vehicle left in the district parking facility for more than twenty-four hours;
- or

(III) Reserved parking.

(b) The district shall not charge a parking fee at a district parking facility pursuant to this subsection (1), prohibit parking pursuant to subsection (1.5) of this section, or enforce a penalty pursuant to subsection (4) of this section, which for purposes of this paragraph (b) includes treating a motor vehicle as abandoned, until it has posted signs warning of such parking fee, prohibition, or penalty at all entrances and exits to the facility for at least ninety days. The warning signs shall remain in place so long as the parking fee, prohibition, or penalty is in effect at the facility.

(c) The district shall be prohibited from requiring an individual to give any type of personal information, including, but not limited to, any motor vehicle registration or driver's license information in furtherance of the administration and enforcement of the parking fee imposed pursuant to this subsection (1); except that the district may require an individual to provide such personal information in order to use reserved parking or automatic payment services offered by the district.

(d) Except as otherwise provided by this section, the district shall not charge a person any type of fee, regardless of what it may be called, to park at a district parking facility.

(e) All parking fees established in this subsection (1) shall be payable in advance. Payment devices shall be available at all parking facilities at which parking fees are charged

pursuant to this subsection (1). The district may establish customer accounts to permit persons who use a district parking facility to prepay parking fees.

(1.5) The district may establish rules prohibiting a person who is not using the mass transportation system from parking at a district parking facility.

(2) No more than fifteen percent of a district parking facility shall be set aside for reserved parking. The district may provide for reserved parking spaces at a facility for the use of its employees.

(3) This section shall not apply to a district parking facility for which a lease was entered into by the district prior to January 1, 2006, a facility where the district charged for parking prior to January 1, 2006, or a district parking facility at or related to Denver union station.

(4) (a) If a motor vehicle is parked at a district parking facility and the person who parks the motor vehicle either fails to pay a parking fee that is required by the district pursuant to the authority set forth in subsection (1) of this section or violates a rule established by the district pursuant subsection (1.5) of this section, the district may impose a penalty on the owner of the vehicle for each day that the vehicle is parked at the facility. The penalty shall be twenty dollars for the first offense, fifty dollars for the second offense, and one hundred dollars for all subsequent offenses. The district shall give written notice to the owner of the penalty and shall notify the owner that he or she may, within fourteen days of the notice from the district, request a hearing to dispute the penalty. The hearing shall be held within thirty days after receipt of the request from the owner and may be conducted in person or by telephone. No person engaged in conducting the hearing or participating in a decision shall be responsible to or subject to the supervision or direction of any person engaged in the performance of parking management functions for the district.

(b) Any motor vehicle for which a penalty is assessed pursuant to paragraph (a) of this subsection (4) that is left unattended at the district parking facility for more than four days shall be considered an abandoned motor vehicle subject to the provisions of part 18 of article 4 of title 42, C.R.S.

(c) The board shall establish reasonable rules concerning the administration and enforcement of this section.

(5) In order to aid in the enforcement of this section and to allow the district to carry out its functions, the department of revenue or an authorized agent of the department shall allow the district to inspect, on an as-needed basis, any motor vehicle registration electronic database that includes the name and address of any registered owner. The inspection of these records by the district is consistent with uses set forth in section 24-72-204 (7) (b) (I), C.R.S., and shall be done in accordance with the provisions of part 2 of article 72 of title 24, C.R.S. The district shall maintain such registration information for one year and shall not release such information to any party other than to the registered owner or as necessary to enforce the penalty set forth in subsection (4) of this section. After one year, the district shall destroy the registration information.

(6) As used in this section, unless the context otherwise requires, "district parking facility" or "facility" means a park-n-ride lot or any other parking lot or structure owned, leased, or used by the district.

Source: L. 2006: Entire section added, p. 229, § 1, effective August 7. **L. 2007:** Entire section amended, p. 1000, § 1, effective July 1.

32-9-120. Levy of taxes - limitations. (1) Notwithstanding any other provision of law or this article to the contrary, no general ad valorem property taxes shall be levied, directly or indirectly, by the district under the provisions of this article, except for the payment of any annual deficit, if any, in the operation and maintenance expenses of the district, such levy not to exceed one-half mill on each dollar of valuation for assessment each year.

(2) Annually, the board shall determine the amount of money necessary to be raised by taxation for the coming year and shall fix a rate of levy, subject to the provisions of subsection (1) of this section, which rate when levied upon every dollar of valuation for assessment of taxable property within the district, together with any other unencumbered

revenues and moneys of the district, shall raise that sum necessary to pay in full all interest and principal on securities of the district, except special obligations payable solely from the revenues of the district, and to pay, to the extent permitted by this section, all other obligations of the district that the district can pay under this article with taxes coming due within the coming year, but excluding any special obligations.

(3) The board shall certify to the counties of the district and the city and county of Denver, in accordance with the schedule prescribed by section 39-5-128, C.R.S., the rate so fixed in subsection (2) of this section, with directions to such counties and the city and county of Denver to levy and collect such taxes upon the taxable property within their respective counties or the city and county and to levy and collect such other taxes pursuant to section 32-9-121.

(4) Repealed.

Source: L. 69: p. 720, § 1. C.R.S. 1963: § 89-20-19. L. 70: p. 293, § 102. L. 71: p. 979, § 3. L. 73: p. 992, § 3. L. 80: (1) amended and (4) added, p. 683, § 5, effective May 1. L. 81: (1) amended, p. 1646, § 4, effective June 8. L. 82: (1) amended and (4) repealed, pp. 500, 502, §§ 4, 8, effective April 15. L. 87: (3) amended, p. 1407, § 4, effective April 22. L. 2000: (2) amended, p. 308, § 3, effective April 5.

32-9-121. Levies to cover deficiencies. In the event that the sum produced from general ad valorem property tax levies totaling less than the maximum levy authorized by section 32-9-120 (1), together with any unencumbered revenues and moneys of the district, are insufficient to pay, when due, installments on contracts and securities of the district and interest thereon and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary, subject to the provisions and limitations of section 32-9-120 (1), until such contracts and securities and interest thereon are fully paid. In no case shall the mill levy exceed one-half mill. No levies shall be made pursuant to this section to pay any amount of special obligations of the district payable solely from sales taxes and the revenues, or a combination thereof, of the district.

Source: L. 69: p. 720, § 1. C.R.S. 1963: § 89-20-20. L. 73: p. 992, § 4. L. 80: Entire section amended, p. 683, § 6, effective May 1. L. 81: Entire section amended, p. 1646, § 5, effective June 8. L. 82: Entire section amended, p. 500, § 5, effective April 15. L. 2000: Entire section amended, p. 308, § 4, effective April 5.

32-9-122. Levying and collecting taxes - lien. It is the duty of the body having authority to levy taxes within each county or city and county of the district to levy the taxes provided in sections 32-9-120 and 32-9-121. It is the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected, and when collected, to pay the same to the district. The payment of such collection shall be made as soon as practical after collection to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other taxes.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-21.

Cross references: For collection of taxes, see article 10 of title 39.

32-9-123. Delinquent taxes. If the taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest, and penalties, in the manner provided by the statutes of the state for selling real property for the nonpayment of taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the county, and the county shall account to the district in the

same manner as provided by law for accounting for school, town, and city taxes. Delinquent personal property shall be distrained and sold as provided by law. Nothing in this article shall be construed as preventing the collection in full of the proceeds of all levies of taxes lawfully made by the district, including without limitation any delinquencies, interest, penalties, and costs.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-22.

Cross references: For the sale of tax liens, see article 11 of title 39.

32-9-123.5. Prohibition on borrowing by district. Notwithstanding any other provision of this article, the district shall not borrow money for the purpose of acquisition, construction, continuing construction, or operation of mass transit facilities during the period from January 1, 1990, through May 9, 1990, and, during such time period, the district shall not issue any district securities evidencing such borrowing.

Source: L. 90: Entire section added, p. 1514, § 1, effective April 3.

32-9-124. Forms of borrowing. Subject to the provisions of this article, the district, to carry out the purposes of this article, may borrow money and may issue the following district securities to evidence such borrowing: Notes, warrants, bonds, temporary bonds, refunding bonds, special obligation bonds, and interim notes.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-23.

32-9-125. Issuance of notes. The district may borrow money in anticipation of general ad valorem property taxes, sales taxes, or revenues, or a combination thereof, and issue notes to evidence the amount so borrowed.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-24. L. 73: p. 992, § 5.

32-9-126. Issuance of warrants. The district may defray the cost of any services or supplies, equipment, or other materials furnished to or for the benefit of the district by the issuance of warrants to evidence the amount due therefor in anticipation of general ad valorem property taxes, sales taxes, or revenues, or any combination thereof.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-25. L. 73: p. 993, § 6.

32-9-127. Maturities of notes and warrants. Notes and warrants may mature at such time not exceeding two years from the respective dates of their issuance as the board may determine. They shall not be extended or funded except by the issuance of bonds, special obligation bonds, or interim notes in compliance with sections 32-9-128 and 32-9-130.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-26. L. 70: p. 304, § 1.

32-9-128. Incurrence of special obligations. The district may borrow money in anticipation of the revenues and the sales tax proceeds of the district, but not the proceeds of any general ad valorem property taxes, and issue special obligation bonds to evidence the amount so borrowed. Any special obligation bonds or other obligations payable in whole or in part from the sales tax proceeds of the district or revenues of the district, or both, may be issued or incurred without an election, in anticipation of such sales tax proceeds or revenues, or both.

Source: L. 69: p. 721, § 1. C.R.S. 1963: § 89-20-27. L. 70: p. 293, § 103. L. 73: 993, § 7. L. 82: Entire section amended, p. 501, § 6, effective April 15. L. 2000: Entire section amended, p. 308, § 5, effective April 5.

32-9-128.5. Private activity and exempt facility bonds. (1) In order to maximize public and private participation in federal funding opportunities and opportunities for transportation infrastructure development, the district, in addition to the other powers granted by this article, shall have the following powers:

(a) Subject to the requirements specified in subsection (2) of this section, to issue private activity or exempt facility bonds as authorized by federal law; and

(b) To enter into agreements with private businesses under which:

(I) The district agrees to loan to a private business the net proceeds of private activity or exempt facility bonds issued so that the private business can finance all or a portion of a mass transportation system project that is owned by, leased from the district by, or operated by the private business; and

(II) The private business agrees that it has the sole responsibility to pay, either directly or indirectly through the district or a bond trustee, all financial obligations owed to bond holders and that it shall provide and maintain any reserve deemed necessary by the district to ensure that the financial obligations are paid.

(2) The private activity or exempt facility bonds issued by the district as authorized by paragraph (a) of subsection (1) of this section shall specify that bond holders may not look to any revenues of the district for repayment of the bonds. The bonds shall further specify that the only sources of repayment for the bonds are revenues provided by the private business, property of the private business, or credit enhancement obtained by the private business that may be pledged to the payment of the bonds. Because private activity or exempt facility bonds are payable only from said sources, such bonds shall not be deemed to create district indebtedness or a multiple-fiscal year obligation within the meaning of any provision of the state constitution or the laws of this state, and the district may issue such bonds without voter approval.

(3) Notwithstanding any other provision of law, the state or any state agency, county, municipality, or other municipal or quasi-municipal corporation or political subdivision may, in connection with a mass transportation system project financed by private activity or exempt facility bonds issued by the district, lend or grant money or any other form of real, personal, or mixed property directly to a private business developing or operating the project or indirectly to such a private business through the district and may enter into contracts to make such loans and grants, all upon terms and conditions the district or private business and the state, state agency, county, municipality, or municipal or quasi-municipal corporation or political subdivision may agree upon. If a loan or grant is paid indirectly to a private business through the district, the district shall forward the loan or grant to the private business immediately, and the loan or grant shall not be deemed to be revenues of the district.

(4) The provision of mass transportation services by private operators under contract to and operating within the district is not subject to regulation by the public utilities commission of the state of Colorado created in section 40-2-101 (1), C.R.S.

Source: L. 2008: Entire section added, p. 1073, § 1, effective August 5.

32-9-129. Issuance of temporary bonds. The district may, without an election, issue temporary bonds, pending preparation of definitive bonds and exchangeable for the definitive bonds when prepared, as the board may determine. Each temporary bond shall set forth substantially the same conditions, terms, and provisions as the definitive bond for which it is exchanged. Each holder of a temporary bond shall have all the rights and remedies which he would have as a holder of the definitive bond.

Source: L. 69: p. 722, § 1. C.R.S. 1963: § 89-20-29. L. 73: 993, § 8.

32-9-130. Issuance of interim notes. The district may borrow money and issue interim notes evidencing short-term loans for the acquisition or improvement and equipment of any mass transportation facility of the district in supplementation of long-term financing and the issuance of bonds, as provided in section 32-9-148.

Source: L. 69: p. 722, § 1. C.R.S. 1963: § 89-20-30. L. 73: 993, § 9.

32-9-131. Pledge of proceeds of sales taxes and revenues. The payment of district securities may be secured by the specific pledge of the proceeds of sales taxes or revenues, or both such taxes and revenues, of the district, as the board may determine. Revenues or sales taxes pledged for the payment of any securities, as received by the district, shall immediately be subject to the lien of each such pledge, without any physical delivery thereof, any filing, or further act, and the lien of each such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument relating thereto shall have priority over all other obligations and liabilities of the district, except as may be otherwise provided in this article or in said resolution or instrument, and subject to any prior pledges and liens theretofore created. The lien of each such pledge shall be valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the district, irrespective of whether such persons have notice thereof.

Source: L. 69: p. 722, § 1. C.R.S. 1963: § 89-20-31. L. 73: 994, § 10. L. 2000: Entire section amended, p. 308, § 6, effective April 5.

32-9-132. Ranking among different issues. Except as otherwise provided in the authorizing resolution of the board, all securities of the same issue or series shall, subject to the prior rights of outstanding securities, claims, and other obligations, have a prior lien on the revenues pledged for the payment of the securities.

Source: L. 69: p. 722, § 1. C.R.S. 1963: § 89-20-32. L. 2000: Entire section amended, p. 309, § 7, effective April 5.

32-9-133. Ranking in same issue. All securities of the same issue or series shall be equally and ratably secured without priority by a lien on the revenues of the district in accordance with the provisions of this article and the authorizing resolution, or other instrument relating thereto, except to the extent such resolution or other instrument shall otherwise expressly provide.

Source: L. 69: p. 723, § 1. C.R.S. 1963: § 89-20-33. L. 2000: Entire section amended, p. 309, § 8, effective April 5.

32-9-134. Payment recital in securities. District securities issued under this article and constituting special obligations shall recite in substance that the securities and the interest thereon are payable solely from the revenues of the district or the sales tax proceeds of the district, or both, as the case may be, pledged to the payment thereof.

Source: L. 69: p. 723, § 1. C.R.S. 1963: § 89-20-34. L. 73: p. 994, § 13. L. 2000: Entire section amended, p. 309, § 9, effective April 5.

32-9-135. Incontestable recital in securities. Any authorizing resolution, or other instrument relating thereto under this article, may provide that each security therein designated shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all the provisions of this article, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 69: p. 723, § 1. C.R.S. 1963: § 89-20-35.

32-9-136. Limitation upon payment. The payment of securities shall not be secured by any encumbrance, mortgage, or other pledge of property of the district, other than revenues, proceeds of sales taxes, or any other moneys pledged for the payment of the securities. No property of the district, subject to said exception, shall be liable to be forfeited or taken in payment of the securities.

Source: L. 69: p. 723, § 1. C.R.S. 1963: § 89-20-36. L. 73: p. 994, § 14. L. 2000: Entire section amended, p. 309, § 10, effective April 5.

32-9-137. Security details. (1) Any district securities authorized to be issued in this article shall bear such date, shall be in such denomination, shall mature at such time, but in no event exceeding forty years from their date or any shorter limitation provided in this article, and shall bear interest at a rate such that the net effective interest rate of the issue of securities does not exceed the maximum net effective interest rate authorized, which interest may be evidenced by one or two sets of coupons payable annually or semiannually, except that the first interest payment date appertaining to any security may represent interest for any period not in excess of one year, as may be prescribed by resolution or other instrument. The securities and any coupons shall be payable in such medium of payment at any banking institution or such other place within or without the state as determined by the board, and the securities at the option of the board may be in one or more series, may be made subject to prior redemption in advance of maturity in such order or by lot or otherwise at such time without or with the payment of such premium, not exceeding seven percent of the principal amount of each security so redeemed, as determined by the board. For any securities the issuance of which does not require approval at an election pursuant to this article, the maximum net effective interest rate shall be established by the board prior to the sale and issuance of such securities.

(2) Any district securities may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both, and where interest accruing on the securities is not represented by interest coupons, the securities may provide for the endorsing of payments of interest thereon, and the securities generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details, as may be provided by the board in the resolution authorizing the securities, or other instrument appertaining thereto, except as otherwise provided in this article.

(3) Any resolution authorizing the issuance of securities or any other instrument relating thereto may provide for their reissuance in other denominations in negotiable or nonnegotiable form and otherwise in such manner and form as the board may determine.

Source: L. 69: p. 723, § 1. C.R.S. 1963: § 89-20-38. L. 70: p. 294, § 105.

32-9-138. Negotiability. Subject to the payment provisions specifically provided in this article, any district securities and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the board may otherwise provide.

Source: L. 69: p. 724, § 1. C.R.S. 1963: § 89-20-39.

32-9-139. Single bonds. (1) The board may:

(a) Provide for the initial issuance of one or more securities, in this section called "bond", aggregating the amount of the entire issue, or a designated portion thereof;

(b) Make such provision for installment payments of the principal amount of any such bond as the board may consider desirable;

(c) Provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on each such bond;

(d) Further make provision in any such proceedings for the manner and circumstances in which any such bond may in the future, at the request of the holder or owner thereof, be converted into securities of smaller denominations, which securities of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both, at the option of the holder or owner.

Source: L. 69: p. 724, § 1. C.R.S. 1963: § 89-20-40. L. 73: p. 994, § 11.

32-9-140. Sale of securities. (1) Any securities authorized in this article, except for warrants not issued for cash, and except for temporary bonds issued pending preparation of definitive bonds, shall be sold at public or private sale for not less than the principal amount thereof and accrued interest, or at the board's option, below par, at a discount not exceeding seven percent of the principal amount thereof, but such securities shall never be sold at a price such that the net effective interest rate exceeds the maximum net effective interest rate authorized.

(2) No discount, except as provided in subsection (1) of this section, or commission shall be allowed or paid on or for any security sale to any purchaser or bidder, directly or indirectly.

Source: L. 69: p. 724, § 1. C.R.S. 1963: § 89-20-41. L. 70: p. 294, § 106.

32-9-141. Application of proceeds. All moneys received from the issuance of any securities authorized in this article shall be used solely for the purposes for which issued.

Source: L. 69: p. 724, § 1. C.R.S. 1963: § 89-20-42.

32-9-142. Use of unexpended proceeds. Any unexpended balance of such security proceeds remaining after the completion of the purposes for which such securities were issued shall be credited immediately to the fund or account created for the payment of the principal of said securities and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise appertaining to their issuance, or so paid into a reserve therefor.

Source: L. 69: p. 724, § 1. C.R.S. 1963: § 89-20-43.

32-9-143. Covenants in security proceedings. Any resolution or trust indenture authorizing the issuance of securities or any other instrument relating thereto may contain covenants and other provisions limiting the exercise of powers conferred by this article upon the board in order to secure the payment of such securities, in agreement with the holders and owners of such securities, as the board may determine.

Source: L. 69: p. 725, § 1. C.R.S. 1963: § 89-20-44.

32-9-144. Remedies of security holders. (1) Subject to contractual limitations binding upon the holders or owners of any issue or series of securities or trustee therefor and subject to any prior or superior rights of others, any holder or owner of securities or trustee therefor shall have the right and power for the equal benefit and protection of all holders and owners of securities similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the district and its board and any of its officers, agents, and employees, and to require and compel the district or its board or any such officers, agents, or employees to perform and carry out their duties, obligations, or other commitments under this article and their covenants and agreements with the holder or owner of any security;

(b) By action or suit in equity to require the district and its board to account as if they were the trustee of an express trust;

(c) By action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any revenues or any proceeds of taxes, or both, pledged for the payment of the securities, prescribe sufficient fees derived therefrom, and collect, receive, and apply all revenues or other moneys pledged for the payment of the securities in the same manner as the district itself might do in accordance with the obligations of the district;

(d) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any security and to bring suit thereupon.

Source: L. 69: p. 725, § 1. C.R.S. 1963: § 89-20-45. L. 2000: (1)(c) amended, p. 309, § 11, effective April 5.

32-9-145. Limitations upon liabilities. Neither the directors nor any person executing any district securities issued under this article shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to this article shall not in any way create or constitute any indebtedness, liability, or obligation of the state or of any political subdivision thereof, except the district, and nothing in this article shall be construed to authorize the district to incur any indebtedness on behalf of or in any way to obligate the state or any political subdivision thereof, except the district.

Source: L. 69: p. 725, § 1. C.R.S. 1963: § 89-20-46.

32-9-146. Interest after maturity. No interest shall accrue on any security authorized in this article after it becomes due and payable if funds for the payment of the principal of and the interest on the security and any prior redemption premium due are available to a paying agent for such payment without default.

Source: L. 69: p. 725, § 1. C.R.S. 1963: § 89-20-47.

32-9-147. Refunding bonds. (1) Except as otherwise provided in this article, any bonds issued under this article may be refunded without an election, subject to the provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise relating thereto.

(2) Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this article for the sale of other bonds.

(3) No bonds may be refunded under this article unless the holders thereof voluntarily surrender them for exchange or payment or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within said period of time. No maturity of any bonds refunded may be extended over fifteen years. The rate of interest on such refunding bonds shall be determined by the board. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of the refunding bonds. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

(4) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow or in trust to be applied to the payment of the bonds refunded upon their presentation therefor. Any proceeds held in escrow or in trust, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow or in trust, together with any interest or other gain to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent or trustee payable therefrom to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption dates upon which the board shall be obligated to call the refunded bonds for prior redemption.

(5) Except as otherwise provided in this article, the relevant provisions pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes, and revenues, and other aspects of the bonds.

Source: L. 69: p. 725, § 1. C.R.S. 1963: § 89-20-48. L. 70: p. 294, § 107. L. 73: pp. 994, 995, §§ 12, 16. L. 89: (4) amended, p. 1120, § 42, effective July 1.

32-9-148. Issuance of interim notes. (1) Whenever a proposal to issue bonds for any purpose authorized in this article has been approved at an election held in accordance with this article, the district may borrow money without any other election in anticipation of sales taxes or of the receipt of the proceeds of said bonds and to issue interim notes to evidence the amount so borrowed; except that the aggregate amount of the interim notes may not exceed the amount so authorized by the election. Any interim notes may mature at such time not exceeding a period of time equal to the estimated time needed to effect the purposes for which the bonds are authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this section, interim notes shall be issued as provided in this article for district securities.

(2) Sales taxes, proceeds of bonds to be thereafter issued or reissued, and bonds issued for the purpose of securing the payment of interim notes, or any combination thereof, may be pledged for the purpose of securing the payment of the interim notes. Any bonds pledged as collateral security for the payment of any interim notes shall mature at such time as the board may determine, but in no event exceeding forty years from the date of either any of such bonds or any of such interim notes, whichever date is the earlier. Any such bonds pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim notes or interim notes secured by a pledge of such bonds, nor shall they bear interest at any time which, with any interest accruing at the same time on the interim notes so secured, exceeds the maximum net effective interest rate authorized.

(3) For the purpose of funding any interim notes, any bonds pledged as collateral security to secure the payment of such interim notes, upon their surrender as pledged property, may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election may be issued for such a funding. Any such bonds shall mature at such time as the board may determine, but in no event exceeding forty years from the date of either any of the interim notes so funded or any of the bonds so pledged as collateral security, whichever date is earlier. Bonds may be issued separately or issued in combination in one series or more. Except as otherwise provided in this section any such funding bonds shall be issued as is provided in this article for district securities.

(4) No interim note issued pursuant to the provisions of this section shall be extended or funded except by the issuance or reissuance of a bond in compliance with the provisions of this section.

Source: L. 69: p. 726, § 1. C.R.S. 1963: § 89-20-49. L. 70: p. 295, § 108. L. 73: p. 994, § 15.

32-9-149. Elections. (1) Where in this article an election is permitted or required, the election shall be held concurrently or jointly with any general election held under the laws of this state or in accordance with article 41 of title 1, C.R.S., as applicable.

(2) Repealed.

Source: L. 69: p. 727, § 1. C.R.S. 1963: § 89-20-50. L. 70: p. 296, § 109. L. 81: (2) amended, p. 1626, § 33, effective July 1. L. 83: Entire section R&RE, p. 1283, § 4, effective June 3. L. 86: (2) repealed, p. 1221, § 31, effective May 30. L. 92: (1) amended, p. 911, § 164, effective January 1, 1993. L. 94: (1) amended, p. 1325, § 4, effective May 25.

32-9-150. Election resolution. (1) The board shall call any election by resolution adopted at least thirty days prior to the election. The resolution shall recite:

(a) The objects and purposes of the election for which the indebtedness is proposed to be incurred;

(b) The estimated cost;

(c) How much, if any, of said estimated cost is to be defrayed out of any federal grant or money other than that received from indebtedness to be incurred;

(d) The estimated additional annual cost of operation and maintenance of any facility, the acquisition of which the indebtedness, in whole or in part, is to be incurred;

(e) The amount of principal of the indebtedness to be incurred therefor, and the maximum net effective interest rate to be paid on such indebtedness;

(f) The date upon which the election shall be held; and

(g) The name of the designated election official who shall be responsible for conducting the election pursuant to articles 1 to 13 of title 1, C.R.S.

(2) and (3) (Deleted by amendment, L. 92, p. 911, § 165, effective January 1, 1993.)

Source: L. 69: p. 727, § 1. C.R.S. 1963: § 89-20-51. L. 70: p. 296, § 110. L. 92: IP(1), (1)(f), (2), and (3) amended and (1)(g) added, p. 911, § 165, effective January 1, 1993.

32-9-151. Conduct and costs of elections. (1) Except as otherwise provided in this article, any district election shall be held and conducted in accordance with articles 1 to 13 of title 1, C.R.S.

(2) The district shall reimburse each affected county for all true and actual costs of conducting a district election pursuant to sections 1-5-505 and 1-5-506, C.R.S.

Source: L. 69: p. 728, § 1. C.R.S. 1963: § 89-20-52. L. 70: p. 296, §§ 111, 112. L. 71: pp. 962, 963, §§ 10, 11. L. 73: p. 989, § 6. L. 77: (5) amended, p. 233, § 9, effective June 19; (8) amended, p. 1513, § 76, effective July 15. L. 80: (3) and (9) amended, p. 415, § 28, effective February 21. L. 83: Entire section R&RE, p. 1284, § 5, effective June 3. L. 92: Entire section amended, p. 911, § 166, effective January 1, 1993. L. 93: (2) amended, p. 1791, § 80, effective June 6.

32-9-152. Notice of election. (Repealed)

Source: L. 69: p. 729, § 1. C.R.S. 1963: § 89-20-53. L. 83: Entire section repealed, p. 1284, § 6, effective June 3.

32-9-153. Polling places. (Repealed)

Source: L. 69: p. 729, § 1. C.R.S. 1963: § 89-20-54. L. 83: Entire section repealed, p. 1284, § 6, effective June 3.

32-9-154. Election supplies. (Repealed)

Source: L. 69: p. 729, § 1. C.R.S. 1963: § 89-20-55. L. 70: p. 297, § 113. L. 77: Entire section amended, p. 1513, § 77, effective July 15. L. 83: Entire section repealed, p. 1284, § 6, effective June 3.

32-9-155. Election returns. (Repealed)

Source: L. 69: p. 729, § 1. C.R.S. 1963: § 89-20-56. L. 70: p. 297, § 114. L. 71: p. 963, § 12. L. 83: Entire section repealed, p. 1284, § 6, effective June 3.

32-9-156. District - tax exempted. The district shall be exempted from any general ad valorem taxes upon any property of the district acquired and used for purposes of this article.

Source: L. 69: p. 730, § 1. C.R.S. 1963: § 89-20-57.

32-9-157. Dissolution of district. (Repealed)

Source: L. 69: p. 730, § 1. C.R.S. 1963: § 89-20-58. L. 72: p. 483, § 7. L. 73: p. 989, § 7. L. 76: (4) and (5) amended, p. 603, § 23, effective July 1. L. 83: Entire section repealed, p. 1284, § 6, effective June 3.

32-9-158. Merger, consolidation, or assumption of district. Nothing in this article shall be construed to prevent the merger, consolidation, or assumption of the regional transportation district with, into, or by any other district, authority, or political subdivision of the state that may be authorized and formed pursuant to the laws and constitution of the state of Colorado, so long as adequate and equitable provisions are made upon merger, consolidation, or assumption for the discharge of all obligations of the district and for the protection of the rights of all holders of securities of the district.

Source: L. 69: p. 731, § 1. C.R.S. 1963: § 89-20-61.

32-9-159. Freedom from judicial process. (1) Execution or other judicial process shall not issue against any property of the district authorized in this article, nor shall any judgment against the district be a charge or lien upon its property.

(2) Subsection (1) of this section does not apply to or limit the right of the holder or owner of any district securities, his trustee, or any assignee of all or part of this interest, the federal government or any public body when it is a party to any contract with the district, and any other obligee under this article to foreclose, to enforce, or to pursue any remedies for the enforcement of any pledge or lien given by the district on the proceeds of any taxes or revenues or both, or on any other moneys of the district.

Source: L. 69: p. 730, § 1. C.R.S. 1963: § 89-20-59.

32-9-160. Misdemeanors. (1) Any person who wrongfully damages, injures, or destroys, or in any manner impairs the usefulness of any facility, property, structure, improvement, equipment, or other property of the district acquired under the provisions of this article, or who wrongfully interferes with any officer, agent, or employee of the district in the proper discharge of his duties is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) If the district is damaged by any such act, it may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

Source: L. 69: p. 731, § 1. C.R.S. 1963: § 89-20-60.

32-9-161. Eminent domain. (1) Subsequent to approval of incurrence of debt and issuance of securities in an election held pursuant to section 32-9-108, the power of eminent domain vested in the district shall include, but not be limited to, the power to condemn, in the name of the district:

(a) Either the fee simple or any lesser estate or interest in any real property which the board by resolution determines is necessary for carrying out the purposes of this article; such resolution shall be prima facie evidence that the condemnation of the fee simple, or other lesser estate or interest in real property, is necessary for carrying out the purposes of this article;

(b) Any property necessary to carry out any of the purposes of this article, even if such property is already devoted to the same use by any person or public body, except the federal government unless the federal government consents to such condemnation; and

(c) Any existing transportation system of any person or public body in the district in use.

(2) The district shall not abandon any condemnation proceedings after the date upon which the district took possession of the property condemned.

Source: L. 73: p. 986, § 4. **C.R.S. 1963:** § 89-20-63.

Editor's note: Section 32-9-108, which is referenced in subsection (1) of this section, was repealed by L. 83, p. 1284, § 6. The election formerly detailed in that section, concerning authorizing the district to issue securities, payable from a district-wide sales tax, for the development of a multimodal mass transportation system was held September 7, 1973.

32-9-162. Money management. The district has the authority to structure and transact its banking affairs in a manner most financially advantageous to the district, consistent with prevailing prudent business practice. The district may conduct its banking affairs with any banking or other state or federally regulated financial institution, which is federally insured, whether such bank or other financial institution is within or without the district.

Source: L. 85: Entire section added, p. 1120, § 2, effective May 5.

32-9-163. Investment management. (1) In addition to the authority granted the district under section 32-9-119 (1) (n), (1) (o), and (1) (p), the district may invest its moneys in any of the following:

- (a) Obligations of the United States government or its agencies and instrumentalities;
- (b) Certificates of deposit or other evidences of deposit or investment of a bank, a savings and loan association, or any other state or federally regulated financial institution, which is federally insured;
- (c) Bankers' acceptances drawn on and accepted by commercial banks;
- (d) Collateralized prime commercial paper;
- (e) Repurchase agreements and reverse repurchase agreements the underlying collateral of which consists of the instruments set forth in paragraphs (a) to (d) of this subsection (1);
- (f) Money market mutual funds the portfolios of which consist of the instruments set forth in paragraphs (a) to (d) of this subsection (1);
- (g) Securities of the district.

(2) In addition to the investments authorized by subsection (1) of this section, the district, for purposes of hedging against interest rate risk only and not for speculation, may enter into contractual arrangements involving debt futures and options on debt futures only on obligations of the United States government.

(3) Investment decisions shall be made with the judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs and shall not be made for speculation but shall be made for investment, considering the probable credit quality of their capital as well as the probable income to be derived.

(4) The district shall establish a written investment policy with respect to investing the moneys of the district. The investment policy shall address, but shall not be limited to, liquidity, diversification, credit quality of principal, yield, maturity, and quality and capability of investment management, with primary emphasis on credit quality and liquidity.

Source: L. 85: Entire section added, p. 1120, § 2, effective May 5.

32-9-164. Custodians. For purposes of making deposits or investments, the board may appoint, by written resolution, one or more persons to act as custodians of the moneys of the district, who shall give surety bonds in such amounts and form and for such purposes as the board requires.

Source: L. 85: Entire section added, p. 1120, § 2, effective May 5.

ARTICLE 9.5**Transit Construction Authority****32-9.5-101 to 32-9.5-110. (Repealed)**

Source: L. 89: Entire article repealed, p. 1321, § 2, effective August 1.

Editor's note: (1) This article was added in 1987. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) For the holding that the transit construction authority (prior to its repeal in 1989) was not a service authority within the meaning of § 17 of article XIV of the Colorado constitution, see *Anema v. Transit Const. Authority*, 788 P.2d 1261 (Colo. 1990).

ARTICLE 9.7**Mass Transportation**

32-9.7-101. Definitions.

32-9.7-102. Mass transportation account.

32-9.7-101. Definitions. For purposes of this article, unless the context otherwise requires:

(1) "Mass transportation project" means any project which transports the general public by bus, rail, air, high occupancy vehicle lane, or any other means of conveyance provided for in article 9 of this title.

Source: L. 89: Entire article added, p. 1320, § 1, effective August 8.

32-9.7-102. Mass transportation account. There is hereby created in the state treasury a mass transportation account which shall consist of all of the unexpended revenues collected by the board of the transit construction authority as of August 1, 1989, which revenues were collected pursuant to the authority of such board to impose assessments on property or persons. Such revenues shall be transmitted to the state treasurer for deposit into a separate interest-bearing mass transportation account for the construction of mass transportation projects in the corridors from which such funds were collected. The expenditure of such funds shall only be made with the approval of the general assembly. Any other use of these funds shall require a two-thirds majority vote of both houses of the general assembly. The mass transportation account created in this section shall accumulate interest and shall be kept separate from all other accounts in the state treasury, and it shall be identified separately from all other revenues in the state treasury. All reports, studies, plans, documents, books, financial records, audits, and any other information compiled by the transit construction authority shall be transferred to the director of research of the legislative council, and such information shall be identified separately from all other information relating to mass transportation issues and shall be made available to the public upon request.

Source: L. 89: Entire article added, p. 1320, § 1, effective August 8.

Editor's note: The transit construction authority was terminated on August 1, 1989. See chapter 291, Session Laws of Colorado 1989.

Cross references: For the appropriation made from the mass transportation account to the corrections expansion reserve fund, see § 17-1-117, as said section existed prior to its repeal in 2000.

ARTICLE 10

Three Lakes Water and Sanitation District Act

32-10-101.	Short title.	32-10-130.	Correction of faulty notices. (Repealed)
32-10-102.	Legislative declaration.	32-10-131.	Early hearings. (Repealed)
32-10-103.	Definitions. (Repealed)	32-10-132.	Refunding bonds. (Repealed)
32-10-104.	Creation of district.	32-10-133.	Limitations upon issuance. (Repealed)
32-10-105.	Boundaries of district.	32-10-134.	Use of proceeds of refunding bonds. (Repealed)
32-10-106.	Board of directors - initial appointment. (Repealed)	32-10-135.	Combination of refunding and other bonds. (Repealed)
32-10-107.	Board to file oath and bond. (Repealed)	32-10-136.	Board's determination final. (Repealed)
32-10-108.	Oath and bond of directors. (Repealed)	32-10-137.	Board of directors of district to conduct elections. (Repealed)
32-10-109.	Organization of board - compensation - audit - removal. (Repealed)	32-10-138.	Persons entitled to vote at district elections. (Repealed)
32-10-110.	Meetings - vacancies. (Repealed)	32-10-139.	Notice of election. (Repealed)
32-10-111.	Directors - number - election - term. (Repealed)	32-10-140.	Copies of election laws and judges' instructions. (Repealed)
32-10-112.	Vacancies. (Repealed)	32-10-141.	Judges of election. (Repealed)
32-10-113.	Qualifications and nominations of candidates for district directors. (Repealed)	32-10-142.	Oath of judges - compensation. (Repealed)
32-10-114.	Objections to nominations. (Repealed)	32-10-143.	Precincts and polling places. (Repealed)
32-10-115.	General powers. (Repealed)	32-10-144.	Ballots, ballot boxes, electronic voting, and voting machines. (Repealed)
32-10-116.	Contracts of district - requirements. (Repealed)	32-10-145.	Arrangements for voting. (Repealed)
32-10-117.	Water, sanitation - charge for availability - power to compel connection. (Repealed)	32-10-146.	Hours of voting. (Repealed)
32-10-118.	Water and sanitation - right to sell or lease water. (Repealed)	32-10-147.	Watchers. (Repealed)
32-10-119.	Construction of facilities - duties. (Repealed)	32-10-148.	Judge to keep pollbook. (Repealed)
32-10-120.	Revenues of district - collection. (Repealed)	32-10-149.	Preparing to vote - affidavit. (Repealed)
32-10-121.	Levy and collection of taxes. (Repealed)	32-10-150.	Manner of voting in precincts which use paper ballots. (Repealed)
32-10-122.	Levies to cover deficiencies. (Repealed)	32-10-151.	Disabled voter - assistance. (Repealed)
32-10-123.	Inclusion in or exclusion from district - procedures. (Repealed)	32-10-152.	Spoiled ballots. (Repealed)
32-10-124.	Court proceedings - inclusion - exclusion. (Repealed)	32-10-153.	Count and certification of votes. (Repealed)
32-10-125.	Effect of inclusion or exclusion. (Repealed)	32-10-154.	Defective ballots. (Repealed)
32-10-126.	Power to issue revenue bonds - terms. (Repealed)	32-10-155.	Return of ballot box, pollbook, and registration list. (Repealed)
32-10-127.	Power to incur indebtedness - interest - maturity - denominations. (Repealed)	32-10-156.	Preservation of records. (Repealed)
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	votes - voting machines. (Repealed)	32-10-172.	Sufficiency of complaint - judicial notice. (Repealed)
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32-10-162.	Challenges. (Repealed)	32-10-174.	Officers subject to recall. (Repealed)
32-10-163.	Canvass of votes - certificate of election. (Repealed)	32-10-175.	Recall - procedure - tampering with petition. (Repealed)
32-10-164.	Imperfect returns. (Repealed)	32-10-176.	Recall petition - sufficiency - review. (Repealed)
32-10-165.	Corrections. (Repealed)	32-10-177.	Recall election - resignation. (Repealed)
32-10-166.	Recount of votes - board to conduct. (Repealed)	32-10-178.	Transfer of functions to a service authority. (Repealed)
32-10-167.	Tie - lots - notice to candidates. (Repealed)	32-10-179.	Master plan - approval by board of county commissioners. (Repealed)
32-10-168.	Contests. (Repealed)	32-10-180.	Application of special district act.
32-10-169.	District judge to preside - bond. (Repealed)		
32-10-170.	Controversies. (Repealed)		
32-10-171.	District attorney or attorney general to prosecute. (Repealed)		

32-10-101. Short title. This article shall be known and may be cited as the “Three Lakes Water and Sanitation District Act”.

Source: L. 71: p. 1002, § 1. C.R.S. 1963: § 89-24-1.

32-10-102. Legislative declaration. (1) The general assembly determines, finds, and declares that:

(a) Certain areas in this state possess natural characteristics which make them attractive for the building of seasonal homes and tourist facilities. There is an increasing need to build public facilities in such areas in order to accommodate the needs of the seasonal population. Many of these areas contain large federal land holdings which attract seasonal users. The increasing public use in such areas is leading to serious water quality problems, a factor of concern to all the citizens of this state. Such an area is the three lakes area of Grand county, surrounding Grand lake, Shadow Mountain lake, and lake Granby. The general assembly thus declares that the creation of this district promotes the health, comfort, convenience, safety, and welfare of all the people of the state and visitors to the state, and will be of special benefit to the inhabitants of the district and the property therein.

(b) All property to be acquired by the district under this article shall be owned, operated, administered, and maintained for and on behalf of all of the people of the district;

(c) The provision in this article for the purposes, powers, duties, privileges, immunities, rights, liabilities, and disabilities concerning the district will serve a public use;

(d) The district created by this article is a body corporate and politic, a political subdivision of the state, and a municipal corporation with the powers provided in this article;

(e) Any notice provided for in this article for any purpose is reasonably calculated to inform each person who has a legally protected interest which may be directly and adversely affected by any proceedings under this article;

(f) The necessity for this article results from the population, growth, and development in the area included by this article and from the resultant pollution of Grand lake, Shadow Mountain lake, and lake Granby;

(g) A general law cannot be made applicable to the district, and to properties, powers, duties, privileges, immunities, rights, liabilities, and disabilities pertaining thereto as provided in this article, because of the number of atypical factors and special conditions concerning them;

(h) The powers, privileges, and rights granted in this article and the duties, immunities, liabilities, and disabilities provided in this article comply in all respects with any requirement or limitation imposed by any constitutional provision;

(i) For the accomplishment of the purposes provided in this section, the provisions of this article shall be broadly construed.

Source: L. 71: p. 1002, § 1. C.R.S. 1963: § 89-24-2.

32-10-103. Definitions. (Repealed)

Source: L. 71: p. 1003, § 1. C.R.S. 1963: § 89-24-3. L. 77: (7) amended, p. 1513, § 78, effective July 15. L. 87: IP(5)(a), (5)(a)(II), and (5)(b) amended, p. 337, § 107, effective July 1. L. 92: (4), (5)(a), (7), (10), and (13) amended and (2.5) added, p. 912, § 167, effective January 1, 1993. L. 94: (5)(a)(I) amended, p. 1775, § 46, effective January 1, 1995. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-104. Creation of district. There is hereby created a district known and designated as the “three lakes water and sanitation district”.

Source: L. 71: p. 1004, § 1. C.R.S. 1963: § 89-24-4.

32-10-105. Boundaries of district. The area comprising the district shall consist of the lands located in Grand county, described as follows:

Beginning at the NE corner Section 1, T. 4 N., R. 76 W., of the 6th principal meridian; thence southerly along the east lines of Sections 1, 12, 13, 24, and 25, all in T. 4 N., R. 76 W., to the SE corner of said Section 25; thence easterly along the north lines of Sections 31 and 32, T. 4 N., R. 75 W., to the NE corner of said Section 32; thence southerly along the east line of Section 32, T. 4 N., R. 75 W., to the SE corner of said Section 32; thence easterly along the north line of Section 4, T. 3 N., R. 75 W., to the N 1/4 corner of said Section 4; thence southerly along the north-south centerlines of Section 4 and Section 9, T. 3 N., R. 75 W., to the center of said Section 9; thence westerly along the east-west centerlines of Sections 9, 8, and 7, T. 3 N., R. 75 W., to a point on the easterly shoreline of Shadow Mountain lake; thence southerly along the easterly shoreline of Shadow Mountain lake through Sections 7, 18, and 19, T. 3 N., R. 75 W., to the Shadow Mountain lake dam at the centerline of the Colorado river, in said Section 19; thence southerly along the centerline of the Colorado river, Columbine bay, and Grand bay of lake Granby through Sections 19, 30, 29, and 32, T. 3 N., R. 75 W., to a point on the south line of said Section 32, which line is also the north line of Section 5, T. 2 N., R. 75 W.; thence easterly along the north line of said Section 5 to the NE corner of Section 5, T. 2 N., R. 75 W.; thence southerly along the east lines of Sections 5 and 8, T. 2 N., R. 75 W., to the E 1/4 corner of said Section 8; thence easterly along the east-west centerline of Section 9, T. 2 N., R. 75 W., to the E 1/4 corner of said Section 9; thence southerly along the east line of Section 9, T. 2 N., R. 75 W., to the SE corner of said Section 9; thence easterly along the north lines of Sections 15 and 14, T. 2 N., R. 75 W., to the NE corner of said Section 14; thence southerly along the east lines of Sections 14 and 23, T. 2 N., R. 75 W., to the SE corner of said Section 23; thence westerly along the south lines of Sections 23, 22, and 21, T. 2 N., R. 75 W., to the S 1/4 corner of said Section 21; thence northerly along the north-south centerline of said Section 21 to the S 1/4 corner of Section 16, T. 2 N., R. 75 W.; thence westerly along the south lines of Sections 16, 17, and 18, T. 2 N., R. 75 W., and Sections 13, 14, and 15, T. 2 N., R. 76 W., to the SW corner of said Section 15; thence northerly along the west lines of Sections 15, 10, and 3, T. 2 N., R. 76 W., to the W 1/4 corner of said Section 3; thence westerly along the east-west centerline of Section 4, T. 2 N., R. 76 W., to the center of said Section 4; thence northerly along the north-south centerline of said Section 4, T. 2 N., R. 76 W., and the north-south centerline of Section 33, T. 3 N., R. 76 W., to the center of said Section 33; thence westerly along the east-west centerlines of Sections 33, 32, and 31, T. 3 N., R. 76 W., to the W 1/4 corner of said Section 31; thence northerly along the west line of Section 31, T. 3 N., R. 76 W., to the NW corner of said Section 31; thence easterly along the north line of said Section 31, T. 3 N., R. 76 W., to the N 1/4 corner of said Section 31; thence

northerly along the north-south centerline of Section 30, T. 3 N., R. 76 W., to the N 1/4 corner of said Section 30; thence easterly along the north line of Section 30, T. 3 N., R. 76 W., to the NE corner of said Section 30; thence northerly along the west line of Section 20, T. 3 N., R. 76 W., to the NW corner of said Section 20; thence easterly along the north lines of Sections 20, 21, and 22, T. 3 N., R. 76 W., to the NE corner of said Section 22; thence northerly along the west lines of Sections 14 and 11, T. 3 N., R. 76 W., to the NW corner of said Section 11; thence easterly along the north line of Section 11, T. 3 N., R. 76 W., to the N 1/4 corner of said Section 11; thence northerly along the north-south centerlines of Section 2, T. 3 N., R. 76 W., and Section 35, T. 4 N., R. 76 W., to the N 1/4 corner of said Section 35; thence easterly along the north line of Section 35, T. 4 N., R. 76 W., to the NE corner of said Section 35; thence northerly along the west lines of Sections 25, 24, and 13, T. 4 N., R. 76 W., to the NW corner of said Section 13; thence westerly along the south line of Section 11, T. 4 N., R. 76 W., to the S 1/4 corner of said Section 11; thence northerly along the north-south centerlines of Sections 11 and 2, T. 4 N., R. 76 W., to the N 1/4 corner of said Section 2; thence easterly along the north lines of Sections 2 and 1, T. 4 N., R. 76 W., to the NE corner of said Section 1, the point of beginning; and the above description contains 59.25 square miles, more or less, including water surface areas.

Source: L. 71: p. 1004, § 1. C.R.S. 1963: § 89-24-5.

32-10-106. Board of directors - initial appointment. (Repealed)

Source: L. 71: p. 1006, § 1. C.R.S. 1963: § 89-24-6. L. 92: Entire section amended, p. 912, § 168, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-107. Board to file oath and bond. (Repealed)

Source: L. 71: p. 1006, § 1. C.R.S. 1963: § 89-24-7. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-108. Oath and bond of directors. (Repealed)

Source: L. 71: p. 1026, § 1. C.R.S. 1963: § 89-24-72. L. 92: Entire section amended, p. 913, § 169, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-109. Organization of board - compensation - audit - removal. (Repealed)

Source: L. 71: p. 1006, § 1. C.R.S. 1963: § 89-24-8. L. 77: (4)(a) amended, p. 1513, § 79, effective July 15. L. 96: (4) amended, p. 549, § 2, effective April 24. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-110. Meetings - vacancies. (Repealed)

Source: L. 71: p. 1007, § 1. C.R.S. 1963: § 89-24-9. L. 90: (1)(c) amended, p. 1499, § 9, effective July 1. L. 91: IP(1)(c) amended, p. 821, § 8, effective June 1. L. 92: (3) amended, p. 913, § 170, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-111. Directors - number - election - term. (Repealed)

Source: L. 71: p. 1017, § 1. C.R.S. 1963: § 89-24-34. L. 92: Entire section amended, p. 913, § 171, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-112. Vacancies. (Repealed)

Source: L. 71: p. 1027, § 1. C.R.S. 1963: § 89-24-77. L. 92: (1)(a) and (3) amended, p. 914, § 172, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-113. Qualifications and nominations of candidates for district directors. (Repealed)

Source: L. 71: p. 1018, § 1. C.R.S. 1963: § 89-24-37. L. 75: (2) amended, p. 221, § 71, effective July 16. L. 92: Entire section amended, p. 914, § 173, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-114. Objections to nominations. (Repealed)

Source: L. 71: p. 1018, § 1. C.R.S. 1963: § 89-24-38. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-115. General powers. (Repealed)

Source: L. 71: p. 1007, § 1. C.R.S. 1963: § 89-24-10. L. 79: (1)(q) added, p. 1626, § 43, effective June 8. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-116. Contracts of district - requirements. (Repealed)

Source: L. 71: p. 1009, § 1. C.R.S. 1963: § 89-24-11. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-117. Water, sanitation - charge for availability - power to compel connection. (Repealed)

Source: L. 71: p. 1009, § 1. C.R.S. 1963: § 89-24-12. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-118. Water and sanitation - right to sell or lease water. (Repealed)

Source: L. 71: p. 1010, § 1. C.R.S. 1963: § 89-24-13. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-119. Construction of facilities - duties. (Repealed)

Source: L. 71: p. 1010, § 1. C.R.S. 1963: § 89-24-14. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-120. Revenues of district - collection. (Repealed)

Source: L. 71: p. 1010, § 1. C.R.S. 1963: § 89-24-15. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-121. Levy and collection of taxes. (Repealed)

Source: L. 71: p. 1011, § 1. C.R.S. 1963: § 89-24-16. L. 77: (3) amended, p. 1514, § 80, effective July 15. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-122. Levies to cover deficiencies. (Repealed)

Source: L. 71: p. 1011, § 1. C.R.S. 1963: § 89-24-17. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-123. Inclusion in or exclusion from district - procedures. (Repealed)

Source: L. 71: p. 1011, § 1. C.R.S. 1963: § 89-24-18. L. 81: (1) amended, p. 1626, § 34, effective July 1. L. 92: (6)(c) amended, p. 914, § 174, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-124. Court proceedings - inclusion - exclusion. (Repealed)

Source: L. 71: p. 1013, § 1. C.R.S. 1963: § 89-24-19. L. 93: (1.5) added, p. 84, § 3, effective March 29. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-125. Effect of inclusion or exclusion. (Repealed)

Source: L. 71: p. 1014, § 1. C.R.S. 1963: § 89-24-20. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-126. Power to issue revenue bonds - terms. (Repealed)

Source: L. 71: p. 1014, § 1. C.R.S. 1963: § 89-24-21. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-127. Power to incur indebtedness - interest - maturity - denominations. (Repealed)

Source: L. 71: p. 1014, § 1. C.R.S. 1963: § 89-24-22. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-128. Debt question submitted to electors - resolution. (Repealed)

Source: L. 71: p. 1015, § 1. C.R.S. 1963: § 89-24-23. L. 92: (1) and (2) amended, p. 915, § 175, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-129. Effect - subsequent elections. (Repealed)

Source: L. 71: p. 1015, § 1. C.R.S. 1963: § 89-24-24. L. 92: Entire section amended, p. 915, § 176, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-130. Correction of faulty notices. (Repealed)

Source: L. 71: p. 1016, § 1. C.R.S. 1963: § 89-24-25. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-131. Early hearings. (Repealed)

Source: L. 71: p. 1016, § 1. C.R.S. 1963: § 89-24-26. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-132. Refunding bonds. (Repealed)

Source: L. 71: p. 1016, § 1. C.R.S. 1963: § 89-24-27. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-133. Limitations upon issuance. (Repealed)

Source: L. 71: p. 1016, § 1. C.R.S. 1963: § 89-24-28. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-134. Use of proceeds of refunding bonds. (Repealed)

Source: L. 71: p. 1016, § 1. C.R.S. 1963: § 89-24-29. L. 89: Entire section amended, p. 1120, § 43, effective July 1. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-135. Combination of refunding and other bonds. (Repealed)

Source: L. 71: p. 1017, § 1. C.R.S. 1963: § 89-24-30. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-136. Board's determination final. (Repealed)

Source: L. 71: p. 1017, § 1. C.R.S. 1963: § 89-24-31. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-137. Board of directors of district to conduct elections. (Repealed)

Source: L. 71: p. 1017, § 1. C.R.S. 1963: § 89-24-32. L. 92: Entire section amended, p. 916, § 177, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-138. Persons entitled to vote at district elections. (Repealed)

Source: L. 71: p. 1017, § 1. C.R.S. 1963: § 89-24-33. L. 87: Entire section R&RE, p. 337, § 108, effective July 1. L. 92: (1) to (3), IP(4), and (4)(c) amended, p. 916, § 178, effective January 1, 1993. L. 93: (1) amended, p. 1791, § 81, effective June 6. L. 94: (4)(c) amended, p. 1643, § 70, effective May 31. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-139. Notice of election. (Repealed)

Source: L. 71: p. 1018, § 1. C.R.S. 1963: § 89-24-35. L. 87: Entire section R&RE, p. 338, § 109, effective July 1. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-140. Copies of election laws and judges' instructions. (Repealed)

Source: L. 71: p. 1018, § 1. C.R.S. 1963: § 89-24-36. L. 87: Entire section amended, p. 338, § 110, effective July 1. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-141. Judges of election. (Repealed)

Source: L. 71: p. 1018, § 1. C.R.S. 1963: § 89-24-39. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-142. Oath of judges - compensation. (Repealed)

Source: L. 71: p. 1019, § 1. C.R.S. 1963: § 89-24-40. L. 87: (3) amended, p. 338, § 111, effective July 1. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-143. Precincts and polling places. (Repealed)

Source: L. 71: p. 1019, § 1. C.R.S. 1963: § 89-24-41. L. 77: Entire section amended, p. 1514, § 81, effective July 15. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-144. Ballots, ballot boxes, electronic voting, and voting machines. (Repealed)

Source: L. 71: p. 1019, § 1. C.R.S. 1963: § 89-24-42. L. 77: Entire section amended, p. 1514, § 82, effective July 15. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-145. Arrangements for voting. (Repealed)

Source: L. 71: p. 1020, § 1. C.R.S. 1963: § 89-24-43. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-146. Hours of voting. (Repealed)

Source: L. 71: p. 1020, § 1. C.R.S. 1963: § 89-24-44. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-147. Watchers. (Repealed)

Source: L. 71: p. 1020, § 1. C.R.S. 1963: § 89-24-45. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-148. Judge to keep pollbook. (Repealed)

Source: L. 71: p. 1021, § 1. C.R.S. 1963: § 89-24-46. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-149. Preparing to vote - affidavit. (Repealed)

Source: L. 71: p. 1021, § 1. C.R.S. 1963: § 89-24-47. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-150. Manner of voting in precincts which use paper ballots. (Repealed)

Source: L. 71: p. 1021, § 1. C.R.S. 1963: § 89-24-48. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-151. Disabled voter - assistance. (Repealed)

Source: L. 71: p. 1021, § 1. C.R.S. 1963: § 89-24-49. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-152. Spoiled ballots. (Repealed)

Source: L. 71: p. 1021, § 1. C.R.S. 1963: § 89-24-50. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-153. Count and certification of votes. (Repealed)

Source: L. 71: p. 1022, § 1. C.R.S. 1963: § 89-24-51. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-154. Defective ballots. (Repealed)

Source: L. 71: p. 1022, § 1. C.R.S. 1963: § 89-24-52. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-155. Return of ballot box, pollbook, and registration list. (Repealed)

Source: L. 71: p. 1022, § 1. C.R.S. 1963: § 89-24-53. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-156. Preservation of records. (Repealed)

Source: L. 71: p. 1022, § 1. C.R.S. 1963: § 89-24-54. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-157. Use of voting machines. (Repealed)

Source: L. 71: p. 1022, § 1. C.R.S. 1963: § 89-24-55. L. 80: Entire section amended, p. 415, § 29, effective February 21. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-158. Judges to inspect machines. (Repealed)

Source: L. 71: p. 1023, § 1. C.R.S. 1963: § 89-24-56. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-159. Ballot labels - voting machines. (Repealed)

Source: L. 71: p. 1023, § 1. C.R.S. 1963: § 89-24-57. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-160. Close of polls and count of votes - voting machines. (Repealed)

Source: L. 71: p. 1023, § 1. C.R.S. 1963: § 89-24-58. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-161. Absentee voting. (Repealed)

Source: L. 71: p. 1023, § 1. C.R.S. 1963: § 89-24-59. L. 77: (3) amended, p. 234, § 10, effective June 19. L. 80: (1) amended, p. 415, § 30, effective February 21. L. 87: (3) amended, p. 338, § 112, effective July 1. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-162. Challenges. (Repealed)

Source: L. 71: p. 1023, § 1. C.R.S. 1963: § 89-24-60. L. 72: p. 562, § 31. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-163. Canvass of votes - certificate of election. (Repealed)

Source: L. 71: p. 1024, § 1. C.R.S. 1963: § 89-24-61. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-164. Imperfect returns. (Repealed)

Source: L. 71: p. 1024, § 1. C.R.S. 1963: § 89-24-62. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-165. Corrections. (Repealed)

Source: L. 71: p. 1024, § 1. C.R.S. 1963: § 89-24-63. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-166. Recount of votes - board to conduct. (Repealed)

Source: L. 71: p. 1024, § 1. C.R.S. 1963: § 89-24-64. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-167. Tie - lots - notice to candidates. (Repealed)

Source: L. 71: p. 1024, § 1. C.R.S. 1963: § 89-24-65. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-168. Contests. (Repealed)

Source: L. 71: p. 1025, § 1. C.R.S. 1963: § 89-24-66. L. 80: Entire section amended, p. 416, § 31, effective February 21. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-169. District judge to preside - bond. (Repealed)

Source: L. 71: p. 1025, § 1. C.R.S. 1963: § 89-24-67. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-170. Controversies. (Repealed)

Source: L. 71: p. 1025, § 1. C.R.S. 1963: § 89-24-68. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-171. District attorney or attorney general to prosecute. (Repealed)

Source: L. 71: p. 1025, § 1. C.R.S. 1963: § 89-24-69. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-172. Sufficiency of complaint - judicial notice. (Repealed)

Source: L. 71: p. 1025, § 1. C.R.S. 1963: § 89-24-70. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-173. Election offenses - penalties. (Repealed)

Source: L. 71: p. 1026, § 1. C.R.S. 1963: § 89-24-71. L. 80: Entire section amended, p. 439, § 6, effective July 1. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-174. Officers subject to recall. (Repealed)

Source: L. 71: p. 1026, § 1. C.R.S. 1963: § 89-24-73. L. 92: Entire section amended, p. 917, § 179, effective January 1, 1993. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-175. Recall - procedure - tampering with petition. (Repealed)

Source: L. 71: p. 1026, § 1. C.R.S. 1963: § 89-24-74. L. 85: (1)(a) amended, p. 1122, § 1, effective May 22. L. 88: (2) added, p. 296, § 12, effective May 29. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-176. Recall petition - sufficiency - review. (Repealed)

Source: L. 71: p. 1027, § 1. C.R.S. 1963: § 89-24-75. L. 85: Entire section R&RE, p. 1122, § 2, effective May 22. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-177. Recall election - resignation. (Repealed)

Source: L. 71: p. 1027, § 1. C.R.S. 1963: § 89-24-76. L. 85: Entire section amended, p. 1123, § 3, effective May 22. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-10-178. Transfer of functions to a service authority. (Repealed)

Source: L. 71: p. 1028, § 1. C.R.S. 1963: § 89-24-78. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-179. Master plan - approval by board of county commissioners. (Repealed)

Source: L. 71: p. 1028, § 1. C.R.S. 1963: § 89-24-79. L. 97: Entire section repealed, p. 1095, § 8, effective May 27.

32-10-180. Application of special district act. On and after May 27, 1997, and except as provided in this article, the three lakes water and sanitation district shall be subject to the provisions of the "Special District Act", article 1 of this title. All actions taken by the

district under this article prior to May 27, 1997, shall be considered valid and effective, and any existing debt and bond obligations of the district shall be deemed valid, effective, and binding.

Source: L. 97: Entire section added, p. 1095, § 7, effective May 27.

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Urban Drainage and Flood Control Act

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PART I

GENERAL PROVISIONS

32-11-101. Short title. This article shall be known and may be cited as the "Urban Drainage and Flood Control Act".

Source: L. 69: p. 732, § 1. C.R.S. 1963: § 89-21-1.

32-11-102. Legislative declaration. (1) The general assembly hereby determines, finds, and declares that:

(a) All property to be acquired by the district under this article shall be owned, operated, administered, and maintained for and on behalf of all of the people of the district;

(b) The creation of the district by this article promotes the health, comfort, safety, convenience, and welfare of all the people of the state and is of special benefit to the inhabitants of the district and the property therein;

(c) The provisions in this article of the purposes, powers, duties, privileges, immunities, rights, liabilities, and disabilities concerning the district serve a public use;

(d) The district created by this article is a body corporate and politic, a political subdivision of the state, and a municipal corporation with the powers provided in this article;

(e) Any notice provided for in this article for any purpose is reasonably calculated to inform each person of interest in any proceedings under this article which may directly and adversely affect his legally protected interests, if any;

(f) The necessity for this article results from the large population growth in the urban area included by this article within the district constituting a major portion of the state's population, from the numerous capital improvements and large amount of improved real property situated within such urban area, from the torrential storms occurring sporadically and intermittently in the urban area and other areas draining into such urban area, from the increasing danger of floods therein and the resultant risks to the property and to the health and safety of the persons within the urban area, from the division of the urban area into large areas of incorporated areas and unincorporated areas, from the fragmentation and proliferation of powers, rights, privileges, and duties pertaining to water, flood control, and drainage within such urban area among a substantial number of public bodies, and from the resultant inabilities of such public bodies to acquire suitable capital improvements for the alleviation of such dangers and risks;

(g) A general law cannot be made applicable to the district, and to properties, powers, duties, privileges, immunities, rights, liabilities, and disabilities pertaining thereto as provided in this article, because of the number of atypical factors and special conditions concerning them;

(h) The powers, privileges, and rights granted in this article, and the duties, immunities, liabilities, and disabilities provided in this article comply in all respects with any requirement or limitation imposed by any constitutional provision;

(i) For the accomplishment of the purposes provided in this section, the provisions of this article shall be broadly construed;

(j) The experience of the Big Thompson flood of 1976 illustrates the need for Colorado floodplains to be continually kept clear of debris and debris-collecting structures. This need is most apparent in the urban drainage and flood control district which encompasses many different political entities and more than one-half of the entire population of this state. To meet this need, it is the intent of the general assembly that a systematic and uniform program of preventive maintenance be instituted and maintained in the district, which program shall be administered by the board of directors of the district and not by local governments.

Source: L. 69: p. 733, § 2. C.R.S. 1963: § 89-21-2. L. 79: (1)(j) added, p. 1210, § 1, effective July 1.

ANNOTATION

The general assembly did not intend to require the urban drainage and flood control district to acquire all inadequate facilities, even if the district was aware of flooding caused

by such facilities. *Larry H. Miller Corp.-Denver v. Urban Drainage & Flood Control Dist.*, 64 P.3d 941 (Colo. App. 2003).

32-11-103. Public purpose. The exercise of any power authorized in this article by the board on behalf of the district has been determined, and is declared to effect a public purpose; and any project authorized in this article shall effect a public purpose.

Source: L. 69: p. 818, § 215. C.R.S. 1963: § 89-21-215.

32-11-104. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acquisition" or "acquire" means the purchase, construction, reconstruction, lease, gift, transfer, assignment, option to purchase, other contract, grant from the federal government, any public body, or any other person, endowment, bequest, devise, installation, condemnation, and any other acquirement (or any combination thereof) of the facilities, other property, any project, or an interest therein, authorized by this article.

(2) This "article" means the "Urban Drainage and Flood Control Act".

(3) "Assess", "assessment", or "special assessment" means the levy of a special

assessment, or the special assessment, against any tract specially benefited in an improvement district by any project, which assessment shall be made on a front-foot, zone, area, or other equitable basis as determined by the board; but in no event shall any assessment exceed the estimated maximum special benefits to the tract assessed as determined by the board, as provided in section 32-11-634 (4).

(4) "Assessable property" means the tracts of land specially benefited in an improvement district by any project the cost of which is wholly or partly defrayed by the urban district by the levy of assessments, except any tract owned by the federal government in the absence of its consent to the assessment of any tract so owned, and except any street, alley, highway, or other public right-of-way of a public body, as provided in section 32-11-660.

(5) "Assessment lien" means a lien on a tract in an improvement district created by resolution of the urban district to secure the payment of an assessment levied against that tract, as provided in section 32-11-645.

(6) "Assessment unit" means a unit or quasi-improvement district designated by the board for the purpose of petition, remonstrance, and assessment in the case of a combination of projects in an improvement district, pursuant to section 32-11-606.

(7) "Board" or "board of directors", when not otherwise qualified, means the board of directors of the urban district.

(8) "Chairman" or "chairman of the board", or any phrase of similar import means the de jure or de facto presiding officer of the board and the urban district, or his successor in functions, if any.

(9) "Commercial bank" means a state or national bank or trust company which is a member of the federal deposit insurance corporation, including without limitation any "trust bank" as defined in this section.

(10) (a) "Condemnation" or "condemn" means the acquisition by the exercise of the power of eminent domain of any property for the facilities, any project, or an interest therein, authorized in this article. The board may exercise on behalf of the district the power of eminent domain or dominant eminent domain within or without or both within and without the district in the manner provided in articles 1 to 7 of title 38, C.R.S., as from time to time amended, except as otherwise provided in this article. The district may take any property necessary to carry out any of the objects or purposes of this article, whether such property is already devoted to the same use by any person other than the federal government in the absence of its consent to any such taking, and may condemn any existing works or improvements of any such person in the district.

(b) The power of eminent domain vested in the board includes the power to condemn, in the name of the district, either the fee simple or any lesser estate or interest in any real property which the board by resolution determines is necessary for carrying out the purposes of this article. Such resolution is prima facie evidence that the taking of the fee simple, easement, or other lesser estate or interest, as the case may be, is necessary.

(c) The district shall not abandon any condemnation proceedings subsequent to the date upon which it has taken possession of the property being acquired.

(d) In the event the construction of any project authorized in this article, or any part thereof, makes necessary the removal and relocation of any public utility, whether on private or public right-of-way, or otherwise, the district shall reimburse the owner of such public utility facility for the expense of such removal and relocation, including the cost of any necessary land or rights in land.

(11) (a) "Corporate district" means any school district, junior college district, conservancy district, drainage district, metropolitan district, water district, sanitation district, water and sanitation district, mosquito control district, street improvement district, television relay and translator district, public improvement district, general improvement district, fire protection district, metropolitan recreation district, metropolitan park district, metropolitan recreation and park district, metropolitan water district, health service district, metropolitan sewage disposal district, irrigation district, internal improvement district, water conservation district, water conservancy district, or any other type of district constituting a body corporate and politic and a political subdivision of the state.

(b) "Corporate district" does not include a "district" or "urban district" as defined in this section nor an "improvement district" as defined in this section.

(12) “Cost” or “cost of the project”, or any phrase of similar import, means, in addition to the usual connotations thereof, all or any part of the cost of the acquisition, improvement, and equipment (or any combination thereof) of all or any part of a project of the urban district and of all or any property, rights, easements, licenses, privileges, franchises, and other agreements deemed by the urban district to be necessary or useful and convenient therefor or in connection therewith, and all incidental expenses pertaining thereto, including without limitation at the option of the board and as it may from time to time determine:

(a) The cost of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired;

(b) The cost of acquiring any lands to which such buildings, structures, or other facilities may be moved or relocated;

(c) The cost of equipment for the district, including any project;

(d) The cost of installing or relocating or installing and relocating water lines, storm sewers, sanitary sewers, and other utility lines and services;

(e) The costs of restoring any public street, highway, bridge, viaduct, or other public right-of-way, stream of water, watercourse, ditch flume, pipeline, utility transmission line, or other public facilities to their former state of usefulness as nearly as may be;

(f) Condemnation costs, including all preliminary expenses and other incidental expenses pertaining to any condemnation;

(g) The cost of preliminary plans, other plans, specifications, studies, surveys, estimates of project cost and of taxes, revenues, and assessments (or any combination thereof), economic feasibility reports, and any other expenses necessary or incident to determining the feasibility or practicability of a project;

(h) The cost of other estimates, appraising, printing, advice, inspection, and other services rendered by engineers, architects, financial consultants, attorneys-at-law, clerical help, and other employees and agents of the urban district, and other professional costs;

(i) Court costs and other legal expenses;

(j) The cost of making, publishing, posting, mailing, and otherwise giving any notice, and of filing and recording instruments;

(k) The cost of acquiring any real property, including any easement or other right or interest therein, and including the taking of any option;

(l) The cost of contingencies, operation and maintenance expenses, and other expenses of the district prior to and during the acquisition, improvement, and equipment (or any combination thereof) of any project, and additionally during a period of not exceeding one year after the completion of the project, as may be estimated and determined by the board in any resolution authorizing the issuance of any district securities or other instrument pertaining thereto or in any contract with any public body, the federal government, or otherwise;

(m) Such provision or reserves or both provision and reserves for working capital, operation and maintenance expenses, replacement expenses, or for payment or security of principal of and interest on any district securities during and after the acquisition, improvement, and equipment (or any combination thereof) of any project, as the board may determine;

(n) Reimbursements to the federal government, the state, or any other public body or other person of any moneys theretofore expended for the purposes of the district, including such expenditures for or in connection with a project;

(o) The cost of funding any notes, warrants, or interim debentures as provided in this article;

(p) The preparation of budgets, including without limitation the procedure preliminary thereto;

(q) The levy, collection, and disposition of special assessments, including without limitation the preparation of preliminary rolls and assessment rolls;

(r) The levy, collection, and disposition of taxes;

(s) The fixing, collection, and disposition of revenues;

(t) All such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of the facilities, any project, any part thereof, or the placing of the same in operation.

(13) (a) "County" means the county in the state of Colorado in which is situated any tract assessed or other property to which the term "county" pertains, including without limitation the city and county of Denver and the city and county of Broomfield; and if such property at any time after June 14, 1969, is located in more than one county, "county" means each county in which the property is located.

(b) Whenever the term "county" is used in connection with an election held by the urban district, or taxes levied by the district, or otherwise in connection therewith, the term "county" means each county in which the urban district is located, including without limitation the city and county of Denver.

(14) "County assessor" means the de jure or de facto county assessor of each such county, or his successor in functions, if any.

(15) "County clerk" means the de jure or de facto county clerk of each such county, or his successor in functions, if any.

(16) "County treasurer" means the de jure or de facto county treasurer of each such county, or his successor in functions, if any.

(17) "Director" means a de jure or de facto member of the board.

(18) "Disposal" or "dispose" means the sale, destruction, razing, loan, lease, grant, transfer, assignment, option to sell, other contract, or other disposition (or any combination thereof) of facilities, other property, or an interest therein, authorized in this article.

(19) (a) "District" or "urban district" means the urban drainage and flood control district created by this article.

(b) "District" or "urban district" does not include the term "corporate district" nor the term "improvement district" as defined in this section.

(20) "District securities" means bonds, temporary bonds, notes, warrants, and interim debentures evidencing loans to or money due from the urban district and authorized to be issued pursuant to the provisions of this article.

(21) "Engineer" means any engineer in the permanent employ of the urban district, or any licensed professional engineer, or firm of such engineers, as from time to time determined by the board:

(a) Who has a wide and favorable repute for skill and experience in the field of designing and in preparing plans and specifications for and supervising the construction of facilities like those which the district is authorized to acquire;

(b) Who is entitled to practice and is practicing under the laws of the state; and

(c) Who is selected, retained, and compensated by the board, in the name and on behalf of the district.

(22) "Equipment" or "equip" means the furnishing of all necessary or desirable, related, or appurtenant machinery, furnishings, apparatus, paraphernalia, and other gear, or any combination thereof, pertaining to any project or other property of the urban district, or any interest therein, authorized in this article, or otherwise relating to the district's facilities.

(23) (a) "Executive officer" means the de jure or de facto mayor, chairman of the board, president of the corporate district, or other titular head or chief official of a "public body" as defined in this section, or his successor in functions, if any.

(b) "Executive officer" does not include a city manager, county manager, or other chief administrator of a public body who is not its titular head.

(24) (a) "Facilities" means the drainage and flood control system of the urban district, consisting of all properties, real, personal, mixed, or otherwise, owned or acquired by the district through purchase, construction, or otherwise, and used in connection with such system of the district, and in any way pertaining thereto, whether situated within or without its limits, or both within and without its limits.

(b) The facilities of the district may, as the board from time to time determines, consist of any natural and artificial watercourses for the collection, channeling, impounding, and disposition of rainfall, other surface and subsurface drainage, and storm and flood waters, including without limitation ditches, ponds, dams, spillways, retarding basins, detention basins, lakes, reservoirs, canals, channels, levees, revetments, dikes, walls, embankments,

bridges, inlets, outlets, connections, laterals, other collection lines, intercepting sewers, outfalls, outfall sewers, trunk sewers, force mains, submains, waterlines, sluices, flumes, syphons, sewer lines, pipes, other transmission lines, culverts, pumping stations, gauging stations, stream gauges, rain gauges, engines, valves, pumps, meters, junction boxes, manholes, other inlet and outlet structures, passenger cars, pickups, trucks, and other vehicles, bucket machines, inlet and outlet cleaners, backhoes, draglines, graders, other equipment, apparatus, fixtures, structures, and buildings, flood warning services, and appurtenant telephone, telegraph, radio, and television apparatus, and other water diversion, drainage, and flood control facilities, and all appurtenances and incidentals necessary, useful, or desirable for any such facilities (or any combination thereof), including real and other property therefor.

(25) "Federal government" means the United States, or any department, agency, instrumentality, or corporation thereof.

(26) Repealed.

(27) "Fiscal year" for the purpose of this article means the twelve months commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year.

(28) "Governing body" means the city council, city commission, board of commissioners, board of trustees, board of directors, or other legislative body of a public body designated in this article in which body the legislative powers of the public body are vested.

(29) "Governor" means the de jure or de facto governor of the state of Colorado, or his successor in functions, if any.

(30) (a) "Gross revenues" or "gross pledged revenues" means all the revenues derived directly or indirectly from service charges by the urban district from the operation and use of and otherwise pertaining to the facilities, or any part thereof, whether resulting from repairs, extensions, enlargements, betterments, or other improvements to the facilities, or otherwise, and includes all revenues received by the district from the facilities, including, without limiting the generality of the foregoing, all fees, rates, and other charges for the use of the facilities, or for any service rendered by the district in the operation thereof, or otherwise pertaining thereto, as received by the urban district and pledged wholly or in part for the payment of any district securities issued under this article.

(b) "Gross revenues" or "gross pledged revenues" does not include:

(I) The proceeds derived from any assessments or taxes;

(II) Any moneys borrowed and used for the acquisition of capital improvements for or other acquisition of the facilities; and

(III) Any moneys received as grants, appropriations, or other gifts from the federal government, the state, or other sources, the use of which is limited by the grantor or donor to the construction of capital improvements for or other acquisition of the facilities, except to the extent any such moneys are received as service charges for the use of or otherwise pertaining to the facilities.

(31) (a) "Hereby", "herein", "hereinabove", "hereinafter", "hereof", "hereunder", "herewith", or any term of similar import, refers to this article and not solely to the particular portion thereof in which such word is used.

(b) "Heretofore" means before the adoption of this article.

(c) "Hereafter" means after the adoption of this article.

(32) "Holder" or any similar term, when used in conjunction with any coupons, any bonds, or any other designated district securities, means the person in possession and the apparent owner of the designated item if such obligation is registered to bearer or is not registered, or the term means the registered owner of any such security which is registrable for payment if it is at the time registered for payment otherwise than to bearer.

(33) "Improvement" or "improve" means the extension, enlargement, betterment, alteration, reconstruction, replacement, and other major improvement (or any combination thereof) of the facilities, any property pertaining thereto, any project, or an interest therein, authorized in this article.

(34) (a) "Improvement district" means the geographical area within the urban district designated and delineated by the board, in which improvement district are located the facilities or project, or an interest therein, the cost of which is to be defrayed wholly or in

part by the levy of special assessments, and in which improvement district is located each tract to be assessed therefor. An improvement district may consist of noncontiguous areas. Improvement districts shall be designated by consecutive numbers or in some other manner to identify separately each such district in the urban district.

(b) "Improvement district" does not mean the "urban district" as defined in this section.

(35) (a) "Mailed notice", "notice by mail", or any phrase of similar import means the giving by the engineer, district secretary, district treasurer, county treasurer, any deputy thereof, or other designated person, as determined by the board or as otherwise provided in this article, of any designated written or printed notice addressed to the last-known owner of each tract assessed or to be assessed or other designated person at his last-known address, by deposit at least twenty days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first-class mail. The failure to mail any such notice shall not invalidate any proceedings under this article.

(b) The names and addresses of such property owners shall be obtained from the records of the county assessor or from such other source or sources as the engineer, district secretary, district treasurer, county treasurer, any deputy thereof, or other person so giving notice deems reliable. Any list of such names and addresses pertaining to any improvement district may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals.

(c) Any mailing of any notice required in this article shall be verified by the affidavit or certificate of the engineer, district secretary, district treasurer, county treasurer, the deputy thereof, or other person mailing the notice, which verification shall be retained in the records of the urban district at least until all assessments and securities pertaining thereto have been paid in full or any claim is barred by a statute of limitations.

(36) (a) "Municipality" means an incorporated town, city and county, or city, whether incorporated and governed under general act or special charter.

(b) "Municipal" pertains to a municipality.

(37) "Net revenues" or "net pledged revenues" means the gross pledged revenues remaining after the deduction of the "operation and maintenance expenses" as defined in this section.

(38) "Newspaper" means a newspaper printed in the English language at least once each calendar week.

(39) (a) "Operation and maintenance expenses", or any phrase of similar import, means all reasonable and necessary current expenses of the district, paid or accrued, of operating, maintaining, and repairing the facilities, including without limitation, at the district's option (except as by contract or otherwise limited by law):

(I) Engineering, auditing, reporting, legal, and other overhead expense of the district directly related to the administration, operation, and maintenance of the facilities;

(II) Property and liability insurance and fidelity bond premiums;

(III) Payments to pension, retirement, health, and hospitalization funds, and other insurance;

(IV) The reasonable charges of any paying agent, any copaying agent, and any other depository bank pertaining to any project, any bonds or other district securities pertaining thereto, or otherwise relating to the facilities;

(V) Any taxes, assessments, excise taxes, or other charges which may be lawfully imposed on the district or its income or operations of the facilities under its control, or any privilege relating to the facilities or their operation;

(VI) The costs incurred by the district in the collection of any taxes, assessments, and pledged revenues, and in making refunds of any taxes, assessments, or pledged revenues lawfully due to others;

(VII) Expenses in connection with the issuance of district securities evidencing any loan to or other obligation of the district;

(VIII) The expenses and compensation of any trustee, receiver, or other fiduciary under this article or otherwise;

(IX) Contractual services and professional services, salaries, labor, and the cost of materials and supplies used for current operation, ordinary and current rentals of equipment, or other property; and

(X) All other administrative, general, and commercial expenses pertaining to the facilities.

(b) "Operation and maintenance expenses" does not include any allowance for depreciation or any amounts for capital replacements, renewals, major repairs, and maintenance items (or any combination thereof) of a type not recurring annually or at shorter intervals; nor does it include: The costs of extensions, enlargements, betterments, and other improvements (or any combination thereof), or any reserves therefor; any reserves for operation, maintenance, or repair of the facilities; any allowance for the redemption of any bond or other district security evidencing a loan or other obligation of the district, or the payment of any interest thereon, or any reserve therefor; any liabilities incurred in the acquisition or improvement of any properties comprising any project (or any combination thereof) or otherwise pertaining to the facilities, or otherwise; any other grounds of legal liability not based on contract.

(40) "Ordinance" means the formal instrument by the adoption of which a "governing body" of any "public body" as defined in this section takes formal legislative action, whether such instrument is in the form of an ordinance, resolution, or other type of document.

(41) (a) "Person" means a corporation, firm, other body corporate (including the federal government or any public body), partnership, association, or individual, and also includes an executor, administrator, trustee, receiver, or other representative appointed according to law.

(b) "Person" does not include the "urban district" as defined in this section.

(42) "Pledged revenues" or "revenues" means all or a portion of the gross pledged revenues. The designated term indicates a source of revenues and does not necessarily indicate all or any portion or other part of such revenues in the absence of further qualification.

(43) "Project" means such part of the facilities of the district as the board determines to acquire and authorize at one time.

(44) "Property" means personal property and real property, both improved and unimproved.

(45) (a) "Publication" or "publish" means three consecutive weekly publications in at least one newspaper having general circulation in the district.

(b) It is not necessary that an advertisement be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(46) (a) "Public body" means the state of Colorado or any agency, instrumentality, or corporation thereof, or any county, municipality, corporate district, housing authority, urban renewal authority, other type of authority, the regents of the university of Colorado, the state board for community colleges and occupational education, or any other body corporate and politic and political subdivision of the state.

(b) "Public body" does not include the "federal government" nor the "urban district" as defined in this section.

(47) "Real property" means:

(a) Land, including land under water;

(b) Buildings, structures, fixtures, and improvements on land;

(c) Any property appurtenant to or used in connection with land; and

(d) Every estate, interest, privilege, leasehold, easement, license, franchise, right-of-way, and other right in land, legal or equitable, including, without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(48) "Revenues" means the "pledged revenues" as defined in this section.

(49) "Secretary" means the de jure or de facto secretary of the board and the urban district, or his successor in functions, if any.

(50) "Service charges" means the fees, rates, and other charges for the use of the facilities of the district, or for any service rendered by the district in the operation thereof, or otherwise pertaining thereto, as more specifically provided in section 32-11-306 and elsewhere in this article.

(51) "Special assessments" means "assessment" as defined in this section.

(52) "State" means the state of Colorado; and, where the context so indicates, "state" means the geographical area comprising the state of Colorado.

(53) "Taxes", "taxation", or "tax" means general (ad valorem) taxes.

(54) (a) "Taxpaying elector" and "elector" of a district have the meanings, respectively, as specified in section 32-1-103 for "taxpaying elector" and "eligible elector"; except that to qualify under this article as a taxpaying elector or as an elector of a district, a person must also be a resident of the district.

(b) A person who is obligated to pay taxes under a contract to purchase property in the district shall be considered as such an owner.

(c) The ownership of any property subject to the payment of a specific ownership tax on a motor vehicle or trailer or of any other excise or property tax other than general (ad valorem) taxes shall not constitute the ownership of property subject to taxation as provided in this article.

(55) (a) "Tract" means any lot or other parcel of land for assessment purposes, whether platted or unplatted, regardless of lot or land lines.

(b) Lots, plots, blocks, and other subdivisions may be designated in accordance with any recorded plat thereof; and all lands, platted and unplatted, shall be designated by a definite description, as provided in section 32-11-659.

(56) "Treasurer" means the de jure or de facto treasurer of the board and the urban district, or his successor in functions, if any.

(57) "Trust bank" means a "commercial bank" as defined in this section, which bank is authorized to exercise and is exercising trust powers, and also means any branch of the federal reserve bank.

(58) "Urban district" means "district" as defined in this section.

(59) "United States" means the United States of America.

Source: L. 69: p. 733, § 3. C.R.S. 1963: § 89-21-3. L. 70: p. 298, § 115. L. 77: (10)(a) amended, p. 287, § 61, effective June 29. L. 81: (54)(a) amended, p. 1626, § 35, effective July 1. L. 89: (26) repealed, p. 1135, § 85, effective July 1. L. 94: (54)(a) amended, p. 1643, § 71, effective May 31. L. 96: (11)(a) amended, p. 476, § 18, effective July 1. L. 2001: (13)(a) amended, p. 266, § 5, effective November 15. L. 2004: IP(21) amended, p. 1314, § 64, effective May 28.

32-11-105. Construction. (1) This article, except where the context by clear implication otherwise requires, shall be construed as follows:

(a) Sections, subsections, paragraphs, and subparagraphs mentioned by number, letter, or otherwise correspond to the respective articles, sections, subsections, paragraphs, and subparagraphs of this article so numbered or otherwise so designated.

(b) The titles or headnotes applied to sections, subsections, paragraphs, and subparagraphs in this article are inserted only as a matter of convenience and ease in reference and in no way define, limit, or describe the scope or intent of any provision of this article.

(c) Figures may be used instead of words, and words may be used instead of figures, in all notices, proceedings, and other documents required by this article or otherwise pertaining hereto.

(d) No tract in an improvement district need be separately described except in the assessment roll.

(e) Any cost or estimated cost may be stated as a designated amount per front foot, or

per square foot, or per other unit pertaining to the method of prorating costs and of computing assessments, or per lot of a given size and proportionate amounts for other lots, except in the case of assessments.

Source: L. 69: p. 742, § 4. C.R.S. 1963: § 89-21-4.

32-11-106. Liberal construction. This article being necessary to secure and preserve the public health, safety, and general welfare, the rule of strict construction shall have no application to this article, but this article shall be liberally construed to effect the purposes and objects for which it is intended.

Source: L. 69: p. 818, § 214. C.R.S. 1963: § 89-21-214.

32-11-107. Sufficiency of article. (1) This article, without reference to other statutes of the state, except as otherwise expressly provided in this article, shall constitute full authority for the exercise of powers granted in this article, including without limitation the financing of any project authorized in this article wholly or in part and the issuance of district securities to evidence such loans.

(2) No other act or law with regard to the authorization or issuance of securities or the exercise of any other power granted in this article that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized in this article to be done shall be construed as applying to any proceedings taken under this article or acts done pursuant to this article, except as otherwise provided in this article.

(3) The provisions of no other law, either general, special, or local, except as provided in this article, shall apply to the doing of the things authorized to be done in this article; and no public body shall have authority or jurisdiction over the doing of any of the acts authorized in this article to be done, except as otherwise provided in this article.

(4) No notice, consent, or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any district securities or the making of any contract or the exercise of any other power under this article, except as provided in this article.

(5) The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect the powers conferred by, any other law.

(6) No part of this article shall repeal or affect any other law or part thereof, the intent of this article being that it shall provide a separate method of accomplishing its objectives and not an exclusive one; and this article shall not be construed as repealing, amending, or changing any such other law.

Source: L. 69: p. 818, § 216. C.R.S. 1963: § 89-21-216.

PART 2

ADMINISTRATION

32-11-201. Creation of district. There is hereby created a district to be known and designated as the "Urban Drainage and Flood Control District".

Source: L. 69: p. 743, § 5. C.R.S. 1963: § 89-21-5.

32-11-202. Boundaries of district. The area comprising the district consists of the lands located in the city and county of Denver, in the city and county of Broomfield, and in the counties of Adams, Arapahoe, Boulder, Douglas, and Jefferson within the boundaries of the district, described as follows:

Beginning at the southwest corner of Section 26, T.2 N., R.71 W.; thence easterly along the south line of Section 26, T.2 N., R.71 W. and along the south line of Section 25, T.2 N., R.71 W., a distance of 2 miles to the southeast corner of said Section 25, T.2 N., R.71 W., being the northwest corner of Section 31, T.2 N., R.70 W.; thence southerly along the west line of said Section 31, T.2 N., R.70 W., a distance of 1 mile, more or less, to the southwest corner of said Section 31, T.2 N., R.70 W.; thence easterly, along the south line of said Section 31, T.2 N., R.70 W., and along the south line of Sections 32, 33, and 34 of T.2 N., R.70 W., a distance of 4 miles, more or less, to the southeast corner of said Section 34, T.2 N., R.70 W.; thence northerly along the east line of said Section 34, T.2 N., R.70 W., a distance of 0.5 miles, more or less, to the east 1/4 corner of said Section 34, T.2 N., R.70 W.; thence easterly along the center section line of Section 35, T.2 N., R.70 W., a distance of 1.0 mile, more or less, to the east 1/4 corner of said Section 35, T.2 N., R.70 W.; thence southerly along the east line of said Section 35, T.2 N., R.70 W., a distance of 0.5 miles, more or less, to the southeast corner of said Section 35, T.2 N., R.70 W.; thence easterly along the south line of Section 36, T.2 N., R.70 W., a distance of 1 mile, more or less, to the southeast corner of said Section 36, T.2 N., R.70 W.; thence northerly along the east line of said Section 36, T.2 N., R.70 W., a distance of 0.5 miles, more or less, to the east 1/4 corner of said Section 36, T.2 N., R.70 W.; thence easterly along the center section line of Section 31, T.2 N., R.69 W., a distance of 1 mile, more or less, to the east 1/4 corner of said Section 31, T.2 N., R.69 W.; thence northerly along the east line of said Section 31, T.2 N., R.69 W., a distance of 0.5 miles, more or less, to the northeast corner of said Section 31, T.2 N., R.69 W.; thence easterly along the south line of Sections 29 and 28, T.2 N., R.69 W., and along a portion of the south line of Section 27, T.2 N., R.69 W., a distance of 2.5 miles, more or less, to the south 1/4 corner of said Section 27, T.2 N., R.69 W.; thence northerly along the center section line of Section 27, T.2 N., R.69 W., and along the center section line of Section 22, T.2 N., R.69 W., a distance of 2 miles, more or less, to the north 1/4 corner of said Section 22, T.2 N., R.69 W.; thence easterly along the north line of said Section 22, T.2 N., R.69 W., and along the north line of Sections 23 and 24, T.2 N., R.69 W., a distance of 2.5 miles, more or less, to the northeast corner of Section 24, T.2 N., R.69 W.; thence southerly along the east line of Sections 24, 25, and 36 of T.2 N., R.69 W., and continuing southerly along the east line of Sections 1, 12, 13, 24, 25, and 36 of T.1 N., R.69 W., a distance of 9 miles, more or less, to the southeast corner of said Section 36, T.1 N., R.69 W., said corner being also the southwest corner of Section 31, T.1 N., R.68 W.; thence easterly along the south line of said Section 31, T.1 N., R.68 W., and along the south line of Sections 32, 33, 34, 35, and 36 of T.1 N., R.68 W., and continuing easterly along the south line of Sections 31, 32, 33, 34, 35, and 36 of T.1 N., R.67 W., and continuing easterly along the south line of Sections 31, 32, 33, 34, 35, and 36 of T.1 N., R.66 W., and continuing easterly along the south line of Sections 31, 32, 33, 34, 35, and 36 of T.1 N., R.65 W., and continuing easterly along the south line of Sections 31, 32, 33, 34, 35, and 36 of T.1 N., R.64 W., a distance of 30 miles, more or less, to the southeast corner of said Section 36, T.1 N., R.64 W., said corner being also the northeast corner of Section 1, T.1 S., R.64 W.; thence southerly along the east line of Section 1, T.1 S., R.64 W., and continuing southerly along the east line of Sections 12, 13, 24, 25, and 36 of T.1 S., R.64 W., and continuing southerly along the east line of Sections 1, 12, 13, 24, 25 and 36 of T.2 S., R.64 W., and continuing southerly along the east line of Sections 1, 12, 13, 24, 25, and 36 of T.3 S., R.64 W., and continuing southerly along the east line of Sections 1, 12, 13, 24, 25, and 36 of T.4 S., R.64 W., and continuing southerly along the east line of Sections 1, 12, 13, 24, 25, and 36 of T.5 S., R.64 W., a distance of 30 miles, more or less, to the southeast corner of Section 36, T.5 S., R.64 W.; thence westerly along the south line of said Section 36, T.5 S., R.64 W., and continuing westerly along the south line of Sections 35, 34, 33, 32, and 31, T.5 S., R.64 W., and continuing westerly along the south line of Sections 36, 35, and 34, T.5 S., R.65 W., a distance of 9 miles, more or less, to the southwest corner of Section 34, T.5 S., R.65 W., said corner being also the northeast corner of Section 4, T.6 S., R.65 W.; thence southerly along the east line of said Section 4, T.6 S., R.65 W., and continuing southerly along the east line of Sections 9, 16, 21, 28, and 33, T.6 S., R.65 W., and continuing southerly along the east line of Sections 4, 9, and 16, T.7 S., R.65 W., a distance of 9 miles, more or less, to the southeast corner of Section 16, T.7 S., R.65 W.; thence westerly along the south line of

Section 16 and along the south line of Sections 17 and 18, T.7 S., R.65 W., and continuing westerly along the south line of Sections 13, 14, 15, 16, 17, and 18, T.7 S., R.66 W., and continuing westerly along the south line of Sections 13, 14, 15, 16, and 17, T.7 S., R.67 W., a distance of 14 miles, more or less, to the southwest corner of Section 17, T.7 S., R.67 W., said corner also being the northeast corner of Section 19, T.7 S., R.67 W.; thence southerly along the east line of Section 19, T.7 S., R.67 W., and continuing south along the east line of Section 30, T.7 S., R.67 W., a distance of 2 miles, more or less, to the southeast corner of Section 30, T.7 S., R.67 W.; thence westerly along the south line of Section 30, T.7 S., R.67 W., and continuing westerly along the south line of Sections 25, 26, 27, 28, 29, and 30, T.7 S., R.68 W., and continuing along the south line of Sections 25 and 26, T.7 S., R.69 W., a distance of 9 miles, more or less, to the southwest corner of Section 26, T.7 S., R.69 W.; thence northerly along the west line of said Section 26, and along the west line of Sections 23, 14, 11, and 2, T.7 S., R.69 W., a distance of 5 miles, more or less, to the northwest corner of Section 2, T.7 S., R.69 W., said corner being also the northeast corner of Section 3, T.7 S., R.69 W.; thence westerly along the north line of said Section 3 and along the north line of Sections 4, 5, and 6, T.7 S., R.69 W., and continuing westerly along the north line of Section 1, T.7 S., R.70 W., a distance of 5 miles, more or less, to the northwest corner of Section 1, T.7 S., R.70 W., said corner being also the southwest corner of Section 36, T.6 S., R.70 W.; thence northerly along the west line of said Section 36 and along the west line of Sections 25, 24, 13, 12, and 1 of T.6 S., R.70 W., and continuing easterly along the north line of said Section 1 to the southwest corner of Section 36, T.5 S., R.70 W., and along the west line of Sections 36 and 25, T.5 S., R.70 W., a distance of 8 miles, more or less, to the northwest corner of Section 25, T.5 S., R.70 W., said corner being also the northeast corner of Section 26, T.5 S., R.70 W.; thence westerly along the north line of said Section 26, and westerly along the north line of Sections 27, 28, 29, and 30, a distance of 5 miles, more or less, to the northwest corner of Section 30, T.5 S., R.70 W., said corner being also the southwest corner of Section 19, T.5 S., R.70 W.; thence northerly along the west line of said Section 19, and along the west line of Sections 18, 7, and 6 of T.5 S., R.70 W., and along the west line of Sections 31, 30, 19, 18, 7, and 6 of T.4 S., R.70 W., and continuing northerly along the west line of Sections 31, 30, 19, 18, 7, and 6 of T.3 S., R.70 W., and continuing northerly along the west line of Sections 31, 30, 19, 18, 7, and 6 of T.2 S., R.70 W., and continuing northerly along the west line of Sections 31 and 30 of T.1 S., R.70 W., a distance of 24 miles, more or less, to the northwest corner of Section 30, T.1 S., R.70 W., said corner being also the southeast corner of Section 24, T.1 S., R.71 W.; thence westerly along the south line of said Section 24 and along the south line of Section 23, a distance of 2.5 miles, more or less, to the southwest corner of Section 23, T.1 S., R.71 W.; thence northerly along the west line of said Section 23 and along the west line of Sections 14, 11, and 2 of T.1 S., R.71 W., and continuing easterly along the south line of Section 34 to the southwest corner of Section 35 of T.1 N., R.71 W., and continuing northerly along the west line of Sections 35, 26, 23, 14, 11, and 2 of T.1 N., R.71 W., and continuing northerly along the west line of Section 35, T.2 N., R.71 W., a distance of 11 miles, more or less, to the southwest corner of Section 26, T.2 N., R.71 W., said corner being the point of beginning; and the described area containing 1208 sections, more or less.

Source: L. 69: p. 743, § 6. C.R.S. 1963: § 89-21-6. L. 71: p. 983, § 1. L. 89: Entire section amended, p. 1322, § 1, effective April 12. L. 2001: IP amended, p. 266, § 6, effective November 15.

32-11-203. Board of directors. (1) All powers, rights, privileges, and duties vested in or imposed upon the urban district shall be exercised and performed by and through a local legislative body designated as the board of directors.

(2) The board of directors of the district may create an executive committee of the board and may delegate and redelegate to such committee such power to act on behalf of the district as the board may determine by resolution.

(3) The exercise of all executive, administrative, and ministerial powers may be delegated and redelegated by the board to officials and employees of the district.

(4) The board shall consist of sixteen directors.

(5) (a) Except for the initial appointments of directors, or for any director chosen to fill any unexpired term, and except as otherwise provided in section 32-11-204 (1) and (5.5), the term of each director shall commence on February 1 of a designated year as provided in this article and shall be for two years.

(b) Each director shall be chosen to serve such a two-year term ending on the last day of January of such a year; and each director whose term so ends and otherwise remains qualified to serve as a director shall serve until his successor has been duly chosen and qualified.

(6) The board of directors shall institute and maintain a systematic and uniform program of preventive maintenance in the district, which program shall be administered by said board of directors and not by local governments.

Source: L. 69: p. 745, § 7. C.R.S. 1963: § 89-21-7. L. 79: (6) added, p. 1210, § 2, effective July 1. L. 89: (5)(a) amended, p. 1325, § 2, effective April 12. L. 2001: (4) amended, p. 266, § 7, effective November 15.

32-11-204. Regular appointments. (1) The mayor of the city and county of Denver or the deputy mayor shall be ex officio a director.

(2) Except as otherwise provided in this article, the other directors shall be chosen as provided in this section.

(3) (a) Two directors shall be appointed to the board by the city council of the city and county of Denver after the second Tuesday in January in each odd-numbered year and by the twentieth day of January in such year. One director shall be appointed to the board by such city council during such part of January in each even-numbered year.

(b) Each director appointed pursuant to this subsection (3) shall be a member of such city council and shall remain as such during his term of office as director.

(4) (a) A director shall be appointed to the board by the board of county commissioners of each of the counties of Adams and Boulder and by the city council of the city and county of Broomfield after the second Tuesday in January in each odd-numbered year and by the twentieth day of January in such year; except that, in 2001, the city council of the city and county of Broomfield shall appoint a director after November 15, 2001. A director shall be appointed to the board by the board of county commissioners of each of the counties of Arapahoe, Douglas, and Jefferson during such part of January in each even-numbered year.

(b) Each director appointed pursuant to this subsection (4) shall be a member of the board of county commissioners appointing him to be a director and shall remain as such during his term of office as director.

(5) (a) A director shall be appointed to the board by the governor from each of the counties of Arapahoe and Jefferson after the second Tuesday in January in each odd-numbered year and by the twentieth day of January in such year. A director shall be appointed to the board by the governor from each of the counties of Adams and Boulder during such part of January in each even-numbered year.

(b) Each director appointed pursuant to this subsection (5) shall be an executive officer of a municipality with a population of one hundred thousand or less, as determined by the latest Denver regional council of governments' estimate, which is located wholly or in part in the county from which he is appointed, shall be a resident of such county, and shall remain as such an executive officer and such a county resident during his term of office as director.

(5.5) The mayor or the mayor pro tem of any city located within the district and having a population in excess of one hundred thousand, as determined by the latest Denver regional council of governments' estimate, shall be ex officio a director.

(6) (a) On or after the twenty-first day of January of each year but on or before the last day of January in such year, a director shall be appointed to the board by such board, including as members thereof for the purposes of this subsection (6) each director newly appointed in such month to the board as provided in subsections (3) to (5) of this section, and including each incumbent director whose regular term of office does not end on the last day of such month, but excluding each incumbent director whose regular term of office ends on the last day of such month.

(b) Each director appointed pursuant to this subsection (6) shall be a professional engineer licensed by the state, an elector of the district, and not an officer in the regular employment of any public body. Each such director shall remain so qualified during his or her term of office as director.

(c) No director appointed pursuant to this subsection (6) shall be deemed to be in the regular employment of such a public body designated in paragraph (b) of this subsection (6) merely because the director or an engineering firm of which he is a member or with which he is otherwise associated is engaged as an independent contractor by the public body.

(d) For the purposes of this subsection (6), a quorum of the board shall constitute a majority of the body composed of the mayor of the city and county of Denver or the deputy mayor and such other directors authorized to appoint such remaining director as provided in paragraph (a) of this subsection (6). Each such appointment shall be by motion adopted by a majority of such directors, including the mayor or the deputy mayor, constituting a quorum.

(e) The secretary of the board shall give at least five days' mailed notice of a special or regular meeting designated by the board for considering each such appointment. Such notice shall be addressed to each such director authorized to make such a remaining appointment at the mailing address designated by him in the records of the district.

(7) Each appointing authority designated in subsections (3) to (6) of this section shall cause each newly appointed director, each other appointing authority, the mayor of the city and county of Denver or the deputy mayor, and the secretary of the board to be notified forthwith of each such appointment.

(8) If any appointing authority designated in subsections (3) to (6) of this section fails to appoint any director to the board as therein provided and to cause notification of such appointment to be given pursuant to subsection (7) of this section, at the time, subject to the limitations, and otherwise as provided in said subsections (3) to (6), the governor forthwith shall make such appointment and shall cause notice thereof to be given as provided in said subsections (3) to (6) for the appointing authority.

(9) Except as otherwise provided in this article, any incumbent may be reappointed as a director to the board.

Source: L. 69: p. 745, § 8. C.R.S. 1963: § 89-21-8. L. 70: p. 298, § 116. L. 81: (1), (6)(d), and (7) amended, p. 1648, § 1, effective May 26. L. 89: (5)(b) amended and (5.5) added, p. 1325, § 3, effective April 12. L. 2001: (4)(a) amended, p. 267, § 8, effective November 15. L. 2004: (6)(b) amended, p. 1314, § 65, effective May 28.

32-11-205. Filling vacancies. Upon a vacancy occurring in the board by reason of a director's death, resignation, termination of office as a city council member, county commissioner, or executive officer, or failure to remain a professional engineer licensed by the state who is an elector of the district, and is not an officer or in the regular employment of any public body, as the case may be, in contravention of any provision in section 32-11-204 (3) to (6), or for any other reason, the vacancy for the unexpired term of office of such director, upon the creation of such vacancy, shall be filled by the authority appointing him or her by the appointment forthwith of a successor director to serve for such unexpired term in the manner provided for such appointing authority in section 32-11-204 for regular appointments, except as otherwise provided in this section.

Source: L. 69: p. 748, § 10. C.R.S. 1963: § 89-21-10. L. 70: p. 298, § 117. L. 2004: Entire section amended, p. 1314, § 66, effective May 28.

32-11-206. Organizational meetings. (1) Except for the first board, each board shall meet on the first business day (excluding each Saturday, Sunday, and holiday) in February in each year at a regular place of meeting of the board within the district for the qualification of new directors and for the selection of new officers.

(2) Each director, before entering upon his official duties, shall take and subscribe an oath or affirmation before an officer authorized to administer oaths that he will support the

constitution of the United States and the constitution and laws of the state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability, which oath or affirmation shall be filed in the office of the secretary of state.

Source: L. 69: p. 748, § 11. C.R.S. 1963: § 89-21-11.

32-11-207. Fidelity bonds. (1) Each director shall, before entering upon his official duties, give a fidelity bond to the district in the sum of ten thousand dollars with good and sufficient surety to be approved by the governor, conditioned for the faithful performance of all of the duties of his office, without fraud, deceit, or oppression, and conditioned for the accounting for all moneys and property coming into his hands, and the prompt and faithful payment of all moneys and the delivery of all property coming into his custody or control belonging to the district to his successors in office.

(2) Premiums on all fidelity bonds provided for in this section shall be paid by the district, and all such bonds shall be kept on file in the office of the secretary of state.

Source: L. 69: p. 748, § 12. C.R.S. 1963: § 89-21-12.

32-11-208. Board's administrative powers. (1) The board, on behalf and in the name of the district, has the following powers:

(a) To fix the time and place at which its regular meetings shall be held within the district and to provide for the calling and holding of special meetings;

(b) To adopt and amend or otherwise modify bylaws and rules of procedure;

(c) To select one director as chairman of the board and of the district and another director as chairman pro tem of the board and of the district, and to choose a secretary and a treasurer of the board and of the district, each of which two positions may be filled by a person who is, or is not, a director, and both of which positions may be filled by one person;

(d) To prescribe by resolution a system of business administration, and to create all necessary offices, and to establish and reestablish the powers, duties, and compensation of all officers, agents, and employees and other persons contracting with the district subject to the provisions of section 32-11-212; but, except as may be otherwise therein provided, such compensation shall be established at prevailing rates of pay for equivalent services.

Source: L. 69: p. 748, § 13. C.R.S. 1963: § 89-21-13.

32-11-209. Additional administrative powers. (1) The board also has the following powers for the district:

(a) To require and fix the amount of all official fidelity and completion bonds as may be necessary in the opinion of the board for the protection of the funds and property of the district, subject to the provisions of section 32-11-207;

(b) To prescribe a method of auditing and allowing or rejecting claims and demands, except as provided in section 32-11-801 and elsewhere in this article;

(c) To provide a method for the letting of contracts on a fair and competitive basis for the construction of works, the facilities, or any project, or any interest therein, or the performance or furnishing of labor, materials, or supplies as required in this article and to require a contractor's bond in the manner required of a school board and a school district in sections 38-26-101 and 38-26-105 to 38-26-107, C.R.S., as from time to time amended;

(d) To designate an official newspaper published in the district and to publish any notice or other instrument in any additional newspaper when the board deems it necessary to do so;

(e) To make and pass resolutions and orders on behalf of the district, not repugnant to the provisions of this article, necessary or proper for the government and management of the affairs of the district, for the execution of the powers vested in the district, and for carrying into effect the provisions of this article;

(f) To appoint, by written resolution, one or more persons to act as custodians of the moneys of the district for purposes of depositing such moneys in any depository authorized in section 24-75-603, C.R.S. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

Source: L. 69: p. 749, § 14. C.R.S. 1963: § 89-21-14. L. 77: (1)(c) amended, p. 288, § 62, effective June 29. L. 79: (1)(f) added, p. 1626, § 44, effective June 8.

32-11-210. Records of board. (1) On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board and the secretary.

(2) Every legislative act of the board of a general or permanent nature shall be by resolution.

(3) The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the district, and all corporate acts, which record shall also be a public record.

(4) The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the district in a permanent record, which also shall be a public record.

(5) Any permanent record of the district shall be open for inspection by any elector thereof, by any other interested person, or by any representative of the federal government or any public body.

(6) All records are subject to audit as provided by law for political subdivisions of the state.

Source: L. 69: p. 749, § 15. C.R.S. 1963: § 89-21-15.

Cross references: For the local government audit law, see part 6 of article 1 of title 29.

32-11-211. Meetings of board. (1) All meetings of the board shall be held within the district and shall be open to the public.

(2) No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present.

(3) Any action of the board shall require the affirmative vote of a majority of the directors present and voting except as otherwise provided in this article.

(4) A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide.

Source: L. 69: p. 749, § 16. C.R.S. 1963: § 89-21-16.

32-11-212. Compensation of directors. (1) (a) (I) For directors serving a term of office commencing prior to April 24, 1996, each director shall receive as compensation for the director's services a sum, not in excess of two hundred forty dollars per annum, which shall be set by the board on a regular or special meeting basis, but a director shall not be compensated for any meeting that the director fails to attend.

(II) For directors serving a term of office commencing on or after April 24, 1996, each director shall receive as compensation for the director's services a sum, not in excess of one thousand two hundred dollars per annum, which shall be set by the board on a regular or special meeting basis and which shall not exceed seventy-five dollars per meeting attended. A director shall not be compensated for any meeting that the director fails to attend.

(b) For the purposes of this subsection (1), attendance by an alternate, when authorized in this article, shall be considered as attendance by the director.

(c) If an alternate attends a meeting on behalf of a director, the alternate shall receive compensation not less than that established for directors.

(2) No director shall receive any compensation as an officer, engineer, attorney, employee, or other agent of the district.

(3) The board may authorize the reimbursement of any director for expenses incurred and pertaining to the activities of the district.

Source: L. 69: p. 750, § 17. C.R.S. 1963: § 89-21-17. L. 81: (1) amended, p. 1649, § 1, effective July 1. L. 96: (1) amended, p. 549, § 3, effective April 24.

32-11-213. Conflicts in interest prohibited. (1) No director, officer, employee, or agent of the district shall be interested in any contract or transaction with the district, except in his official representative capacity or as is provided in his contract of employment with the district, subject to the provisions of section 32-11-212.

(2) Neither the holding of any office or employment in the government of any public body or of the federal government nor the owning of any property within the state, within or without the district, shall be deemed a disqualification for membership on the board or employment by the district or a disqualification for compensation for services as a director or as an officer, employee, or agent of the district, except as provided in section 32-11-212 and elsewhere in this article.

Source: L. 69: p. 750, § 18. C.R.S. 1963: § 89-21-18.

32-11-214. Authorization of facilities. (1) The district, acting by and through the board, may acquire, improve, equip, relocate, maintain, and operate the facilities, any project, or any part thereof for the benefit of the district and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries thereto.

(2) When a comprehensive program for the acquisition of facilities for the district satisfactory to the board is available, such program shall be tentatively adopted. The program need only describe the proposed facilities in general terms and not in detail.

(3) A public hearing on the proposed program shall be scheduled, and notice of the hearing shall be given by publication. After the hearing and any adjournments thereof which may be ordered, the board may either require changes to be made in the program as the board considers desirable, or the board may approve the program as prepared.

(4) If any substantial changes to the comprehensive program are ordered at any time, in the original acquisition of the facilities or in any improvement thereto, or otherwise, a further hearing shall be held pursuant to notice which shall be given by publication.

(5) Such a comprehensive program may consist of one project or of more than one project. A public hearing need not be held on each such project if it implements such a comprehensive program on which a public hearing has been held.

Source: L. 69: p. 750, § 19. C.R.S. 1963: § 89-21-19.

32-11-215. Implementing powers. The board, in connection with the facilities of the district and any project, may from time to time condemn, otherwise acquire, improve, equip, operate, maintain, and dispose of property within or without or both within and without the district.

Source: L. 69: p. 751, § 20. C.R.S. 1963: § 89-21-20.

32-11-216. Additional powers of district. (1) The district has the following powers:

(a) To have duties, privileges, immunities, rights, liabilities, and disabilities pertaining to a body corporate and politic and constituting a municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety, and general

welfare; but, the district shall not have the power to construct, condemn, purchase, acquire, lease, add to, maintain, or conduct and operate a water works to provide domestic, municipal, and industrial water to urban areas;

- (b) To have perpetual existence and succession;
- (c) To adopt, have, and use a corporate seal and to alter the same at pleasure;
- (d) To sue and to be sued and to be a party to suits, actions, and proceedings;
- (e) To commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise, and otherwise participate in and assume the cost and expense of any and all actions and proceedings begun and pertaining to the district, its board, its officers, agents, or employees or any of the district's powers, duties, privileges, immunities, rights, liabilities and disabilities, the facilities or any project of the district, or any property of the district;
- (f) To enter into contracts and agreements, including but not limited to contracts with the federal government, the state, and any other public body;
- (g) To trade, exchange, purchase, condemn, and otherwise acquire, operate, maintain, and dispose of real property and personal property, including interests therein, either within or without or both within and without the territorial limits of the district.

Source: L. 69: p. 751, § 21. C.R.S. 1963: § 89-21-21.

32-11-217. Financial powers of district. (1) The district also has the following powers:

(a) To borrow money and to issue district securities evidencing any loan to or amount due by the district, to provide for and secure the payment of any district securities and the rights of the holders thereof, and to purchase, hold, and dispose of district securities, as provided in this article;

(b) To fund or refund any loan or obligation of the district, and to issue funding or refunding securities to evidence such loan or obligation without any election, except as provided in this article;

(c) (I) To levy and cause to be collected taxes on and against all taxable property within the district; except that any levy, except as provided in subparagraph (II) of this paragraph (c), in excess of one mill shall require the favorable vote of a majority of the electors of the district voting on the question, subject to the limitations provided in paragraph (d) of this subsection (1), by certifying, in accordance with the schedule prescribed by section 39-5-128, C.R.S., in each year in which the board determines to levy taxes, to the body having authority to levy taxes within each county wherein the district has any territory, the rate so fixed, with directions that, at the time and in the manner required by law for levying taxes for other purposes, such body having authority to levy taxes shall levy such taxes upon the valuation for assessment of all taxable property within the district, in addition to such other taxes as may be levied by such body, as provided in this section. Not more than one-tenth of a mill shall be used for engineering and operations of the district, not more than four-tenths of a mill shall be used for capital construction, and not more than four-tenths of a mill shall be used for maintenance and preservation of floodways and floodplains.

(I.5) In addition to the financial powers and limitations set forth in subparagraph (I) of this paragraph (c) and notwithstanding the limitations set forth in paragraph (d) of this subsection (1), the district shall have the power to levy and cause to be collected an additional tax not to exceed one-tenth of a mill upon the valuation for assessment of all taxable property within those portions of Adams, Arapahoe, Denver, Douglas, and Jefferson counties lying within the district. The additional tax shall be collected in the manner set forth in subparagraph (I) of this paragraph (c). The funds derived from such levy shall be used for the maintenance of and any improvements on that portion of the South Platte river which lies within the district.

(II) No levy authorized by this article for the payment of the principal of, any prior redemption premiums due in connection with, or the interest on any bonds or other securities issued under this article, whether general obligations or special obligations, shall be subject to the election requirements of subparagraph (I) of this paragraph (c), but all such levies shall be subject to the limitations provided in paragraph (d) of this subsection (1).

(d) To levy taxes for any fiscal year without limitation as to rate or amount for the payment of any debt of the district authorized at an election as provided in this article, except as otherwise provided by sections 32-11-564 and 32-11-566, in accordance with section 32-11-533, and evidenced by the district’s interim debentures, bonds, or other contract constituting a general obligation of the district, for a term exceeding one year, and between the district and the federal government or any public body (or any combination thereof), as provided in this section, but otherwise to levy taxes for any fiscal year subject to the following limitations:

Purpose of levy	Mill limitation
To defray operation and maintenance expenses:	one-half mill
To defray costs of capital improvements:	one mill
To accumulate funds as additional security for payment of assessment bonds:	one mill
Maximum annual nondebt levy:	two and one-half mills;

(e) To fix, from time to time increase or decrease, collect, and cause to be collected rates, fees, and other service charges pertaining to the facilities of the district, including without limitation minimum charges and charges for availability of the facilities or services relating thereto; to pledge such revenues for the payment of district securities; and to enforce the collection of such revenues by civil action or by any other means provided by law;

(f) To levy, collect, and cause to be collected assessments fixed against specially benefited real property in any improvement district within the urban district as provided in this article;

(g) To deposit any moneys of the district in any depository authorized in section 24-75-603, C.R.S.;

(h) To invest and reinvest any surplus money in the district’s treasury, including such moneys in a sinking or reserve fund established for the purpose of retiring any district securities, not required for the immediate necessities of the district in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., by direct purchase of any issue of such securities, or part thereof, at the original sale of the same, or by the subsequent purchase of such securities, except as otherwise provided in section 32-11-520 or elsewhere in this article;

(i) To redeem at maturity and to sell from time to time such securities thus purchased and held, so that the proceeds may be applied to the purposes for which the money with which such securities were originally purchased was placed in the treasury of the district;

(j) To reinvest the proceeds of any such sale in securities as provided in paragraph (h) of this subsection (1) and otherwise in this article.

Source: L. 69: p. 751, § 22. C.R.S. 1963: § 89-21-22. L. 70: p. 298, § 118. L. 71: p. 964, § 13. L. 73: p. 996, § 1. L. 79: (1)(c) amended, p. 1210, § 3, effective July 1; (1)(g) amended, p. 1626, § 45, effective June 8. L. 83: (1)(c) amended, p. 1285, § 1, effective May 20. L. 84: (1)(c) amended, p. 846, § 1, effective July 1. L. 86: (1)(c)(I) amended and (1)(c)(I.5) added, p. 1071, § 1, effective April 17. L. 87: (1)(c)(I) amended, p. 1407, § 5, effective April 22. L. 89: (1)(h) and (1)(j) amended, p. 1121, § 44, effective July 1.

ANNOTATION

Law reviews. For article, “What Constitutes ‘Benefits’ for Urban Drainage Projects”, see 51 Den. L.J. 551 (1974).

32-11-218. Miscellaneous powers. (1) The district also has the following powers:
(a) To hire and retain officers, agents, employees, engineers, attorneys, and any other

persons, permanent or temporary, necessary or desirable to effect the purposes of this article, to defray any expenses incurred thereby in connection with the district, and to acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workers' compensation insurance, property damage insurance, public liability insurance for the district and its officers, agents, and employees, and other types of insurance, as the board may determine; but, no provision in this article authorizing the acquisition of insurance shall be construed as waiving any immunity of the district or any director, officer, or agent thereof otherwise existing under the laws of the state;

(b) To pay or otherwise to defray the cost of a project;

(c) To pay or otherwise to defray and to contract so to pay or defray, for any term not exceeding fifty years, without an election, except as otherwise provided in this article, the principal of, any interest on, and any other charges pertaining to any securities or other obligations of the federal government, any public body, or other person incurred in connection with any property thereof subsequently acquired by the district and relating to its facilities;

(d) To establish, operate, and maintain facilities within the district across or along any public street, highway, bridge, viaduct, or other public right-of-way, or in, upon, under, or over any vacant public lands, which public lands are or may become the property of a public body, without first obtaining a franchise from the public body having jurisdiction over the same; but the district shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct, or other public right-of-way to its former state of usefulness as nearly as may be, and shall not use the same in such manner as permanently to impair completely or unnecessarily the usefulness thereof;

(e) To adopt, amend, repeal, enforce, and otherwise administer such reasonable resolutions, rules, regulations, and orders as the district deems necessary or convenient for the operation, maintenance, management, government, and use of the district's facilities and any other drainage and flood control facilities under its control, whether situated within or without or both within and without the territorial limits of the district;

(f) (I) To adopt, amend, repeal, enforce, and otherwise administer under the police power such reasonable flood-plain zoning resolutions, rules, regulations, and orders pertaining to properties within the district of any public body or other person (other than the federal government) reasonably affecting the collection, channeling, impounding, or disposition of rainfall, other surface and subsurface drainage, and storm and flood waters (or any combination thereof), including without limitation variances in the event of any practical difficulties or unnecessary hardship and exceptions in the event of appropriate factors, as the board may from time to time deem necessary or convenient. In the event of any conflict between any flood-plain zoning regulation adopted under this section and any flood-plain zoning regulation adopted by any other public body, the more restrictive regulation shall control.

(II) No such resolution, rule, regulation, or order shall be adopted or amended except by action of the board on the behalf and in the name of the district after a public hearing thereon is held by the board, in connection with which any public body owning drainage and flood control facilities in the area involved or otherwise exercising powers affecting drainage and flood control therein and other persons of interest have an opportunity to be heard, after mailed notice of the hearing is given by the secretary to each such public body and after notice of such hearing is given by publication by the secretary to persons of interest, both known and unknown.

Source: L. 69: p. 753, § 23. C.R.S. 1963: § 89-21-23. L. 90: (1)(a) amended, p. 573, § 67, effective July 1.

32-11-219. Cooperative powers. (1) Subject to the provisions of sections 32-11-533 and 32-11-534, the district also has the following powers:

(a) To accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance, and operation of any enterprise in which the district is authorized to engage, and to enter into contracts and

cooperate with, and accept cooperation from, the federal government in the planning, acquisition, improvement, equipment, maintenance, and operation, and in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise in accordance with any legislation which congress may adopt, under which aid, assistance, and cooperation may be furnished by the federal government in the planning, acquisition, improvement, equipment, maintenance, and operation, or in financing the planning, acquisition, improvement, equipment, maintenance, and operation of any such enterprise, including without limitation costs of engineering, architectural, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action preliminary to the acquisition, improvement, or equipment of any project, and to do all things necessary in order to avail itself of such aid, assistance, and cooperation under any federal legislation;

(b) To enter without any election into joint operating or service contracts and agreements; acquisition, improvement, equipment, or disposal contracts; or other arrangements for any term not exceeding fifty years with the federal government and any public body (or any combination thereof), concerning the facilities and any project or property pertaining thereto, whether acquired by the district, by the federal government, or by any public body; and to accept grants and contributions from the federal government, any public body, or any other person in connection therewith;

(c) To enter into and perform without any election, when determined by the board to be in the public interest, contracts and agreements, for any term not exceeding fifty years, with the federal government, any public body, or any other person for the provision and operation by the district of any drainage and flood control facilities pertaining to such facilities of the district or any project relating thereto and the payment periodically thereby to the district of amounts at least sufficient, if any, in the determination of the board, to compensate the district for the cost of providing, operating, and maintaining such facilities serving the federal government, such public body, or such other person, or otherwise;

(d) To enter into and perform without any election contracts and agreements with the federal government, any public body, or any other person for or concerning the planning, construction, lease or other acquisition, improvement, equipment, operation, maintenance, disposal, and the financing of any property pertaining to the facilities of the district or to any project of the district, including but not necessarily limited to any contract or agreement for any term not exceeding fifty years;

(e) To cooperate with and act in conjunction with the federal government or any of its engineers, officers, boards, commissions, or departments, or with the state or any of its engineers, officers, boards, commissions, or departments, or with any other public body or any other person in the acquisition, improvement, or equipment of any facilities or any project authorized for the district or for any other works, acts, or purposes provided for in this article, and to adopt and carry out any definite plan or system of work for any such purpose;

(f) To cooperate with the federal government or any public body by an agreement therewith by which the district may:

(I) Acquire and provide, without cost to the cooperating entity, the land, easements, and rights-of-way necessary for the acquisition, improvement, or equipment of any project;

(II) Hold the cooperating entity free from and save it harmless from any claim for damages arising from the acquisition, improvement, equipment, maintenance, and operation of any facilities;

(III) Maintain and operate any facilities in accordance with regulations prescribed by the cooperating entity;

(IV) Establish and enforce regulations, if any, concerning the facilities and satisfactory to the cooperating entity;

(g) To provide by any contract for any term not exceeding fifty years, or otherwise, without an election:

(I) For the joint use of personnel, equipment, and facilities of the district and any public body, including without limitation public buildings constructed by or under the supervision of the board or the governing body of the public body concerned, upon such terms and agreements and within such areas within the district as may be determined, for the

promotion and protection of health, comfort, safety, life, welfare, and property of the inhabitants of the district and any such public body and any other persons of interest;

(II) For the joint employment of clerks, stenographers, and other employees pertaining to the facilities or any project established in the district, upon such terms and conditions as may be determined for the equitable apportionment of the expenses resulting therefrom.

(2) The board shall provide for comprehensive planning and, where possible, coordinate operations with all regional special purpose districts, regional multipurpose public agencies, and regional planning commissions and any political subdivision that is multijurisdictional in nature and functions wholly or partly within the urban district.

(3) If a single multipurpose service authority is subsequently created in the Denver metropolitan area, the powers, functions, and facilities of the district created by this article shall be transferred to such service authority; except that the general assembly may provide for the transfer to other political subdivisions of any facilities outside the boundaries of such service authority.

(4) The board, wherever and however possible and feasible, shall promote and cooperate with park and recreation districts, municipalities, and other governmental agencies for the development and use of drainageways for recreational and park purposes.

Source: L. 69: p. 754, § 24. C.R.S. 1963: § 89-21-24.

32-11-220. Other supplemental powers. (1) The district also has the following powers:

(a) To enter upon any land to make surveys, borings, soundings, and examinations for the purpose of the district, and to locate the necessary works of any project and any roadways and other rights-of-way pertaining to any project authorized in this article; to acquire all property necessary or convenient for the acquisition, improvement, or equipment of such works, including works constructed and being constructed by private owners, and all necessary appurtenances; and also, where necessary or convenient to such end, and for such purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning facilities, franchises, concessions, or rights pertaining to facilities or any project of the district;

(b) To acquire property by agreement, condemnation, or otherwise, and if any street, road, highway, railroad, canal, ditch, or other property subject or devoted to public use becomes subject to interference by reason of the construction or proposed construction of any works of the district, the right to interfere with such property, whether it be publicly or privately owned; but:

(I) If such right is acquired by condemnation proceedings, and if the court finds that public necessity or convenience requires, the judgment may direct the district to relocate such street, road, highway, railroad, canal, ditch, or other property in accordance with the plans prescribed by the court;

(II) If, by such judgment or agreement, the district is required to relocate any such street, road, highway, railroad, canal, ditch, or other property subject or devoted to public use, the board has the power to acquire in the name of the district, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with the agreement or judgment of condemnation, and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, ditch, or other property as may be proper to comply with the agreement or judgment;

(c) To carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to the facilities and any project, both within and without the district;

(d) To make and keep records in connection with the facilities and any project or otherwise concerning the district;

(e) To arbitrate any differences arising in connection with the facilities and any project or otherwise concerning the district;

(f) To have the management, control, and supervision of all business and affairs pertaining to the facilities and any project authorized in this article, or otherwise concerning

the district, and of the acquisition, improvement, equipment, operation, maintenance, and disposal of any property pertaining to the facilities or any such project;

(g) To enter into contracts of indemnity and guaranty, in such form as may be approved by the board, relating to or connected with the performance of any contract or agreement which the district is empowered to enter into under the provisions of this article or of any other law of the state;

(h) To obtain financial statements, appraisals, economic feasibility reports, and valuations of any type pertaining to the facilities or any project or any property relating thereto;

(i) To adopt any resolution authorizing a project or the issuance of district securities, or both, or otherwise pertaining thereto, or otherwise concerning the district;

(j) To make and execute an indenture or other trust instrument pertaining to any district securities authorized in this article, except as otherwise provided in section 32-11-502 and elsewhere in this article;

(k) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this article, or in the performance of the district's covenants or duties, or in order to secure the payment of district securities;

(l) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article;

(m) To exercise all or any part or combination of the powers granted in this article.

Source: L. 69: p. 755, § 25. C.R.S. 1963: § 89-21-25.

32-11-221. Approval of other facilities. (1) No public body or other person (other than the federal government) shall, after June 14, 1969, acquire or improve within the territorial limits of the district any drainage and flood control facilities (other than gutters and rainspouts attached to buildings and other structures; other than curbs and gutters pertaining to the improvement of any streets, alleys, highways, and other rights-of-way; and other than a collection or secondary storm drainage system, as defined in the Denver regional council of governments storm drainage criteria manual, as from time to time amended) until a proposal for such an acquisition or improvement has been approved by the board.

(2) If any person (other than the federal government) after June 14, 1969, acquires or improves any such facilities without such approval, the board may order their modification to meet the reasonable specifications and other requirements of the district.

(3) The board shall not approve a proposal for any such acquisition or improvement unless the drainage or flood control facilities so to be acquired or improved appropriately complement or supplement the facilities of the district, both proposed and acquired, and upon the adoption of a comprehensive program for the acquisition of facilities for the district, as from time to time modified, if modified, pursuant to section 32-11-214, appropriately conform to such program.

(4) The board shall not unreasonably withhold its approval of nor disapprove any such proposal unless such facilities to be acquired or approved do not so complement or supplement the district's facilities or do not so conform to such a comprehensive program of the district, if any.

(5) If any such proposal does not sufficiently delineate the facilities so to be acquired or improved for the board to determine whether such facilities so complement or supplement the district's facilities and so conform to such a comprehensive program of the district, if any, the board may order such additional information to be furnished to it as it may deem necessary or desirable for it to make such a determination. The board may delay its consideration of any such proposal until the additional information which the board requests is received by it.

Source: L. 69: p. 760, § 33. C.R.S. 1963: § 89-21-33.

32-11-222. Powers of public bodies. (1) The governing body of any public body, upon its behalf and in its name, for the purpose of aiding and cooperating in any project authorized in this article, upon the terms and with or without consideration and with or without an election, as the governing body determines, has power under this article:

(a) To sell, lease, loan, donate, grant, convey, assign, transfer, and otherwise dispose to the district any facilities or any other property, or any interest therein, pertaining to any project (or any combination thereof);

(b) To make available to the district for temporary use, or otherwise to dispose of any machinery, equipment, facilities, and other property, and any agents, employees, persons with professional training, and any other persons, to effect the purposes of this article. Any such property owned and persons in the employ of any public body while engaged in performing for the district any service, activity, or undertaking authorized in this article, pursuant to contract or otherwise, shall have and retain all of the powers, privileges, immunities, rights, and duties of, and shall be deemed to be engaged in the service and employment of, such public body, notwithstanding that such service, activity, or undertaking is being performed in or for the district.

(c) To enter into any agreement or joint agreement between or among the federal government, the district, and any public bodies (or any combination thereof) extending over any period not exceeding fifty years, which is mutually agreed thereby, notwithstanding any law to the contrary, respecting action or proceedings pertaining to any power granted in this article, and the use or joint use of any facilities, project, or other property herein authorized;

(d) To sell, lease, loan, donate, grant, convey, assign, transfer, or pay over to the district any facilities or any project authorized in this article, or any part or parts thereof, or any interest in personal property or real property, or any funds available for acquisition, improvement, or equipment purposes, including the proceeds of any securities issued for acquisition, improvement, or equipment purposes which may be used by the district in the acquisition, improvement, equipment, maintenance, and operation of any facilities or project authorized in this article (or any combination thereof);

(e) To transfer, grant, convey, or assign and set over to the district any contracts which may have been awarded by the public body for the acquisition, improvement, or equipment of any project not begun or, if begun, not completed;

(f) To budget and appropriate, and each public body is required and directed to budget and appropriate from time to time the proceeds of taxes, service charges, and other revenues legally available therefor to pay all obligations arising from the exercise of any powers granted in this article as such obligation accrues and becomes due;

(g) To provide for an agency, by any agreement authorized in this article, to administer or execute that or any collateral agreement, which agency may be one of the parties to the agreement, or a commission or board constituted pursuant to the agreement;

(h) To provide that any such agency shall possess the common power specified in the agreement, and may exercise it in the manner or according to the method provided in the agreement. Such power is subject to the restrictions upon the manner of exercising the power of any one of the contracting parties, which party shall be designated by the agreement.

(i) To continue any agreement authorized in this article for a definite term not exceeding fifty years, or until rescinded or terminated, which agreement may provide for the method by which it may be rescinded or terminated by any party.

Source: L. 69: p. 761, § 34. C.R.S. 1963: § 89-21-34.

PART 3

TAXATION AND SERVICE CHARGES

32-11-301. Levy and collection of taxes. To levy and collect taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the urban district, and shall fix a rate of levy, subject to the provisions of section 32-11-217 (1) (c) and (1) (d), which, when levied upon

every dollar of valuation for assessment of taxable property within the district, and, together with other moneys of the district, will raise the amount required by the district annually to supply funds for paying expenses of organization and the costs of acquiring, improving, equipping, operating, and maintaining any project or facilities of the district, and promptly to pay in full, when due, all interest on the principal of, any prior redemption premiums due in connection with, and any other district charges pertaining to the general obligation bonds and other general obligation securities of the district and any other debt of the district, and to meet any other obligations of the district payable from taxes, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 32-11-302.

Source: L. 69: p. 757, § 26. C.R.S. 1963: § 89-21-26. L. 72: p. 612, § 134.

32-11-302. Levies to cover deficiencies. (1) The board, in certifying annual levies, shall take into account the maturing obligations for the ensuing year as provided in its contracts, maturing securities, and interest on securities, and deficiencies and defaults in prior years, and shall make ample provision for the payment thereof.

(2) In case the moneys produced from such levies, together with the revenues and any other moneys of the district, are not sufficient punctually to pay the annual installments of its contracts or securities and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, except the limitations in section 32-11-217 (1) (d), such taxes shall be made and continue to be levied until the obligations of the district payable from taxes are fully paid.

Source: L. 69: p. 757, § 27. C.R.S. 1963: § 89-21-27.

32-11-303. Sinking funds. Whenever any obligations (other than any special obligations not payable from taxes) have been incurred by the district, subject to the limitations in section 32-11-217 (1) (d), the board may levy taxes and collect revenue for the purpose of creating a reserve in such amount as the board may determine, which may be used to meet such general obligations and any other obligations payable from taxes of the district, for operation and maintenance expenses and depreciation charges, and for defraying the cost of any project of the district.

Source: L. 69: p. 758, § 28. C.R.S. 1963: § 89-21-28.

32-11-304. Levying and collecting taxes. (1) The body having authority to levy taxes within each county in which the district is situate shall levy the taxes provided in section 32-11-217 (1) (c) and (1) (d), and elsewhere in this article.

(2) All officials charged with the duty of collecting taxes shall collect such taxes levied by the district at the time and in the form and manner and with like interest and penalties as other taxes are collected and, when collected, shall pay the same to the district.

(3) The payment of such collection shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district.

(4) All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other taxes.

Source: L. 69: p. 758, § 29. C.R.S. 1963: § 89-21-29.

Cross references: For collection of taxes, see article 10 of title 39; for enforcement of tax liens, see article 20 of title 39.

32-11-305. Delinquent taxes. (1) If the taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of such taxes, interest, and

penalties, in the manner provided by the statutes of the state for selling real property for the nonpayment of taxes. If there are no bids at such tax sale for the property so offered, the property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, town, and city taxes.

(2) Delinquent personal property shall be distrained and sold as provided by law.

(3) Nothing in this article, neither the tax limitations in section 32-11-217 (1) (d) nor otherwise, shall be construed as preventing the collection in full of the proceeds of all levies of taxes by the district authorized by this article, including without limitation any delinquencies, interest, penalties, and costs.

Source: L. 69: p. 758, § 30. C.R.S. 1963: § 89-21-30.

Cross references: For the sale of tax liens, see article 11 of title 39.

32-11-306. Service charges. (1) (a) The urban district, as provided in section 32-11-217 (1) (e) and elsewhere in this article, may fix, modify, and collect, or cause to be collected, service charges for direct or indirect connection with, or the use or services of, the facilities of the district, including without limitation minimum charges and charges for the availability of the facilities or services relating thereto.

(b) Such service charges may be charged to and collected in advance or otherwise by the district at any time or from time to time from any person owning real property within the district or from any occupant of such property which directly or indirectly is, has been, or will be connected with the drainage and flood control system of the district or from which or on which originates or has originated rainfall, other surface and subsurface drainage, and storm and flood waters (or any combination thereof) which have entered or may enter such system, and such owner or occupant of any such real property shall be liable for and shall pay such service charges to the district at the time when and place where such service charges are due and payable.

(c) Such service charges of the district may accrue from any date on which the board reasonably estimates, in any resolution authorizing the issuance of any securities or other instrument pertaining thereto or in any contract with any person, that the facilities comprising the system or any project being acquired or improved and equipped will be available for service or use.

(2) (a) Such service charges, as nearly as the district deems practicable and equitable, shall be reasonable, and shall be uniform throughout the district for the same type, class, and amount of use or service of the district's system, and may be based or computed on measurements of drainage flow devices duly provided and maintained by the district or by any user as approved by the district, or on the consumption of water in or on or in connection with the real property, making due allowance for commercial and other use of water discharged into any sanitary sewer system and for any infiltration of groundwater and discharge of surface runoff into such sewer system, or on the capacity of the capital improvements in or on or connected with the real property, or upon the availability of service or readiness to serve by the district's system, or on any other factors determining the type, class, and amount of use or service of the district's system, or on any combination of such factors. The district may give weight to the characteristics of any real property, including without limitation the characteristics of capital improvements, both proposed and existing, in any subdivision or other area in the urban district, and any other special matter affecting the runoff of rainfall, of other surface and subsurface drainage, and of storm and flood waters (or any combination thereof) from such real property directly or indirectly into the district's facilities.

(b) Reasonable penalties may be fixed for any delinquencies, including without limitation interest on delinquent service charges from any date due at a rate of not exceeding one percent per month, or fraction thereof, reasonable attorneys' fees, and other costs of collection.

(3) The district may prescribe and from time to time when necessary revise a schedule of such service charges, which shall comply with the terms of any contract of the district, and in any event shall be such that the revenues from the service charges of the district will

at all times be adequate, except to the extent that the proceeds of any taxes or other moneys are available and used, after an allowance is made for delinquencies accrued and reasonably estimated to accrue by the board in the payment of such service charges, whether resulting from any delinquency of any person or from any other cause:

- (a) To pay all operation and maintenance expenses;
- (b) To pay punctually the principal of and interest on any securities payable from revenues of the district's facilities and issued or to be issued by the district;
- (c) To maintain such reserves or sinking funds therefor; and
- (d) To pay any expenses incidental to the facilities of the district or any project authorized in this article, any contingencies, acquisitions, improvements, and equipment, and any other cost, as may be required by the terms of any contract of, or as may be deemed necessary or desirable by, the district.

(4) Such schedule shall thus be prescribed and from time to time revised by the district. A public hearing thereon may be, but is not required to be, held by the district at least seven days after such published notice is given, as the district may determine to be reasonable. The district shall fix and determine the time or times when and the place or places where such service charges shall be due and payable and may require that the service charges shall be paid in advance for a period of not more than one year. A copy of such schedule of service charges in effect shall at all times be kept on file at the principal office of the district and shall at all reasonable times be open to public inspection.

(5) The general assembly has determined and hereby declares that the obligations arising from time to time of any person to pay service charges fixed in connection with the district's facilities shall constitute general obligations of the public body or other person charged with their payment; but as such obligations accrue for current services and benefits from and use of such facilities, the obligations shall not constitute an indebtedness of the public body within the meaning of any constitutional, charter, or statutory limitation, or other provision restricting the incurrence of any debt.

(6) No board, agency, bureau, commission, or official other than the board of the district has authority to fix, prescribe, levy, modify, supervise, or regulate the making of service charges, nor to prescribe, supervise, or regulate the performance of services pertaining to the district's facilities, as authorized in this article; but this subsection (6) is not a limitation on the contracting powers of the district acting by and through its board.

Source: L. 69: p. 758, § 31. **C.R.S. 1963:** § 89-21-31.

PART 4

ELECTIONS

32-11-401. Elections. Wherever in this article an election is permitted or required, the election may be held separately at a special election or may be held jointly or concurrently with any primary or general election held under the laws of the state; but no election shall be held at the same time as any regular election of any city, town, or school district any part of the area of which is located within the boundaries of the district. The elections shall be held and conducted, and the results determined, in the manner provided by articles 1 to 13 of title 1, C.R.S.

Source: L. 69: p. 762, § 36. **C.R.S. 1963:** § 89-21-36. **L. 70:** p. 299, § 119. **L. 81:** Entire section amended, p. 1626, § 36, effective July 1. **L. 92:** Entire section amended, p. 917, § 180, effective January 1, 1993.

32-11-402. Election resolution. (1) The board shall call any election by resolution adopted at least thirty days prior to the election.

(2) The resolution shall recite the objects and purposes of the election, the date upon which the election shall be held, and the form of the ballot and shall designate an election official to conduct the election.

(3) to (5) (Deleted by amendment, L. 92, p. 917, § 181, effective January 1, 1993.)

Source: L. 69: p. 762, § 37. C.R.S. 1963: § 89-21-37. L. 70: p. 299, § 120. L. 92: Entire section amended, p. 917, § 181, effective January 1, 1993.

32-11-403. Conduct of election. (Repealed)

Source: L. 69: p. 763, § 38. C.R.S. 1963: § 89-21-38. L. 70: pp. 299, 300, §§ 121, 122. L. 71: p. 964, §§ 14, 15. L. 77: (6) amended, p. 234, § -11, effective June 19; (4) and (10) amended, p. 288, § 63, effective June 29; (9) amended, p. 1515, § 83, effective July 15. L. 80: (4) and (10) amended, p. 416, § 32, effective February 21. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-11-404. Notice of election. (Repealed)

Source: L. 69: p. 764, § 39. C.R.S. 1963: § 89-21-39. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-11-405. Polling places. (Repealed)

Source: L. 69: p. 764, § 40. C.R.S. 1963: § 89-21-40. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-11-406. Election supplies. (Repealed)

Source: L. 69: p. 764, § 41. C.R.S. 1963: § 89-21-41. L. 70: p. 300, § 123. L. 77: (1) amended, p. 1515, § 84, effective July 15. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

32-11-407. Election returns. (Repealed)

Source: L. 69: p. 765, § 42. C.R.S. 1963: § 89-21-42. L. 92: Entire section repealed, p. 924, § 198, effective January 1, 1993.

PART 5

INDEBTEDNESS AND FINANCIAL PROVISIONS

32-11-501. Forms of borrowing. (1) Upon the conditions and under the circumstances set forth in this section, the urban district, to carry out the purposes of this article, at any time or from time to time may borrow money to defray the cost of any project designated by the board, or any part thereof as the board may determine, and may issue district securities to evidence such borrowing or obligations otherwise incurred under this article, as provided in this section.

(2) The urban district may issue, in one series or more, without the district securities being authorized at any election, except as otherwise provided in section 32-11-533 and elsewhere in this article, in anticipation of taxes or pledged revenues, or both, and constituting either general obligations or special obligations of the district, any one or more of the following types of district securities:

(a) Notes, evidencing any amount borrowed by the district;

(b) Warrants, evidencing the amount due to any person for any services, supplies, equipment, or other materials furnished to or for the benefit of the district and pertaining to a project;

(c) Bonds, evidencing any amount borrowed by the district and constituting long-term financing;

(d) Temporary bonds, pending the preparation of and exchangeable for definitive bonds of like character and in like principal amount when prepared and issued in compliance with the conditions and limitations provided in this article; and

(e) Interim debentures, evidencing any emergency loans, construction loans, and other temporary loans not exceeding three years, in supplementation of long-term financing and the issuance of bonds, as provided in sections 32-11-558 to 32-11-563.

(3) The urban district, pursuant to part 6 of this article and sections 32-11-803 to 32-11-808, at any time or from time to time, may create therein an improvement district, levy special assessments against the assessable property in the improvement district, and cause the assessments to be collected to defray wholly or in part the cost of any project, and may issue, in one series or more, without the district securities being authorized at any election, in anticipation of the assessments and any other moneys pledged additionally to secure the payment of the securities, and constituting special obligations of the urban district, any one or more of the following types of district securities:

(a) Bonds, evidencing any amount borrowed and constituting long-term financing;

(b) Temporary bonds, pending the preparation of and exchangeable for definitive bonds of like character and in like principal amount when prepared and issued in compliance with the conditions and limitations provided in this article; and

(c) Assessment debentures, evidencing any construction loans or other temporary loans not exceeding three years, in supplementation of long-term financing and the issuance of bonds, as provided in section 32-11-621.

Source: L. 69: p. 765, § 43. C.R.S. 1963: § 89-21-43.

32-11-502. Limitations upon security. (1) The payment of district securities or any other obligations of the district shall not be secured by an encumbrance, mortgage, or other pledge of property of the district, except for its pledged revenues, proceeds of taxes, proceeds of assessments, and any other moneys pledged for the payment of the securities or such other obligations.

(2) No property of the district subject to such exception shall be liable to be forfeited or taken in payment of any district securities or other obligations of the district.

Source: L. 69: p. 766, § 44. C.R.S. 1963: § 89-21-44.

32-11-503. Recourse against district personnel. No recourse shall be had for the payment of the principal of, any interest on, and any prior redemption premiums due in connection with any bonds or other district securities or other obligations of the district evidenced by any other contract or for any claim based thereon or otherwise upon the resolution authorizing the issuance of such securities or the incurrence of such other obligations, or other instrument pertaining thereto, against any individual director or any officer or other agent of the district, past, present, or future, either directly or indirectly through the board or the district, or otherwise, whether by virtue of any constitution, statute, or rule of law, or by the endorsement of any penalty or otherwise, all such liability, if any, shall be by the acceptance of the securities and as a part of the consideration of their issuance or by the making of any other contract specially waived and released.

Source: L. 69: p. 766, § 45. C.R.S. 1963: § 89-21-45.

32-11-504. Repeal of article. The faith of the state is pledged that this article, any law supplemental or otherwise pertaining thereto, and any other law concerning the bonds or other district securities, taxes, assessments, or the pledged revenues, or any combination of such securities, such taxes, such assessments, and such revenues shall not be repealed, amended, or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding district securities, until all such securities have been discharged in full or provision for their payment and redemption has been fully made, including without limitation the known minimum yield from the investment or reinvestment of moneys pledged therefor in federal securities.

Source: L. 69: p. 766, § 46. C.R.S. 1963: § 89-21-46.

32-11-505. Registration of securities. (1) Before the board delivers any securities under this article, all such securities shall be registered by the treasurer in a book kept in his office for that purpose.

(2) The register shall show:

- (a) The principal amount of the securities;
- (b) The time of payment of each of the securities; and
- (c) The rate of interest each of the securities bears.

(3) After registration by the treasurer, he shall cause the securities to be delivered to the purchaser thereof from the district, upon payment being made therefor on the terms of the sale.

Source: L. 69: p. 766, § 47. C.R.S. 1963: § 89-21-47.

32-11-506. Details of securities. (1) Except as otherwise provided in this article and in any other law, the provisions of which are relevant by express reference in this article thereto, any district securities issued under this article, as may be provided by the board in a resolution authorizing their issuance and in any indenture or other proceedings pertaining thereto, may be:

(a) In such form, issued in such manner, and issued with such provisions:

(I) For the application of any accrued interest and any premium from the sale of any bonds or other district securities under this article as provided in section 32-11-516;

(II) For the registration of the bonds or other securities for payment as to principal only, or as to both principal and interest, at the option of any holder of a bond or other security, or for registration for payment only in either manner designated;

(III) For the endorsement of payments of interest on the bonds or other securities or for reconverting the bonds or other securities into coupon bonds or other coupon securities, or both for such endorsement and such reconversion, where any bond or other security is registered for payment as to interest; and where interest accruing on the securities is not represented by interest coupons, the securities may provide for the endorsing of payments of interest thereon;

(IV) For the endorsement of payments of principal on the bonds or other securities, where any bond or other securities are registered for payment as to principal;

(V) For the initial issuance of one or more bonds or other securities aggregating the amount of the entire issue or any portion thereof, and the endorsement of payments of interest or principal or both interest and principal on the securities;

(VI) For the manner and circumstances in and under which any such bond or other securities may in the future, at the request of the holder thereof, be converted into bonds or other securities of smaller or larger denominations, which bonds or other securities of smaller or larger denominations may in turn be either coupon bonds or other coupon securities or bonds or other securities registered for payment, or coupon bonds or other coupon securities with provisions for registration for payment;

(VII) For the reissuance of any outstanding bonds or other securities, and the terms and conditions thereof, whether lost, apparently destroyed, wrongfully taken, or for any other reason, as provided in the "Uniform Commercial Code - Investment Securities", being article 8 of title 4, C.R.S., or otherwise;

(VIII) For the deposit of moneys, federal securities, or other securities of the federal government, or both moneys and all such securities, with and securing their repayment by a commercial bank within or without or both within and without this state; and

(IX) For the payment of costs or expenses incident to the enforcement of the securities or of the provisions of the resolution or of any covenant or contract with the holders of the securities.

(b) Issued otherwise with such recitals, terms, covenants, conditions, and other provisions as the board may provide.

Source: L. 69: p. 767, § 48. C.R.S. 1963: § 89-21-48.

32-11-507. Recital of issuance under article. A resolution providing for the issuance of bonds or other district securities under this article or an indenture or other proceedings pertaining thereto may provide that the securities contain a recital that they are issued pursuant to this "Urban Drainage and Flood Control Act", which recital shall be conclusive evidence of their validity and the regularity of their issuance.

Source: L. 69: p. 768, § 49. C.R.S. 1963: § 89-21-49.

32-11-508. Additional securities details. (1) As the board may determine, any bonds and other district securities issued under this article, except as otherwise provided in this article or in any law supplemental thereto, may:

- (a) Be of a convenient denomination or denominations;
- (b) Be fully negotiable within the meaning of and for all the purposes of the "Uniform Commercial Code - Investment Securities", being article 8 of title 4, C.R.S.;
- (c) Mature at such time or serially at such times in regular numerical order at annual or other designated intervals in amounts designated and fixed by the board;
- (d) Bear interest payable annually, semiannually, or at other designated intervals, but the first interest payment date may be for interest accruing for any other period;
- (e) Be made payable in lawful money of the United States, at the office of the treasurer, any county treasurer, or any commercial bank within or without or both within and without the state as may be provided by the board; and
- (f) Be printed at such place within or without this state, as the board may determine.

Source: L. 69: p. 768, § 50. C.R.S. 1963: § 89-21-50.

32-11-509. Payment without further order. The principal of, the interest on, and any prior redemption premium due in connection with any district securities shall be paid as the same become due in accordance with the terms of the securities and any resolutions and other proceedings pertaining to their issuance, without any warrant or further order or other preliminaries.

Source: L. 69: p. 768, § 51. C.R.S. 1963: § 89-21-51.

32-11-510. Interest coupons. Any bonds issued under this article (except temporary bonds) shall have one or two sets of interest coupons, bearing the number of the bond to which they are respectively attached, numbered consecutively in regular numerical order, and attached in such manner that they may be removed upon the payment of the installments of interest without injury to the bonds, except as otherwise provided in this article.

Source: L. 69: p. 768, § 52. C.R.S. 1963: § 89-21-52.

32-11-511. Execution of securities. Bonds and other district securities issued under this article shall be executed in the name of the district, shall be signed by the chairman of the board, shall be countersigned by the treasurer, and shall be attested by the secretary. All bonds or other securities shall be authenticated by the seal of the district affixed thereto. All coupons shall be signed by the treasurer. Facsimile signatures may be used on any coupons.

Source: L. 69: p. 768, § 53. C.R.S. 1963: § 89-21-53.

32-11-512. Use of facsimiles. Any bonds or other securities, including without limitation any certificates endorsed thereon and any coupons attached thereto, may be executed with facsimile signatures and seals as provided in sections 11-55-103 and 11-55-104, C.R.S., as from time to time amended.

Source: L. 69: p. 769, § 54. C.R.S. 1963: § 89-21-54. L. 77: Entire section amended, p. 288, § 64, effective June 29.

32-11-513. Execution by incumbents. The bonds, any coupons pertaining thereto, and other securities bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the district, notwithstanding that before the delivery thereof and payment therefor all of the persons whose signatures appear thereon have ceased to fill their respective offices.

Source: L. 69: p. 769, § 55. C.R.S. 1963: § 89-21-55.

32-11-514. Execution with predecessor's facsimile. Any officer authorized or permitted to sign any bonds, any coupons, or any other securities, at the time of their execution and of a signature certificate pertaining thereto, may adopt for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the bonds, coupons, and other securities pertaining thereto, or any combination thereof.

Source: L. 69: p. 769, § 56. C.R.S. 1963: § 89-21-56.

32-11-515. Repurchase of securities. Any bonds or other district securities may be repurchased by the board out of any funds available for such purpose at a price of not more than the principal amount thereof and accrued interest, plus the amount of the premium, if any, which might on the next prior redemption date of such securities be paid to the holders thereof if such securities should be called for redemption on such date pursuant to their terms. All securities so repurchased shall be canceled; but if the securities are not called for prior redemption at the district's option within one year from the date of their purchase, they may be repurchased without limitation as to price.

Source: L. 69: p. 769, § 57. C.R.S. 1963: § 89-21-57.

32-11-516. Use of securities proceeds. (1) All moneys received from the issuance of any securities authorized in this article shall be used solely for the purpose for which issued and to defray wholly or in part the cost of the project thereby delineated, except for any funding or refunding securities.

(2) Any accrued interest and any premium shall be applied to the cost of the project or to the payment of the interest on or the principal of the securities, or both interest and principal, or shall be deposited in a reserve therefor, or any combination thereof, as the board may determine.

Source: L. 69: p. 769, § 58. C.R.S. 1963: § 89-21-58.

32-11-517. Use of surplus proceeds. Any unexpended balance of the proceeds of such securities remaining after the completion of the acquisition or improvement of properties pertaining to the project or otherwise to the completion of the purpose for which such securities were issued shall be credited immediately to the fund or account created for the payment of the interest on or the principal of the securities, or both principal and interest, and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise pertaining to their issuance, or so paid into a reserve therefor, or any combination thereof, as the board may determine.

Source: L. 69: p. 769, § 59. C.R.S. 1963: § 89-21-59.

32-11-518. Validity of securities unaffected by project. (1) The validity of any securities shall not be dependent on or affected by the validity or regularity of any

proceedings relating to a project or the proper completion of any purpose for which the securities are issued.

(2) The purchaser of the securities shall in no manner be responsible for the application of the proceeds of the securities by the district or any of its officers, agents, and employees.

Source: L. 69: p. 770, § 60. C.R.S. 1963: § 89-21-60.

32-11-519. Employment of experts. (1) The board on behalf of the district may employ legal, fiscal, engineering, and other expert services in connection with any project or the facilities, or both such project and facilities, and the authorization, sale, and issuance of bonds and other securities under this article.

(2) The board on behalf of the district is authorized to enter into any contracts or arrangements, not inconsistent with the provisions of this article, with respect to the sale of bonds or other securities under this article, the employment of engineers, architects, financial consultants, and bond counsel, and other matters as the board may determine to be necessary or desirable in accomplishing the purposes of this article.

Source: L. 69: p. 770, § 61. C.R.S. 1963: § 89-21-61.

32-11-520. Investments and reinvestments. (1) The board, subject to any contractual limitations from time to time imposed upon the district by any resolution authorizing the issuance of the district's outstanding securities or by any trust indenture or other proceedings pertaining thereto, may cause to be invested and reinvested any proceeds of taxes, any proceeds of assessments, any pledged revenues, and any proceeds of bonds or other district securities issued under this article in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may cause such proceeds of taxes, assessments, revenues, district securities, and other securities to be deposited in any trust bank within or without or both within and without this state and secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on such deposit, including without limitation time deposits evidenced by certificates of deposit.

(2) Any such securities and any certificates of deposit thus held may from time to time be sold, and the proceeds may be so reinvested or redeposited as provided in this section.

(3) Sales and redemptions of any such securities and certificates of deposit thus held shall from time to time be made in season so that the proceeds may be applied to the purposes for which the money with which such securities and certificates of deposit were originally acquired was placed in the district treasury.

(4) Any gain from any such investments or reinvestments may be credited to any fund or account pledged for the payment of any securities issued under this article, including any reserve therefor, or any other fund or account pertaining to a project or the facilities or the district's general fund, subject to any contractual limitations in any proceedings pertaining to outstanding district securities.

(5) Any commercial bank incorporated under the laws of this state which may act as depository of the proceeds of any securities issued under this article, any other securities owned by the district, any proceeds of taxes, any proceeds of assessments, any pledged revenues, and any moneys otherwise pertaining to a project or the facilities, or any combination thereof, may furnish such indemnifying bonds or may pledge such securities as may be required by the board.

Source: L. 69: p. 770, § 62. C.R.S. 1963: § 89-21-62. L. 89: (1) to (3) and (5) amended, p. 1121, § 45, effective July 1.

32-11-521. Rights and remedies cumulative. No right or remedy conferred upon any holder of any securities or any coupon pertaining thereto or any trustee for such holder by this article or by any proceedings pertaining to the issuance of such securities or coupon is exclusive of any right or remedy, but each such right or remedy is cumulative and in

addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this article or by any other law.

Source: L. 69: p. 771, § 63. C.R.S. 1963: § 89-21-63.

32-11-522. Continuation of liabilities. The failure of any holder of any district securities or any coupons pertaining thereto to proceed as provided in this article or in such proceedings shall not relieve the district, the board, or any of the officers, agents, and employees of the district of any liability for failure to perform any duty, obligation, or other commitment.

Source: L. 69: p. 771, § 64. C.R.S. 1963: § 89-21-64.

32-11-523. Temporary bonds. (1) Each temporary bond issued under this article shall set forth substantially the same conditions, terms, and provisions as the definitive bond for which it is exchanged.

(2) Each holder of a temporary bond has all the rights and remedies which he would have as a holder of the definitive bond for which the temporary bond is to be exchanged.

Source: L. 69: p. 771, § 65. C.R.S. 1963: § 89-21-65.

32-11-524. Statement of purpose. The resolution authorizing the issuance of any district securities or any indenture pertaining thereto shall describe the purpose for which the securities are issued at least in general terms and may describe any purpose in detail.

Source: L. 69: p. 771, § 66. C.R.S. 1963: § 89-21-66.

32-11-525. Prior redemption calls. (1) Nothing in this article or in any other law of this state shall be construed to permit the board to call, on behalf of the district, bonds or other securities outstanding any time after the adoption of this article for prior redemption in order to fund or refund such securities or in order otherwise to pay them prior to their stated maturities, unless the right to call such securities for prior redemption was specifically reserved and stated in such bonds at the time of their issuance, and all conditions with respect to the manner, price, and time applicable to such prior redemption, as set forth in the proceedings authorizing the outstanding securities, are strictly observed.

(2) It is the intention of the general assembly in this section to make certain that the holder of no outstanding bond or other security may be compelled to surrender such security for funding or refunding or other payment prior to its stated maturity or optional date of prior redemption expressly reserved therein, even though such funding or refunding or other payment might result in financial benefit to the district.

Source: L. 69: p. 771, § 67. C.R.S. 1963: § 89-21-67.

32-11-526. Surrender of district securities by state. Notwithstanding the provisions of section 32-11-525 or of any other law, this state, acting by and through the state agency authorizing the acquisition of district bonds or other district securities, may agree with the board to exchange any outstanding securities of the district held by the state or any agency, corporation, department, or other instrumentality of the state, for funding or refunding bonds or other funding securities of the district, or otherwise to surrender at such price and time and otherwise upon such conditions and other terms and in such manner as may be mutually agreeable, such outstanding securities to the state for funding or refunding or other payment at any time prior to their respective maturities or to any date as of which the district has the right and option to call on its behalf such outstanding securities for prior redemption as expressly provided in the outstanding securities and any resolution, trust indenture, or other proceedings authorizing their issuance.

Source: L. 69: p. 771, § 68. C.R.S. 1963: § 89-21-68.

32-11-527. Notes and warrants. (1) Notes and warrants designated in section 32-11-501 (2) may mature at such time, not exceeding one year from the date of their issuance, as the board may determine.

(2) The notes and warrants shall not be extended or funded except by the issuance of bonds or interim debentures in compliance with sections 32-11-558 to 32-11-563 and other provisions in this article supplemental thereto.

Source: L. 69: p. 772, § 69. C.R.S. 1963: § 89-21-69.

32-11-528. General obligation securities. (1) The district may issue as general obligations any of the following types of district securities, payable from taxes, or payable from taxes and additionally secured as to their payment by a pledge of net revenues or gross revenues, as the board may determine:

- (a) Notes;
- (b) Warrants;
- (c) Interim debentures;
- (d) Bonds; and
- (e) Temporary bonds.

Source: L. 69: p. 772, § 70. C.R.S. 1963: § 89-21-70.

32-11-529. Special obligation securities. (1) The district may issue as special obligations any of the following types of district securities, in anticipation of net pledged revenues; but not under any circumstances under their terms and the proceedings authorizing their issuance, in anticipation of taxes nor in anticipation of gross pledged revenues:

- (a) Notes;
- (b) Warrants;
- (c) Interim debentures;
- (d) Bonds; and
- (e) Temporary bonds.

(2) Such special obligation district securities may be payable from, secured by a pledge of, and constitute a lien on net pledged revenues.

Source: L. 69: p. 772, § 71. C.R.S. 1963: § 89-21-71.

32-11-530. Covenant to pay operation and maintenance expenses. Any resolution authorizing the issuance of general obligation district securities payable from gross revenues or any indenture or other proceedings pertaining thereto may contain a covenant of the district that to the extent required, as provided therein, the district will pay operation and maintenance expenses by appropriation from its general fund and that to the extent the moneys accounted for therein are insufficient for that purpose the district shall levy taxes therefor, subject to the limitation pertaining to such expenses in section 32-11-217 (1) (d).

Source: L. 69: p. 772, § 72. C.R.S. 1963: § 89-21-72.

32-11-531. Securities constituting indebtedness. (1) Any outstanding general obligation bonds, any temporary general obligation bonds to be exchanged for such definitive bonds, and any general obligation interim debentures constitute outstanding indebtedness of the district and exhaust the debt-incurring power of the district under the debt limitation pertaining thereto in section 32-11-534.

(2) Any general obligation notes and general obligation warrants shall be issued within budget limitations and unencumbered appropriations and shall not constitute indebtedness.

Source: L. 69: p. 772, § 73. C.R.S. 1963: § 89-21-73.

32-11-532. Securities not constituting indebtedness. Any other district securities (except general obligation notes and general obligation warrants) constitute special obligations of the district, and all such other securities (including all notes and warrants, general obligations, or special obligations payable within one year from date) neither constitute outstanding indebtedness of the district nor exhaust its debt-incurring power under any such debt limitation.

Source: L. 69: p. 773, § 74. C.R.S. 1963: § 89-21-74. L. 84: Entire section amended, p. 847, § 2, effective July 1.

32-11-533. Election to authorize debt. Subject to the provisions of sections 32-11-564 and 32-11-566, no indebtedness shall be incurred by the issuance of district securities or by any contract by which the district agrees to repay as general obligations of the district to the federal government or to any public body over a term not limited to the then current fiscal year any project costs advanced thereby under any contract for the acquisition of the project or any interest therein, advanced by the issuance of securities of such a public body to defray any cost of the project or of facilities thereby acquired and becoming a part of the district's facilities, or otherwise advanced, unless a proposal of issuing the district's general obligation bonds, including the maximum net effective interest rate at which such issue of bonds may be issued, or of incurring an indebtedness by the district by making such a contract is submitted and approved at an election held for that purpose in accordance with part 4 of this article and with all laws amendatory thereof and supplemental thereto.

Source: L. 69: p. 773, § 75. C.R.S. 1963: § 89-21-75. L. 70: p. 301, § 124.

32-11-534. Limitations upon incurring debt. (1) The aggregate amount of indebtedness of the district evidenced by district securities and otherwise by contract with the federal government or any public body, or otherwise, shall not at any time exceed three percent of the valuation for assessment of the taxable property within the district as shown by the last preceding assessment for the purposes of taxation, except as otherwise provided in this article.

(2) No debt within such debt limitation at the time it is incurred by the issuance of district securities or by otherwise obligating the district under contract shall become invalid because of any reduction subsequently of the district's debt-incurring power for any reason.

(3) Nothing in this article authorizes the creation of an indebtedness by any public body located wholly or in part within the district or elsewhere.

Source: L. 69: p. 773, § 76. C.R.S. 1963: § 89-21-76.

32-11-535. Interest and prior redemption charges. Interest on any district securities or on any moneys directly or indirectly advanced by the federal government or any public body and to be repaid by the district under any contract, and any prior redemption premiums due in connection with the prepayment of any such securities, and any other prepayment charges due from the district under any contract, do not constitute indebtedness under this article, except as otherwise provided in sections 32-11-564 (1) (a) and 32-11-566 (3).

Source: L. 69: p. 773, § 77. C.R.S. 1963: § 89-21-77.

32-11-536. Recitals in securities. (1) The district securities issued under this article, designated in section 32-11-501 (2), and constituting special obligations shall recite in substance that the securities and the interest thereon are payable solely from the net revenues pledged to the payment thereof.

(2) District securities issued under this article and constituting general obligations shall pledge the full faith and credit of the district for their payment, shall so state, and shall state that they are payable from taxes.

(3) General obligation district securities, the payment of which is additionally secured by a pledge of revenues, shall recite in substance, in addition to the statements required by subsection (2) of this section, that the payment of the securities and the interest thereon is additionally secured by a pledge of the net revenues or the gross revenues, as the case may be, designated in the securities.

Source: L. 69: p. 774, § 78. C.R.S. 1963: § 89-21-78.

32-11-537. Consolidated bond fund. Payment of the principal of and the interest on general obligation bonds may be made from a consolidated bond interest and redemption fund of the district except as otherwise provided in any proceedings pertaining to outstanding district securities or in any other contract.

Source: L. 69: p. 774, § 79. C.R.S. 1963: § 89-21-79.

32-11-538. Securities tax levies. (1) There shall be levied annually a special tax on all taxable property, both real and personal, within the territorial limits of the district, fully sufficient, without regard to any statutory limitations existing, except for any notes or warrants, to pay the interest on the general obligation district securities and to pay and retire the same as provided in this article and any law supplemental to this article. The amount of money to be raised by such tax shall be included in the annual estimate or budget for the district for each year for which such tax is required to be levied by this article. Such tax shall be levied and collected in the same manner and at the same time as other taxes of the district are levied and collected.

(2) Subject to the provisions of section 32-11-537, the proceeds of any such tax levied to pay interest on such securities of any series shall be kept by the district treasurer in a special account separate and apart from all other funds, and the proceeds of the tax levied to pay the principal of such securities shall be kept by the treasurer in a special account separate and apart from all other funds, which two special accounts shall be used for no other purpose than the payment of the interest on the securities and the principal thereof, respectively, as the same falls due.

Source: L. 69: p. 774, § 80. C.R.S. 1963: § 89-21-80.

Cross references: For collection of taxes, see article 10 of title 39.

32-11-539. Initial levies. (1) Such tax shall be levied immediately after the issuance of any general obligation securities issued in accordance with the provisions of this article, at the times and in the manner provided by law, and annually thereafter until all of the securities and the interest thereon have been fully discharged.

(2) Such tax may be first levied after the district, acting by and through the board, has contracted to sell any securities but before their issuance.

Source: L. 69: p. 774, § 81. C.R.S. 1963: § 89-21-81.

32-11-540. Payments from general fund. Any sums coming due on any general obligation district securities at any time when there are not on hand from such tax levy or levies sufficient funds to pay the same shall be promptly paid when due from the general fund of the district, reimbursement to be made to such general fund in the sums thus advanced when the taxes provided for in this article have been collected.

Source: L. 69: p. 774, § 82. C.R.S. 1963: § 89-21-82.

32-11-541. Use of other moneys. The district may apply any funds (other than taxes) that may be available for that purpose to the payment of the interest on or the principal of

any general obligation district securities as the same respectively mature, including without limitation the payment of general obligation bonds as provided in section 32-11-537, and regardless of whether the payment of the general obligation district securities is additionally secured by a pledge of revenues and, upon such payments, the levy of taxes provided in this article may thereupon to that extent be diminished.

Source: L. 69: p. 775, § 83. C.R.S. 1963: § 89-21-83. ~

32-11-542. Appropriation of taxes. There is by this article, and there shall be by resolution authorizing the issuance of any indebtedness contracted in accordance with the provisions of this article, specially appropriated the proceeds of such taxes to the payment of the principal thereof and any interest thereon; and such appropriations shall not be repealed nor the taxes postponed or diminished, except as otherwise expressly provided in this article, until the principal of and interest on the district securities evidencing such debt or other indebtedness evidenced by other contract have been wholly paid.

Source: L. 69: p. 775, § 84. C.R.S. 1963: § 89-21-84.

32-11-543. Special obligation limitations. None of the covenants, agreements, representations, and warranties contained in any resolution authorizing the issuance of bonds or other district securities issued under the provisions of this article, designated in section 32-11-501 (2), and constituting special obligations, or in any other instrument pertaining thereto, in the absence of any breach thereof, shall ever impose or be construed as imposing any liability, obligation, or charge against the district (except the special funds pledged therefor) or against the general credit of the district, payable out of the general fund of the district, or out of any funds derived from taxation.

Source: L. 69: p. 775, § 85. C.R.S. 1963: § 89-21-85.

32-11-544. Purchase price and interest. (1) Any district securities designated in section 32-11-501 (2) and otherwise issued under this article, as may be provided by the board in a resolution authorizing their issuance and in any indenture or other proceedings pertaining thereto, may be issued at, above, or below par, at a discount not exceeding seven percent of the principal amount of the securities; but they may not be issued at a price such that the net effective interest rate of the issue of securities exceeds the maximum net effective interest rate authorized.

(2) Such district securities shall bear interest at a rate such that the net effective interest rate of the issue of securities does not exceed the maximum net effective interest rate authorized.

Source: L. 69: p. 775, § 86. C.R.S. 1963: § 89-21-86. L. 70: p. 301, § 125.

32-11-545. Public and private sales. (1) Notes may be issued at public or private sale.

(2) Warrants may be issued to evidence the amount due to any person furnishing services or materials as provided in this article.

(3) General obligation bonds shall be issued at public sale. Bonds constituting special obligations may be issued at public or private sale.

(4) Temporary bonds shall be issued to a purchaser of the definitive bonds in anticipation of the exchange of the former for the latter.

(5) Interim debentures may be issued at public or private sale.

Source: L. 69: p. 775, § 87. C.R.S. 1963: § 89-21-87.

32-11-546. Notice of public sale. (1) Before selling any district securities publicly, the board shall:

(a) Cause a notice calling for bids for the purchase of the securities to be published once a week for four consecutive weeks by four weekly insertions a week apart, the first publication to be not more than thirty days nor less than twenty-two days next preceding the date of sale, in a newspaper published within the boundaries of the district and having general circulation therein;

(b) Cause such other notice to be given as the board may direct.

Source: L. 69: p. 775, § 88. C.R.S. 1963: § 89-21-88.

32-11-547. Contents of sale notice. (1) The notice shall:

(a) Specify a place and designate a day and the hour thereof subsequent to the date of the last publication when sealed bids for the purchase of the securities shall be received and opened publicly;

(b) Specify the maximum rate of interest which the securities shall bear;

(c) Require each bidder to submit a bid specifying the lowest rate or rates of interest and premium, if any, at which the bidder will purchase the securities, at or above par, or, if so permitted by the board, below par at a discount not exceeding the maximum discount fixed by the board.

Source: L. 69: p. 776, § 89. C.R.S. 1963: § 89-21-89.

32-11-548. Bid requirements. (1) All bids shall:

(a) Be in writing and be sealed; and

(b) Except any bid of the state or any board or department thereof, if one is received, be accompanied by a deposit of an amount of at least two percent of the principal amount of the securities, either in cash, or by cashier's check or treasurer's check of, or by certified check drawn on, a solvent commercial bank in the United States, which deposit shall be returned if the bid is not accepted.

Source: L. 69: p. 776, § 90. C.R.S. 1963: § 89-21-90.

32-11-549. Acceptance of best bid. (1) Subject to the right of the board to reject any and all bids, the securities shall be sold to the responsible bidder making the best bid.

(2) If there are two or more equal bids for the securities and such equal bids are the best bids received and not less than the principal amount of the securities and accrued interest, except for any permitted discount, the board shall determine which bid shall be accepted.

Source: L. 69: p. 776, § 91. C.R.S. 1963: § 89-21-91.

32-11-550. Rejection of bids. (1) If a bid is accepted, the deposits of all other bidders shall be thereupon returned. If all bids are rejected, all deposits shall be returned forthwith.

(2) If the successful bidder fails or neglects to complete the purchase of the securities within thirty days following the acceptance of his bid, or within ten days after the bonds are made ready and are tendered by the district for delivery, whichever is later, the amount of his deposit shall be forfeited to the district (but no bidder shall forfeit such deposit whenever the securities are not ready and so tendered for delivery within sixty days from the date of the acceptance of his bid), and the board may accept the bid of the person making the next best bid.

(3) If all bids are rejected, the board may readvertise the securities for sale in the same manner as provided for the original advertisement or may sell the securities privately.

Source: L. 69: p. 776, § 92. C.R.S. 1963: § 89-21-92.

32-11-551. Bond maturities. (1) General obligation bonds shall mature within not exceeding forty years from their date or respective dates and commencing not later than the third year thereafter, in such manner as the board may determine.

(2) Special obligation bonds (other than assessment bonds) shall mature within not exceeding fifty years from their date or respective dates.

Source: L. 69: p. 776, § 93. C.R.S. 1963: § 89-21-93.

32-11-552. Prior redemption provisions. The board may provide for the redemption prior to maturity at the option of the district of any or all of the bonds or other district securities designated in section 32-11-501 (2), in such order, by lot or otherwise, at such time, with or without the payment of such premiums not exceeding seven percent of the principal amount of each bond or other security so redeemed, and otherwise upon such terms as may be provided by the board in the resolution authorizing the issuance of the securities or other instrument pertaining thereto.

Source: L. 69: p. 777, § 94. C.R.S. 1963: § 89-21-94.

32-11-553. Special funds and accounts. The board, in any resolution authorizing the issuance of bonds or other securities designated in section 32-11-501 (2) or in any instrument or other proceedings pertaining thereto, may create special funds and accounts for the payment of the cost of a project, of operation and maintenance expenses, of the securities, including the accumulation and maintenance of reserves therefor, of improvements, including the accumulation and maintenance of reserves therefor, and of other obligations pertaining to the securities, any project, or the facilities.

Source: L. 69: p. 777, § 95. C.R.S. 1963: § 89-21-95.

32-11-554. Covenants and other provisions. (1) Any resolution providing for the issuance of any bonds or other district securities under this article payable from pledged revenues, and any indenture or other instrument or proceedings pertaining thereto, may at the discretion of the board contain covenants or other provisions, notwithstanding such covenants and provisions may limit the exercise of powers conferred by this article, in order to secure the payment of such securities, in agreement with the holders of such securities, including without limitation covenants or other provisions as to any one or more of the following:

(a) The pledged revenues and, in the case of general obligations, the taxes to be fixed, charged, or levied, and the collection, use, and disposition thereof, including but not limited to the foreclosure of liens for delinquencies, the discontinuance of services, facilities, or use of any properties or facilities, prohibition against free service, the collection of penalties and collection costs, and the use and disposition of any moneys of the district, derived or to be derived from any source designated in this article;

(b) The acquisition, improvement, or equipment of all or any part of properties pertaining to any project or the facilities;

(c) The creation and maintenance of reserves or sinking funds to secure the payment of the principal of and interest on any securities or of operation and maintenance expenses of the facilities, or part thereof, and the source, custody, security, regulation, use, and disposition of any such reserves or funds, including but not limited to the powers and duties of any trustee with regard thereto;

(d) A fair and reasonable payment by the district from its general fund or other available moneys to the account of any designated facilities for services rendered thereby to the district;

(e) The payment of the cost of any project by delineating the purposes to which the proceeds of the sale of securities may be applied, and the custody, security, use, expenditure, application, and disposition thereof;

(f) The temporary investment and any reinvestment of the proceeds of bonds, any other securities, any taxes, or any pledged revenues, or any combination thereof, in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.;

(g) The pledge of and the creation of a lien upon pledged revenues or the proceeds of bonds or other district securities pending their application to defray the cost of the project, or both such revenues and proceeds of such securities, to secure the payment of bonds or other securities issued under this article;

(h) The payment of the principal of and interest on any securities, and any prior redemption premiums due in connection therewith, and the sources and methods thereof, the rank or priority of any securities as to any lien or security for payment, or the acceleration of any maturity of any securities, or the issuance of other or additional securities payable from or constituting a charge against or lien upon any pledged revenues or other moneys pledged for the payment of securities and the creation of future liens and encumbrances thereagainst;

(i) The use, regulation, inspection, management, operation, maintenance, or disposition, or any limitation or regulation of the use of all or any part of the facilities or any property of the district pertaining thereto;

(j) The determination or definition of pledged revenues from the facilities or of operation and maintenance expenses of the facilities, the use and disposition of such revenues, and the manner of and limitations upon paying such expenses;

(k) The creation of special funds and accounts pertaining to any pledged revenues or to the bonds or other securities issued under this article;

(l) The insurance to be carried by the district or any person in interest and use and disposition of insurance moneys, the acquisition of completion, performance, surety, and fidelity bonds pertaining to any project or funds, or both, and the use and disposition of any proceeds of such bonds;

(m) Books of account, the inspection and audit thereof, and other records pertaining to any project, the facilities, or pledged revenues;

(n) The assumption or payment or discharge of any obligation, lien, or other claim relating to any part of any project, the facilities, or any securities having a lien on any part of any pledged revenues or other moneys of the district;

(o) Limitations on the powers of the district to acquire or operate, or permit the acquisition or operation of, any structures, the facilities or properties of which may compete or tend to compete with the facilities;

(p) The vesting in a corporate or other trustee such property, rights, powers, and duties in trust as the board may determine which may include any or all of the rights, powers, and duties of the trustee appointed by the holders of securities, and limiting or abrogating the right of such holders to appoint a trustee, or limiting the rights, duties, and powers of such trustee;

(q) Events of default, rights, and liabilities arising therefrom, and the rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations;

(r) The terms and conditions upon which the holders of the securities or any portion, percentage, or amount of them may enforce any covenants or provisions made under this article or duties imposed by this article;

(s) The terms and conditions upon which the holders of the securities or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any facilities or service, operate and maintain the same, prescribe fees, rates, and charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the district itself might do;

(t) A procedure by which the terms of any resolution authorizing securities, or any other contract with any holders of securities, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and as to the proportion, percentage, or amount of securities the holders of which must consent thereto, and the manner in which such consent may be given;

(u) The terms and conditions upon which any or all of the securities shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived; and

(v) All such acts and things as may be necessary or convenient or desirable in order to secure the securities, or in the discretion of the board tend to make the securities more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give the board power to do in the name and on behalf of the district all things in the issuance of district securities and for their security except as expressly limited in this article.

Source: L. 69: p. 777, § 96. C.R.S. 1963: § 89-21-96. L. 89: (1)(f) amended, p. 1122, § 46, effective July 1.

32-11-555. Liens on pledged revenues. (1) Revenues pledged for the payment of any securities, as received by or otherwise credited to the district, shall immediately be subject to the lien of each such pledge without any physical delivery thereof, any filing, or further act.

(2) The lien of each such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument pertaining thereto has priority over any other obligations and liabilities of the district, except as may be otherwise provided in this article or in the resolution or other instrument, and subject to any prior pledges and liens theretofore created.

(3) The lien of each such pledge shall be valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the district irrespective of whether such persons have notice thereof.

Source: L. 69: p. 779, § 97. C.R.S. 1963: § 89-21-97.

32-11-556. Rights and powers of securities holders. (1) Subject to any contractual limitations binding upon the holders of any issue or series of district securities, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, and subject to any prior or superior rights of others, any holder of securities, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of securities similarly situated:

(a) By mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the district, the board, and any other of the officers, agents, and employees of the district, to require and compel the district, the board, or any such officers, agents, or employees to perform and carry out their respective duties, obligations, or other commitments under this article and under their respective covenants and agreements with the holder of any security;

(b) By action or suit in equity to require the district to account as if it is the trustee of an express trust;

(c) By action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any facilities and any pledged revenues for the payment of the securities, prescribe sufficient fees derived from the facilities, and collect, receive, and apply all pledged revenues or other moneys pledged for the payment of the securities in the same manner as the district itself might do in accordance with the obligations of the district; and

(d) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any securities and to bring suit thereupon.

Source: L. 69: p. 779, § 98. C.R.S. 1963: § 89-21-98.

32-11-557. Receivers. (1) If a resolution of the board authorizing or providing for the issuance of any securities of any series or any other proceedings pertaining thereto contains a provision authorized by section 32-11-554 (1) (s) and further provides in substance that

any trustee appointed pursuant to section 32-11-554 (1) (p) shall have the powers provided therein, then such trustee, whether or not all of the bonds or other securities of such series have been declared due and payable, shall be entitled as of right to the appointment of a receiver of the facilities pertaining thereto.

(2) Any receiver appointed as permitted by section 32-11-554 (1) (s) may enter upon and take possession of the facilities and any property pertaining thereto, and, subject to any pledge or contract with the holders of such securities, shall take possession of all moneys and other property derived from or applicable to the acquisition, operation, maintenance, or improvement of the facilities and proceed with such acquisition, operation, maintenance, or improvement which the board on the behalf of the district is under any obligation to do, and shall operate, maintain, equip, and improve the facilities, and fix, charge, collect, enforce, and receive the service charges and all revenues thereafter arising subject to any pledge thereof or contract with the holders of such securities relating thereto and perform the public duties and carry out the contracts and obligations of the district in the same manner as the board itself might do and under the direction of the court.

Source: L. 69: p. 780, § 99. C.R.S. 1963: § 89-21-99.

32-11-558. Issuance of interim debentures. (1) Notwithstanding any limitation or other provision in this article, whenever the issuance of general obligation bonds by a district for any project has been approved at an election held in accordance with this article, the district is authorized to borrow money without any other election in anticipation of the receipt of the proceeds of taxes, the proceeds of the bonds, the proceeds of pledged revenues, or any other moneys of the district, or any combination thereof, and to issue general obligation interim debentures to evidence the amount so borrowed.

(2) The district also is authorized to borrow money without any election in anticipation of the proceeds of revenue bonds of the district and of its pledged revenues, or any combination thereof, but excluding the proceeds of any taxes, and to issue special obligation interim debentures to evidence the amount so borrowed.

Source: L. 69: p. 780, § 100. C.R.S. 1963: § 89-21-100. L. 70: p. 301, § 126.

32-11-559. Limitations upon funding and refunding securities. (1) Subject to the provisions of subsections (2) to (4) of this section, nothing in this article authorizes the district to issue any district securities constituting a debt for the purpose of funding or refunding district securities constituting special obligations and not constituting an indebtedness.

(2) Any special obligation securities of the district pertaining to any project may be funded or refunded by general obligation securities pertaining to the project only if the district is authorized to issue general obligation bonds pertaining to the project at an election held in the manner provided in section 32-11-533.

(3) No general obligation securities pertaining to the project and creating an indebtedness, by funding or refunding special obligation securities or otherwise (in contradistinction to funding or refunding securities merely reevidencing an indebtedness formerly evidenced by the securities funded or refunded), shall be issued in a principal amount exceeding the debt limitation in section 32-11-534.

(4) No bonds of the district shall be refunded by the issuance of its interim debentures, its notes, or its warrants. No interim debentures of the district shall be funded by the issuance of its notes or its warrants.

Source: L. 69: p. 780, § 101. C.R.S. 1963: § 89-21-101. L. 70: p. 302, § 127.

32-11-560. Interim debenture details. (1) Any interim debentures may mature at such time not exceeding a period of time equal to the estimated time needed to effect the purpose for which they are issued or for which the bonds are authorized to be issued, but

not exceeding three years from the date or respective dates of the interim debentures, as the board may determine.

(2) The proceeds of interim debentures shall be used to defray the cost of the project.

(3) Any notes or warrants or both may be funded with the proceeds of interim debentures, as well as bonds.

(4) Except as otherwise provided in sections 32-11-558 to 32-11-563, interim debentures shall be issued as provided in this article for district securities in sections 32-11-502 to 32-11-557 and 32-11-803 to 32-11-808.

Source: L. 69: p. 781, § 102. **C.R.S. 1963:** § 89-21-102.

32-11-561. Payment of interim debentures. (1) Except as otherwise provided in section 32-11-559, the proceeds of taxes, pledged revenues, and other moneys, including without limitation proceeds of bonds to be issued or reissued after the issuance of interim debentures, and bonds issued for the purpose of securing the payment of interim debentures, or any combination thereof, may be pledged for the purpose of securing the payment of interim debentures. But the proceeds of taxes and the proceeds of bonds payable from taxes, or any combination thereof, shall not be used to pay any special obligation interim debentures, nor may their payment be secured by a pledge of any such general obligation bonds, except as otherwise provided in section 32-11-559.

(2) Any bonds pledged as collateral security for the payment of any interim debentures shall mature at such time as the board may determine, except as otherwise provided in section 32-11-551.

(3) No bonds pledged as collateral security shall be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim debentures secured by a pledge of such bonds, nor shall they bear interest at any time which, with any interest accruing at the same time on the interim debentures so secured, exceeds seven percent each year.

Source: L. 69: p. 781, § 103. **C.R.S. 1963:** § 89-21-103.

32-11-562. Funding interim debentures. No interim debentures issued pursuant to the provisions of sections 32-11-558 to 32-11-561 shall be extended or funded except by the issuance or reissuance of bonds in compliance with section 32-11-563.

Source: L. 69: p. 782, § 104. **C.R.S. 1963:** § 89-21-104.

32-11-563. Funding bonds. (1) For the purpose of funding any interim debentures, any bonds pledged as collateral security to secure the payment of such interim debentures, upon their surrender as pledged property, may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election pursuant to section 32-11-533 for a purpose the same as or encompassing the purpose for which the interim debentures were issued, may be issued for such a funding.

(2) Any such bonds shall mature at such time as the board may determine, except as otherwise provided in section 32-11-551.

(3) Bonds for funding (including but not necessarily limited to any such reissued bonds) and bonds for any other purpose may be issued separately or issued in combination in one series or more.

(4) Except as otherwise provided in sections 32-11-559 to 32-11-563, any such funding bonds shall be issued as is provided in this article for other bonds.

Source: L. 69: p. 782, § 105. **C.R.S. 1963:** § 89-21-105.

32-11-564. Refunding bonds. (1) Subject to the provisions of section 32-11-559, any general obligation bonds or special obligation bonds of the district issued in accordance with the provisions of this article or any other law, and payable from any pledged revenues

and any general obligation bonds of the district so issued but not payable from pledged revenues may be refunded on behalf of the district by the board, by the adoption of a resolution by the board, and by any trust indenture or other proceedings pertaining thereto, authorizing without any election the issuance of refunding bonds to refund, pay, and discharge all or any part of such outstanding bonds of any one or more or all outstanding issues:

(a) For the acceleration, deceleration, or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding three years from the date of the refunding bonds, unless the capitalization of interest on bonds constituting an indebtedness increases the district debt in excess of the district's debt limitation in section 32-11-534; or

(b) For the purpose of reducing interest costs or effecting other economies; or

(c) For the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds, or to any facilities pertaining thereto; or

(d) For any combination of such purposes.

Source: L. 69: p. 782, § 106. C.R.S. 1963: § 89-21-106.

32-11-565. Method of issuing refunding bonds. (1) Subject to the provisions of sections 32-11-525 and 32-11-526, any such bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds being refunded or may be publicly or privately sold.

(2) The refunding bonds, or any part thereof, except as limited by section 32-11-568 (2), may be exchanged by the district for securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., which have been made available for escrow investment by any purchaser of refunding bonds, upon terms of exchange mutually agreed upon, and any such securities so received by the district shall be placed in escrow as provided in sections 32-11-567 and 32-11-568.

Source: L. 69: p. 782, § 107. C.R.S. 1963: § 89-21-107. L. 89: (2) amended, p. 1122, § 47, effective July 1.

32-11-566. Conditions for refunding. (1) No such bonds may be refunded under this article unless they have been outstanding for at least one year from the date or respective dates of their delivery, and unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the securities within such period of time.

(2) No maturity of any bond refunded may be extended over fifteen years, or beyond one year next following the date of the last outstanding maturity, whichever limitation is later. The rate of interest on such refunding bonds shall be determined by the board.

(3) The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except to the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of the refunding bonds. Principal may also then be increased to that extent. In no event, however, in the case of any bonds constituting a debt, shall the principal of the bonds be increased to any amount in excess of the debt limitation in section 32-11-534.

(4) The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for their payment.

Source: L. 69: p. 783, § 108. C.R.S. 1963: § 89-21-108. L. 70: p. 302, § 128.

32-11-567. Disposition of refunding bond proceeds. (1) Except as otherwise provided in this article, the proceeds of such refunding bonds shall either be immediately

applied to the retirement of the bonds to be refunded, or be placed in escrow or trust in any trust bank within or without or both within and without this state to be applied to the payment of the refunded bonds or the refunding bonds, or both, upon their presentation therefor to the extent, in such priority, and otherwise in the manner which the board may determine.

(2) The incidental costs of refunding bonds may be paid by the purchaser of the refunding bonds or be defrayed from any general fund (subject to appropriations therefor as otherwise provided by law) or other available revenues of the district under the control of the board or from the proceeds of the refunding bonds, or from the interest or other yield derived from the investment of any refunding bond proceeds or other moneys in escrow or trust, or from any other sources legally available therefor, or any combination thereof, as the board may determine.

(3) Any accrued interest and any premium pertaining to a sale of refunding bonds may be applied to the payment of the interest thereon or the principal thereof, or to both interest and principal, or may be deposited in a reserve therefor, or may be used to refund bonds by deposit in escrow, trust, or otherwise, or may be used to defray any incidental costs pertaining to the refunding, or any combination thereof, as the board may determine.

Source: L. 69: p. 783, § 109. C.R.S. 1963: § 89-21-109.

32-11-568. Administration of escrow or trust. (1) No such escrow or trust shall necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose.

(2) Any proceeds in escrow or trust, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(3) Any trust bank accounting for federal securities and other securities issued by the federal government in such escrow or trust may place them for safekeeping wholly or in part in any trust bank within or without or both within and without this state.

(4) Any trust bank shall continuously secure any moneys placed in escrow or trust and not so invested or reinvested in federal securities and other securities issued by the federal government by a pledge in any trust bank within or without or both within and without the state of federal securities in an amount at all times at least equal to the total uninvested amount of such moneys accounted for in such escrow or trust.

(5) Such proceeds and investments in escrow or trust, together with any interest or other gain to be derived from any such investment, shall be in an amount at all times at least sufficient to pay principal, interest, any prior redemption premiums due, and any charges of the escrow agent or trustee, and any other incidental expenses payable therefrom, except to the extent provision may have been previously otherwise made therefor, as such obligations become due at their respective maturities or due at designated prior redemption dates in connection with which the board has exercised or is obligated to exercise a prior redemption option on behalf of the district.

(6) The computations made in determining such sufficiency shall be verified by a certified public accountant licensed to practice in this state or in any other state.

Source: L. 69: p. 783, § 110. C.R.S. 1963: § 89-21-110. L. 89: (2) amended, p. 1122, § 48, effective July 1.

32-11-569. Security for payment of refunding bonds. Refunding bonds may be made payable from any taxes or pledged revenues, or both taxes and such revenues, which might be legally pledged for the payment of the bonds being refunded at the time of the refunding or at the time of the issuance of the bonds being refunded, as the board may determine, notwithstanding the taxes, or the revenue sources, or the pledge of such revenues, or any combination thereof, for the payment of the outstanding bonds refunded is thereby modified, subject to the provisions of section 32-11-559.

Source: L. 69: p. 784, § 111. C.R.S. 1963: § 89-21-111.

32-11-570. Combination of bond purposes. Bonds for refunding and bonds for any other purpose authorized by this article or by any other law may be issued separately or issued in combination in one series or more by the district in accordance with the provisions of this article.

Source: L. 69: p. 784, § 112. C.R.S. 1963: § 89-21-112.

32-11-571. Applicability of other statutory provisions. Except as expressly provided or necessarily implied in sections 32-11-564 to 32-11-570, the relevant provisions elsewhere in this article pertaining generally to the issuance of bonds to defray the cost of any project shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the covenants and other provisions of the resolution authorizing the issuance of the bonds, or other instrument or proceedings pertaining thereto, and other aspects of the bonds.

Source: L. 69: p. 784, § 113. C.R.S. 1963: § 89-21-113.

PART 6

SPECIAL ASSESSMENTS

32-11-601. Special assessments. (1) The board, pursuant to this part 6 and to sections 32-11-803 to 32-11-808, upon the behalf and in the name of the urban district, for the purpose of defraying all the cost of acquiring or improving or acquiring and improving any project authorized by this article, or any portion of the cost thereof not to be defrayed with moneys available therefor from the general fund, any special fund, or otherwise, also has power under this article:

(a) To levy assessments against assessable property within the urban district and to cause the assessments so levied to be collected;

(b) To pledge the proceeds of any assessments levied under this article to the payment of assessment bonds and of assessment debentures and to create liens on such proceeds to secure such payments;

(c) To issue assessment bonds and assessment debentures payable from the assessments and additionally to secure their payment as provided in this article;

(d) To make all contracts, to execute all instruments, and to do all things necessary or convenient in the exercise of the powers granted in this article or in the performance of the district's duties or in order to secure the payment of its assessment bonds and assessment debentures, subject to the provisions of sections 32-11-502 to 32-11-526 and 32-11-803 to 32-11-808.

Source: L. 69: p. 785, § 114. C.R.S. 1963: § 89-21-114.

32-11-602. Initiating procedure. (1) The procedure for acquiring or improving, or acquiring and improving, any assessment project can be initiated in one of the following ways:

(a) The provisional order method; or

(b) The petition method.

Source: L. 69: p. 785, § 115. C.R.S. 1963: § 89-21-115.

32-11-603. Provisional order method. (1) Whenever the board is of the opinion that the interest of the urban district requires any assessment project, the board, by resolution, shall direct the engineer to prepare:

(a) Preliminary plans showing:

(I) A typical section of the contemplated project; and

(II) The types of material, approximate thickness, and width;

- (b) A preliminary estimate of the cost of the project, including incidental costs; and
- (c) An assessment plat showing:
 - (I) The area to be assessed; and
 - (II) The amount of maximum benefits estimated to be assessed against each tract in each assessment area.
- (2) The resolution may provide for one or more types of construction, and the engineer shall separately estimate the cost of each type of construction. The estimate may be made in a lump sum or by unit process, as to such engineer may seem most desirable for the facilities complete in place.
- (3) The resolution shall describe the project in general terms.
- (4) The resolution shall state:
 - (a) What part or portion of the expense thereof is of special benefit, and, therefore, shall be paid by assessments;
 - (b) What part, if any, has been or is proposed to be defrayed with moneys derived from other than the levy of assessments; and
 - (c) The basis by which the cost will be apportioned and assessments will be levied.
- (5) In case the assessment is not to be made according to front feet, the resolution shall:
 - (a) By apt description designate the improvement district, including the tracts to be assessed;
 - (b) Describe definitely the location of the project; and
 - (c) State that the assessment is to be made upon all the tracts benefited by the project proportionately to the benefits received.
- (6) In case the assessment is to be upon the abutting property upon a frontage basis, it shall be sufficient for the resolution so to state and to define the location of the project to be made.
- (7) It shall not be necessary in any case to describe minutely in the resolution each particular tract to be assessed but simply to designate the property, improvement district, or the location so that the various parts to be assessed can be ascertained and determined to be within or without the proposed improvement district.
- (8) The engineer shall forthwith prepare and file with the secretary:
 - (a) The preliminary plans;
 - (b) The preliminary estimate of cost; and
 - (c) The assessment plat.
- (9) Upon the filing of the plans, preliminary estimate of cost, and plat, the board shall examine the same; and if the plans, estimate, and plat are found to be satisfactory, the board shall make a provisional order by resolution to the effect that the project shall be acquired or improved, or both acquired and improved.

Source: L. 69: p. 785, § 116. C.R.S. 1963: § 89-21-116.

32-11-604. Petition method. (1) Whenever the owner or owners of tracts to be assessed in the proposed improvement district for not less than ninety-five percent of the entire cost of any project, including all incidental expenses, comprising more than fifty percent of the area of such territory and also comprising a majority of the landowners residing in the territory, may by written petition initiate the acquisition of any assessment project which the board is authorized to initiate, subject to the following limitations:

- (a) The board may incorporate such project in any improvement district or districts;
 - (b) The board need not proceed with the acquisition of any such project or any part thereof after holding a provisional order hearing thereon, pursuant to sections 32-11-608 to 32-11-611, and all provisions of this article thereunto enabling, if the board determines that it is not for the public interest that the proposed project or a part thereof be then ordered to be made; and
 - (c) Any particular kind of project, any material therefor, or any part thereof need not be acquired or located, as provided in the petition, if the board determines that such is not for the public interest.
- (2) The board need not take any proceedings or action upon receiving any such petition if the board determines by resolution that the acquisition of the designated project probably

is not feasible for reasons stated in such resolution, and if the resolution requires a cash deposit or a pledge of property in at least an amount or value therein designated and found therein by the board probably to be sufficient to defray the expenses and costs incurred by the board taken preliminary to and in the attempted acquisition of the project designated in the petition, and if such deposit or pledge is not made with the treasurer within twenty days after notice by mail is given to the person presenting the petition to the secretary of the urban district or after one publication in a newspaper of general circulation in the urban district of a notice of the resolution's adoption and of its content in summary form, as the board may determine. An additional deposit or pledge may from time to time be similarly so required as a condition precedent to the continuation of action by the urban district.

(3) Whenever such deposit or pledge is so made and thereafter the board determines that such acquisition is not feasible within a reasonable period of time, the board may require that all or any portion of the costs theretofore incurred in connection therewith by the urban district after its receipt of the petition shall be defrayed from such deposit or the proceeds of such pledged property, in the absence of such defrayment of costs by petitioners or other interested persons within twenty days after the determination by resolution of the amount so to be defrayed and after such published notice thereof.

(4) Any surplus moneys remaining from such deposit or pledge shall be returned by the urban district to the person making the same.

Source: L. 69: p. 786, § 117. C.R.S. 1963: § 89-21-117.

32-11-605. Subsequent procedure. Upon the filing of such a petition, the board shall proceed in the same manner as is provided by this article where proceedings are initiated by the board, except as otherwise expressly provided or necessarily implied in section 32-11-604.

Source: L. 69: p. 787, § 118. C.R.S. 1963: § 89-21-118.

32-11-606. Combination of programs. (1) More than one improvement program may be combined in one improvement district when the board determines such programs may be combined together in an efficient and an economical improvement district.

(2) If in the combination of improvement programs, they are separate and distinct by reason of substantial difference in their character or location, or otherwise, each such program shall be considered as a unit or quasi-improvement district for the purpose of petition, remonstrance, and assessment.

(3) In case of such combination, the board shall designate the improvement program and the area constituting each such unit, and, in the absence of an arbitrary and an unreasonable abuse of discretion, its determination that there is or is not such a combination and its determination of the project and the area constituting each such unit within the project shall be final and conclusive.

(4) The costs of acquiring or improving, or acquiring and improving, each such improvement program shall be segregated for the levy of assessments, and an equitable share of the incidental costs shall be allocated to each such unit.

Source: L. 69: p. 787, § 119. C.R.S. 1963: § 89-21-119.

32-11-607. Effect of estimates. (1) No estimate of cost required or authorized in this article shall constitute a limitation upon such cost or a limitation upon the rights and powers of the board or of any officers, agents, or employees of the urban district, except as otherwise expressly stated in this article.

(2) No assessment, however, shall exceed the amount of the estimate of maximum special benefits from the project to any tract assessed.

Source: L. 69: p. 787, § 120. C.R.S. 1963: § 89-21-120.

32-11-608. Fixing hearing and notice. (1) In the provisional order the board shall set a time at least twenty days thereafter and a place at which the owners of the tracts to be assessed or any other persons interested therein may appear before the board and be heard as to the propriety and advisability of acquiring or improving, or acquiring and improving, the assessment project provisionally ordered.

(2) Notice shall be given:

(a) By publication; and

(b) By mail.

(3) Proof of publication shall be by affidavit of the publisher.

(4) Proof of mailing shall be by affidavit of the engineer, secretary, or any deputy mailing the notice.

(5) Proof of publication and proof of mailing shall be maintained in the records of the urban district until all the assessments pertaining thereto have been paid in full, including principal, interest, any penalties, and any collection costs.

Source: L. 69: p. 788, § 121. C.R.S. 1963: § 89-21-121.

32-11-609. Content of notice. (1) The notice shall describe:

(a) The kind of project proposed (without mentioning minor details or incidentals);

(b) The estimated cost of the project, and the part or portion, if any, to be paid from sources other than assessments;

(c) The basis for apportioning the assessments, which assessment shall be in proportion to the special benefits derived to each of the several tracts comprising the assessable property and on a front-foot, area, zone, or other equitable basis;

(d) The number of installments and the time in which the assessments are payable;

(e) The maximum rate of interest on unpaid installments of assessments;

(f) The extent of the improvement district to be assessed (by boundaries or other brief description);

(g) The time and the place when and where the board will consider the ordering of the proposed project and will hear all complaints, protests, and objections that may be made in writing and filed with the secretary of the urban district at least three days prior thereto or may be made verbally at the hearing concerning the same by the owner of any tract to be assessed or by any person interested;

(h) The fact that the description of the tracts to be assessed, the maximum amount of benefits estimated to be conferred on each such tract, and all proceedings in the premises are on file and can be seen and examined at the office of the secretary during business hours at any time by any person so interested; and

(i) That regardless of the basis used for apportioning assessments, in cases of wedge-shaped, V-shaped, or any other irregular-shaped tracts, an amount apportioned thereto shall be in proportion to the special benefits thereby derived.

Source: L. 69: p. 788, § 122. C.R.S. 1963: § 89-21-122.

32-11-610. Subsequent modifications. (1) All proceedings may be modified or rescinded wholly or in part by resolution adopted by the board at any time prior to the passage of the resolution adopted pursuant to section 32-11-614 creating the improvement district and authorizing the project.

(2) No substantial change in the improvement district, details, preliminary plans, specifications, or estimates shall be made after the first publication or mailing of notice to property owners, whichever occurs first, except for any deletion of a portion of a project and property from the proposed improvement program for the improvement district or for any assessment unit.

(3) The engineer, however, has the right to make minor changes in time, plans, and materials entering into the work at any time before its completion.

Source: L. 69: p. 789, § 123. C.R.S. 1963: § 89-21-123.

32-11-611. Provisional order hearing. (1) On the date and at the place fixed for the provisional order hearing, any property owners interested in such project may by specific and written complaints, protests, or objections present their views in respect to the proposed project to the board or may present them orally. The board may adjourn the hearing from time to time.

(2) After the hearing has been concluded, after all written complaints, protests, and objections have been read and duly considered, and after all persons desiring to be heard in person have been heard, the board shall consider the arguments, if any, and any other relevant material put forth.

(3) Thereafter if the board determines that it is not for the public interest that the proposed project or a part thereof be made, the board shall make an order by resolution to that effect; and thereupon the proceeding for the project or for any part thereof determined against by such order shall stop and shall not be begun again until the adoption of a new resolution.

(4) Any complaint, protest, or objection to the regularity, validity, and correctness of the proceedings and instruments taken, adopted, or made prior to the date of the hearing shall be deemed waived unless presented in writing on specific grounds at the time and in the manner specified in this article.

Source: L. 69: p. 789, § 124. C.R.S. 1963: § 89-21-124.

32-11-612. Appeal from adverse order. Any person filing a written complaint, protest, or objection on any one or more specific grounds as provided in section 32-11-611, shall have the right within thirty days after the board has finally passed on such complaint, protest, or objection by resolution, as provided in section 32-11-611 (3), or as provided in section 32-11-614 (1), to commence an action or suit in any court of competent jurisdiction to correct or to set aside only such a determination of the board on any such specific and written complaint, protest, or objection; but thereafter all actions or suits attacking the validity of the preliminary plans, any preliminary estimate of cost, assessment plat, other proceedings, and any maximum amount of benefits shall be perpetually barred.

Source: L. 69: p. 789, § 125. C.R.S. 1963: § 89-21-125.

32-11-613. Post-hearing procedure. (1) After the provisional order hearing is held and after the board has disposed of all complaints, protests, and objections, verbal and in writing, the board shall determine whether to proceed with the improvement district and with each assessment unit therein, if there is more than one.

(2) If the board desires to proceed and desires any modification, by motion or by resolution, it shall direct the engineer to prepare and to present to the board:

(a) A revised and detailed estimate of the total cost, including without limitation the cost of acquiring or improving, or acquiring and improving, each proposed improvement program and of each of the incidental costs, which revised estimate shall not constitute a limitation for any purpose, except as otherwise provided in this article;

(b) Full and detailed plans and specifications for each proposed improvement program designed to permit and to encourage competition among the bidders if any improvements are to be acquired by construction contract; and

(c) A revised map and assessment plat showing, respectively, the location of each improvement program and the tracts to be assessed therefor, excluding any area or program not before the board at a provisional order hearing.

(3) That resolution, a separate resolution, or the resolution creating the improvement district may combine or may divide the proposed improvement program or programs pertaining to the improvement district and any other facilities into suitable construction units for the purpose of letting separate and independent contracts, regardless of the extent of any improvement program constituting an assessment unit and regardless of whether a portion or none of the cost of any project is to be defrayed other than by the levy of special assessments.

(4) Nothing in this article shall be construed as not requiring the segregation of costs of unrelated improvement programs for assessment purposes, as provided in this article.

Source: L. 69: p. 789, § 126. C.R.S. 1963: § 89-21-126.

32-11-614. Creation of district. (1) When an accurate estimate of cost, full and detailed plans and specifications, and the map and assessment plat are prepared, presented, and satisfactory to the board, regardless of whether the preliminary estimate of cost, plans, and specifications, map and assessment plat are modified pursuant to section 32-11-613, the board shall by resolution create the district and order the proposed project to be acquired or improved, or acquired and improved.

(2) The resolution shall prescribe:

(a) The extent of the improvement district by boundaries or by other brief description and similarly of each assessment unit therein, if there is more than one;

(b) The kind and location of each improvement program proposed (without mentioning minor details);

(c) The amount or the proportion of the total cost to be defrayed by assessments, the method of levying assessments, the number of installments, and the times in which the costs assessed will be payable; and

(d) The character and the extent of any construction units.

(3) The engineer may further revise such cost, plans and specifications, and the map and assessment plat from time to time for all or any part of any project; and the resolution may be appropriately amended prior to letting any construction contract therefor and prior to any property being acquired or any work being done other than by independent contract let by the urban district.

(4) The resolution, as amended, if amended, shall order the work to be done as provided in this article.

Source: L. 69: p. 790, § 127. C.R.S. 1963: § 89-21-127.

32-11-615. Methods of acquisition or improvement. (1) Any construction work for any project or portion thereof shall be done in any one or more of the following three ways:

(a) By independent contract;

(b) By use of district owned or leased equipment and district officers, agents, and employees; or

(c) By any public body or by the federal government acquiring or improving a project or any interest therein which is authorized in this article which results in general benefits to the urban district and in special benefits to the assessable property being assessed therefor by the urban district within its boundaries and within an improvement district therein created therefor.

(2) Any project or any interest therein not involving construction work pertaining to a capital improvement may be acquired or improved pursuant to any appropriate contract, or otherwise, including, without limitation, the condemnation or other acquisition of real property. In such case nothing in subsection (1) of this section nor in sections 32-11-616 to 32-11-619 shall be applicable.

(3) Notwithstanding a project authorized in this article or any interest therein may not be owned by the urban district nor be directly acquired or improved, or acquired and improved, nor the costs thereof directly incurred by the urban district, and notwithstanding the project authorized in this article or any interest therein may be located on land, an easement or other interest therein, or other real property owned by the federal government or by a public body, the urban district has the power:

(a) To acquire or improve, or both, or to cooperate in the acquisition or improvement of, or both, the project or any interest therein with the federal government or with any public body pursuant to agreement between or among the urban district and such other bodies corporate and politic so long as the project or the interest therein acquired or improved, or both, results in general benefits to the urban district and in special benefits to the assessable

property being assessed therefor by the urban district within its boundaries and within the improvement district therein created therefor;

(b) To levy special assessments on such assessable property to defray all or any part of the costs of the project or any interest therein or to defray all or any part of the urban district's share of such costs if all costs are not being defrayed by the urban district; and

(c) To issue bonds and assessment debentures and to exercise other powers granted in this article and pertaining to such acquisition or improvement, or both.

Source: L. 69: p. 791, § 128. C.R.S. 1963: § 89-21-128.

32-11-616. Construction contracts. (1) No contract for doing construction work for acquiring or improving the project contemplated shall be made or awarded nor shall the board incur any expense or any liability in relation thereto, except for maps, plats, diagrams, estimates, plans, specifications, and notices until after the provisional order hearing and notice thereof provided for in this article have been had and given.

(2) The board may advertise by publication for proposals for doing the work whenever the board desires, but the contract shall not be made or awarded before the time stated in subsection (1) of this section.

(3) In the case of construction work done by independent contract for any project or portion thereof in any improvement district, the engineer or any purchasing officer of the urban district, as provided by the board, shall request competitive bids and publish notice stating that bids will be received at a time and at a place designated therein.

(4) The urban district may contract only with the responsible bidder submitting the lowest and best bid upon proper terms.

(5) The district has the right to reject any and all bids and to waive any irregularity in any bid.

(6) Any contract may be let on a lump-sum or on a unit basis.

(7) No contract shall be entered into for such work unless the contractor gives an undertaking with a sufficient surety approved by the board and in an amount fixed by it for the faithful performance of the contract, substantially as required of a school board and a school district by sections 38-26-101 and 38-26-105 to 38-26-107, C.R.S., as from time to time amended, except as expressly otherwise provided in this article.

(8) Upon default in the performance of any contract, the engineer, or any purchasing officer, as directed by motion of the board, may advertise and may relet the remainder of the work without further resolution and may deduct the cost from the original contract price and may recover any excess cost by suit on the original bond, or otherwise.

(9) All contracts shall provide, among other things, that the person entering into the contract with the urban district will pay for all materials furnished and for services rendered for the performance of the contract and that any person furnishing the materials or rendering the services may maintain an action to recover for the same against the obligor in the undertaking as though the person was named therein. Final settlement shall be effected substantially as required by section 38-26-107, C.R.S., as from time to time amended, and all laws thereunto enabling.

(10) If any contract or any agreement is made in violation of the provisions of this section, it shall be voidable, and no action shall be maintained thereon by any party thereto against the urban district.

(11) To the extent the urban district makes any payment thereunder, such contract or agreement shall be valid, and any such payment may be included in any cost defrayed by the levy of assessments unless theretofore the urban district elects to void the contract or the agreement in its entirety and to recover any such payment from the party to whom made.

(12) The board, except as expressly limited in this article, may in the letting of contracts impose such conditions upon bidders with regard to bonds and to securities, and such guaranties of good and faithful performance, completion of any work, and the keeping of the same in repair, and may provide for any further matter or thing in connection therewith as may be considered by the board to be advantageous to the urban district and to all interested persons.

Source: L. 69: p. 791, § 129. C.R.S. 1963: § 89-21-129. L. 77: (7) and (9) amended, p. 288, § 65, effective June 29.

32-11-617. Extra work authorized - payment. Extra work may arise in connection with any project mentioned in this article and not particularly provided for in the plans, specifications, estimates, bids and contracts; and such extra work shall be performed by the contractor at the direction of the engineer at cost of labor and materials and overhead including superintendence as set forth in the plans, specifications, or construction contract, such amount to be included in the assessment for the project (but not exceeding in the aggregate the estimated maximum special benefits to any tract so assessed) or to be paid out of the general or other funds of the district available therefor, in the discretion of the board.

Source: L. 69: p. 793, § 130. C.R.S. 1963: § 89-21-130.

32-11-618. Construction by district. (1) In the case of construction work done by the use of district owned or leased equipment and by district officers, agents, and employees for any project or any portion thereof in any improvement district, supplies and materials may be purchased or may be otherwise acquired therefor.

(2) All supplies and materials purchased by the urban district for an improvement district costing five hundred dollars or more shall be purchased only after the purchasing officer has given notice by publication therefor.

(3) The district shall accept the lowest and best bid, the kind, quality, and material being equal, but the district has the right to reject all bids, to waive any irregularity in any bid, and to select a single item from any bid when so stated in the invitation to bid.

(4) The provision as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer.

Source: L. 69: p. 793, § 131. C.R.S. 1963: § 89-21-131.

32-11-619. Cooperative construction. (1) In the case of construction work done by agreement with the urban district and with one or more public bodies or with the federal government (or any combination thereof) for any project or any portion thereof in any improvement district, the urban district may enter into and carry out any contract or may establish or comply with the rules and regulations concerning labor and materials and other related matters in connection with any project or any portion thereof, as the district may deem desirable or as may be requested by the federal government or by any public body which is a party to any such contract with the district that may assist in the financing of any project or any part thereof, regardless of whether the district is a party to any construction contract or to any other contract pertaining to incurring costs of the project.

(2) Any project, any portion of the cost of which may be defrayed by the urban district by the levy of assessments under this article, may be acquired with the cooperation and the assistance of, or under a contract let by, or with labor, or supplies and materials, or all of such furnished by any one or more such public bodies or by the federal government (or any combination thereof).

(3) Advantage may be taken of any offer from any source to complete any project on a division of expense or responsibility.

(4) The engineer, on behalf of and in the name of the urban district, is authorized to acquire or improve, or acquire and improve, any such project in such a manner when so authorized by the resolution creating the improvement district or by any amendment thereto.

Source: L. 69: p. 793, § 132. C.R.S. 1963: § 89-21-132.

32-11-620. Use of existing improvements. After the provisional order hearing and at the time of the passage of the resolution creating any improvement district and any project for the improvement district, or any amendment thereof, if any tract or the property of any

railway company to be assessed in the improvement district has the whole or any part of the proposed project, conforming to the general plan, the same may be adopted in whole or in part or may be changed to conform to the general plan, if deemed practical; and the owner of such real estate, when the assessment is made, shall be credited with the amount which is saved by reason of adapting or of adopting such existing improvements.

Source: L. 69: p. 793, § 133. C.R.S. 1963: § 89-21-133.

32-11-621. Assessment debentures. (1) For the purpose of paying any contractor of or otherwise defraying any cost of the project in connection with any improvement district as the same becomes due from time to time until moneys are available therefor from the levy and collection of assessments and from any issuance of assessment bonds, the board may issue assessment debentures on the behalf and in the name of the urban district as provided in sections 32-11-501 (3) and 32-11-502 to 32-11-526 and elsewhere in this article, except as otherwise provided in sections 32-11-621 to 32-11-631.

(2) Any assessment debentures issued for any construction work shall be issued only upon estimates of the engineer.

(3) Any assessment debentures shall be special obligations payable from designated special assessments, any proceeds of special assessment bonds, and any other moneys designated to be available for the redemption of such debentures and authorized in this article to be pledged as additional security for the payment of such bonds.

Source: L. 69: p. 794, § 134. C.R.S. 1963: § 89-21-134.

32-11-622. Issuance of assessment securities. (1) The board has power in connection with any improvement district to issue, on the behalf and in the name of the urban district, bonds in an amount not exceeding the estimated cost of the project or part thereof to be defrayed by the levy and collection of assessments, or if the bonds are issued after the levy of assessments, in an aggregate principal amount not exceeding the aggregate amount of unpaid assessments pledged for the payment of the bonds as provided in sections 32-11-501 (3) and 32-11-502 to 32-11-526 and elsewhere in this article, except as otherwise provided in sections 32-11-622 to 32-11-631.

(2) Any assessment bonds may be issued at public or private sale to defray the cost of the project, including any temporary advances evidenced by assessment debentures or otherwise and all proper incidental expenses.

(3) The board may enter into a contract to sell assessment debentures and assessment bonds at any time; but, any other provisions of this article notwithstanding, if the board so contracts before it awards a construction contract or otherwise contracts for acquiring or improving, or acquiring and improving, the project, the board may terminate the contract to sell such securities if, before the awarding of the construction contract or otherwise contracting for the acquisition or improvement, or acquisition and improvement, of the project, the board determines not to acquire or improve, or acquire and improve, the project, and if the board has not elected to proceed under section 32-11-615 other than by independent contract pursuant to section 32-11-615 (1) (a), if at all.

Source: L. 69: p. 794, § 135. C.R.S. 1963: § 89-21-135.

32-11-623. Purchase price and interest. (1) Any district securities designated in section 32-11-501 (3) and otherwise issued under this article, both assessment bonds and assessment debentures, as may be provided by the board in a resolution authorizing their issuance and the maximum net effective interest rate thereof and in any indenture or other proceedings pertaining thereto, may be issued at, above, or below par, at a discount not exceeding seven percent of the principal amount thereof, but they may not be issued at a price such that the net effective interest rate of the issue of securities exceeds the maximum net effective interest rate authorized.

(2) Such bonds and debentures shall bear interest at a rate such that the net effective interest rate of the issue of bonds or debentures does not exceed the maximum net effective interest rate authorized.

(3) No bond interest rate shall at any time exceed the interest rate (or lower or lowest rate if more than one) borne by the unpaid assessments, but any such bond interest rate may be the same as or less than any assessment interest rate, subject to the limitations of this section, as the board may determine.

Source: L. 69: p. 794, § 136. C.R.S. 1963: § 89-21-136. L. 70: p. 302, § 129.

32-11-624. Use of assessments - payment of assessment securities. (1) The assessments pertaining to any improvement district when levied shall be and shall remain a lien on the respective tracts assessed until paid as provided in this article.

(2) When the assessments pertaining to the improvement district are collected (including principal, interest, and any penalty), they shall be placed in a special fund or special account and as such shall at all times constitute a sinking fund or sinking account for and be deemed specially appropriated to the payment of any assessment debentures not funded with bond proceeds and the payment of the assessment bonds pertaining to the improvement district and the interest thereon, and shall not be used for any other purpose until such securities and the interest thereon are fully paid; or if no such securities are issued, all assessments upon their payment shall be so appropriated and used to defray the cost of the project.

(3) Any assessment debentures not funded with bond proceeds and the assessment bonds, including both principal and interest, shall be payable only out of moneys collected on account of the assessments (including installments thereof, interest thereon, and any penalties) for the project pertaining to the improvement district to which such securities pertain, except as provided in this article.

Source: L. 69: p. 795, § 137. C.R.S. 1963: § 89-21-137.

32-11-625. Bond limitations and details. (1) All assessment bonds issued under this article shall be issued by the treasurer upon estimates of the engineer, or if bonds are issued after the levy of assessments, in an aggregate principal amount not exceeding the aggregate amount of unpaid assessments pledged for the payment of the bonds, and upon order of the board by resolution.

(2) The bonds shall mature in no event after that date which is one year after the last assessment installment payment date.

Source: L. 69: p. 795, § 138. C.R.S. 1963: § 89-21-138.

32-11-626. Prior redemption provisions. The board may provide for the redemption prior to maturity at the option of the district of any of the bonds or debentures designated in section 32-11-501 (3), in such order, by lot or otherwise, at such time or times, without or with the payment of such premium not exceeding seven percent of the principal amount of each bond or other security so redeemed, and otherwise upon such terms as may be provided by the board in the resolution authorizing the issuance of the securities or other instrument pertaining thereto.

Source: L. 69: p. 795, § 139. C.R.S. 1963: § 89-21-139.

32-11-627. Special obligations. (1) Assessment debentures and assessment bonds issued under this article shall constitute special obligations of the urban district and shall not be a debt of the district. The district shall not be liable on such securities except as otherwise expressly provided in this article, nor shall the urban district thereby pledge its full faith and credit for their payment. Such securities (other than debentures funded with bond proceeds) shall not be payable out of any funds other than the special assessments (including

installments thereof, interest thereon, and any penalties) and other funds and moneys pledged as additional security for the payment thereof, as authorized in this article.

(2) Each assessment debenture and assessment bond issued under this article shall recite in substance that the bond and the interest thereon are payable solely from the special assessments and such other funds and moneys pledged to the payment thereof.

Source: L. 69: p. 796, § 140. C.R.S. 1963: § 89-21-140.

32-11-628. Primary additional security. (1) The urban district shall additionally secure the payment of the assessment debentures and the assessment bonds pertaining to any improvement district as provided in this article.

(2) Whenever there is a deficiency in any improvement district to meet payment of such outstanding assessment securities and interest due thereon, it shall be paid out of the urban district's special surplus and deficiency fund.

(3) The urban district shall pay the assessment securities pertaining to any improvement district when due and the interest due thereon from any available moneys of the urban district and reimburse itself by collecting the unpaid assessments due the improvement district, whenever:

(a) Four-fifths of the outstanding bonds pertaining to the improvement district have been paid; and

(b) For any reason the remaining assessments pertaining to the improvement district are not paid in time to take up the final bonds of the improvement district and the interest due thereon; and

(c) There is not sufficient money in the special surplus and deficiency fund.

(4) When all outstanding assessment securities pertaining to an improvement district have been paid and any moneys remain to the credit of such district, they shall be transferred to the special surplus and deficiency fund.

Source: L. 69: p. 796, § 141. C.R.S. 1963: § 89-21-141.

32-11-629. Permissive additional security. (1) In addition to the additional security provided for in section 32-11-628, and not in limitation thereof, the urban district may further additionally secure the payment of assessment debentures and assessment bonds pertaining to any improvement district, both as to principal and interest, as may be provided in accordance with this section.

(2) In consideration of general benefits conferred on the urban district at large from the acquisition by construction, or otherwise, of local improvements, the urban district, prior to the issuance of any assessment debentures or assessment bonds pertaining to any improvement district in this article, may contract by resolution with the holders thereof that the payment of such securities pertaining to the improvement district, both as to principal and interest, as the same become due, is additionally secured by a pledge of moneys in a special fund or special account created therefor into which the urban district covenants to deposit the proceeds of general (ad valorem) property taxes to be levied not earlier than the date of the debentures or bonds of any such series nor later than two years after the maturity date thereof or last maturity date of any serial bonds of any issue, not exceeding in any one year in the aggregate for all improvement districts the limitation pertaining to assessment bonds in section 32-11-217 (1) (d). After the issuance of any such securities, the urban district shall levy such general (ad valorem) taxes pursuant to such contract; but any such levy shall be diminished to the extent other funds of the urban district available therefor are appropriated to and deposited in such fund or account.

(3) Prior to the redemption of all such securities, including both principal and interest, the proceeds of such taxes and any moneys deposited in such fund or account in lieu of such taxes shall be disbursed from the fund or account only for the payment of the principal of and interest on the securities, and any prior redemption premium pertaining thereto. After the securities have been redeemed in full, any moneys remaining in the fund or account and

pertaining only to the improvement district shall be deposited in the surplus and deficiency fund.

(4) Securities of the urban district pertaining to any improvement district payable from assessments, which payment shall be additionally secured as provided in section 32-11-628, or in both that section and this section, as the board may determine, shall not be subject to the debt limitation nor exhaust the debt incurring power of the urban district, nor shall such securities be required to be authorized at any election. Such securities shall not be held to constitute a prohibited lending of credit or donation nor to contravene any constitutional or statutory limitation or restriction.

Source: L. 69: p. 796, § 142. C.R.S. 1963: § 89-21-142.

32-11-630. Redemption of securities. (1) Whenever considered advisable by the treasurer, he may, and whenever funds may be in his hands to the credit of any improvement district exceeding the amount of interest on the unpaid principal becoming due on and prior to one year next after the last interest payment date, and, if maturing serially, the principal becoming due on the next principal payment date, he shall, subject to the provisions concerning the payment of assessment debentures and assessment bonds pertaining to an improvement district prior to maturity in the securities and in any resolution pertaining to their issuance, by publication at least once not less than fifteen days prior to the redemption date, call in a suitable number of securities of the improvement district for payment, for the principal amount thereof, accrued interest to the redemption date, and any prior redemption premium due thereon.

(2) After the redemption date so designated, interest on the securities so called shall cease. The urban district, however, may provide that such securities be redeemed only on interest payment dates.

(3) The notice shall specify the securities so called by number, and all such securities shall be paid in the order designated in any such resolution.

(4) The holder of any such securities may at any time furnish his post-office address to the treasurer, and in such case a copy of such advertisement shall be mailed by the treasurer to the holder of the securities called at such address within three days of the date of such publication.

Source: L. 69: p. 797, § 143. C.R.S. 1963: § 89-21-143.

32-11-631. Rights and powers of security holders. (1) Subject to any contractual limitations binding upon the holders of any issue or series of assessment debentures or assessment bonds or the trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage, or number of such holders, any holder of such securities or trustee therefor has the right and power for the equal benefit and protection of all holders of the securities similarly situated:

(a) By mandamus or by other suit, action, or proceeding at law or in equity to enforce his rights against the urban district, the board, and any other of the officers, agents, and employees of the district, and to require and to compel the district, the board, or any such officers, agents, or employees to perform and to carry out their respective duties, obligations, or other commitments under this article and under their respective covenants and agreements with the holder of such securities;

(b) By action or by suit in equity to require the urban district to account as if it is the trustee of an express trust;

(c) By action or by suit in equity to have appointed a receiver, which receiver may take possession of any accounts and may collect, receive, and apply all assessments, other revenues, and other moneys pledged for the payment of the securities in the same manner as the urban district itself might do in accordance with the obligations of the district; and

(d) By action or by suit in equity to enjoin any acts or things which might be unlawful or in violation of the rights of the holder of any such securities and to bring suit thereupon.

Source: L. 69: p. 797, § 144. C.R.S. 1963: § 89-21-144.

32-11-632. Statement of cost of project. Upon the completion of any project in any improvement district or, in the case of assessment units or sewers, upon completion from time to time of an improvement program in any assessment unit or any parts of sewers affording complete drainage for any part of the improvement district, or after the determination of the net cost to the urban district, and upon the acceptance thereof by the board, or whenever the total cost of such project or any of such part of sewers can be definitely ascertained, and upon the board's determination to assess all or a part of the cost thereof, the engineer shall prepare and shall furnish to the board a statement showing the total cost of the project or of any such part thereof.

Source: L. 69: p. 798, § 145. C.R.S. 1963: § 89-21-145.

32-11-633. Order for assessment roll and its form. (1) Following the furnishing of the statement of the cost of the project, the board by resolution shall:

(a) Determine the cost of the project to be paid by the assessable property in the improvement district;

(b) Order the engineer to make out an assessment roll containing, among other things:

(I) The name of each last-known owner of each tract to be assessed or, if not known, that the name is unknown; and

(II) A description of each tract to be assessed and the amount of the proposed assessment thereon, apportioned upon the basis for assessments stated in the provisional order for the hearing on the project;

(c) Cause a copy of the resolution to be furnished by the secretary to the engineer.

(2) In fixing the amount or the sum of money that may be required to pay the cost of the project, the board need not necessarily be governed by the estimates of such cost provided for in this article, but the board may fix such other sum within the limits prescribed as it may deem necessary to cover the cost of the project.

(3) If by mistake or otherwise any person is improperly designated in the assessment roll as the owner of any tract or if the same is assessed without the name of the owner or in the name of a person other than the owner, such assessment shall not for that reason be vitiated, but it shall in all respects be as valid upon and against such tract as though assessed in the name of the owner thereof. When the assessment roll has been confirmed, such assessment shall become a lien on such tract and shall be collected as provided by law.

Source: L. 69: p. 798, § 146. C.R.S. 1963: § 89-21-146.

32-11-634. Assessment computations and limitations. (1) If the assessment is made upon the basis of frontage, the engineer shall assess each tract with such relative portion of the whole amount to be levied as the length of front of such premises bears to the whole frontage of all the tracts to be assessed, and the frontage of all tracts to be assessed shall be deemed to be the aggregate number of feet as determined for assessment by the engineer.

(2) If the assessment is directed to be according to an area or zone or another equitable basis other than a front-foot basis, the engineer shall assess upon each tract such relative portion of the whole sum to be levied as is proportionate to the estimated benefit according to such basis.

(3) Regardless of the basis used, in cases of wedge-shaped or V-shaped or any other irregular-shaped tracts, an amount apportioned thereto shall be in proportion to the special benefits thereby derived.

(4) No assessment shall exceed the amount of the estimate of maximum special benefits to the tract assessed, as provided in section 32-11-607 (2).

(5) Any amount which would be assessed against any tract in the absence of both limitations in subsections (3) and (4) of this section shall be defrayed by other than the levy of assessments.

Source: L. 69: p. 799, § 147. C.R.S. 1963: § 89-21-147.

32-11-635. Determination of assessable tracts. The board shall determine what amount or part of every expense shall be charged as an assessment and the tracts upon which the same shall be levied, and as often as the board deems it expedient, it shall require all of the several tracts chargeable therewith respectively to be reported by the secretary to the engineer for assessment.

Source: L. 69: p. 799, § 148. **C.R.S. 1963:** § 89-21-148.

32-11-636. Preparation of proposed roll. (1) Upon receiving the report mentioned in section 32-11-633, the engineer shall make an assessment roll and state a proposed assessment therein upon each tract so reported to him, and by such proposed assessments he shall defray the whole amount of all charges so directed to be levied upon each of such tracts respectively. When completed, he shall report the assessment roll to the board.

(2) When any assessment is reported by the engineer to the board as directed in this section, the same shall be filed in the office of the secretary and numbered.

Source: L. 69: p. 799, § 149. **C.R.S. 1963:** § 89-21-149.

32-11-637. Notice of assessment hearing. (1) Upon receiving the assessment roll, the board, by resolution, shall:

(a) Fix a time and a place when and where complaints, protests, and objections that may be made in writing or verbally concerning the same by the owner of any tract or by any person interested may be heard; and

(b) Order the secretary to give notice of the hearing.

(2) The secretary shall give notice by publication and by mail of the time and the place of such hearing, which notice shall also state:

(a) That the assessment roll is on file in his office;

(b) The date of filing the same;

(c) The time and the place when and where the board will hear all complaints, protests, or objections that may be made in writing or verbally to the assessment roll and to the proposed assessments by the parties thereby aggrieved; and

(d) That any complaint, protest, or objection to the regularity, validity, and correctness of the proceedings, of the assessment roll, of each assessment contained therein, and of the amount thereof levied on each tract shall be deemed waived unless filed in writing on specific grounds with the secretary at least three days prior to the assessment hearing.

Source: L. 69: p. 799, § 150. **C.R.S. 1963:** § 89-21-150.

32-11-638. Assessment hearing. (1) At the time and the place so designated, the board shall hear and shall determine any written complaint, protest, or objection filed as provided in section 32-11-637, any verbal views expressed in respect to the proposed assessments, the assessment roll, or the assessment procedure, and the board may adjourn the hearing from time to time.

(2) The board by resolution has the power in its discretion to revise, correct, confirm, or set aside any assessment and to order that such assessment be made de novo.

Source: L. 69: p. 800, § 151. **C.R.S. 1963:** § 89-21-151.

32-11-639. Levy of assessments. (1) After the assessment roll is in final form and is so confirmed by resolution, the urban district by the same or by a supplemental resolution shall by reference to such assessment roll as so modified, if modified, and as confirmed by such resolution, levy the assessments in the roll.

(2) The board shall cause the resolution levying the assessments to be published at least one time in a newspaper of general circulation in the improvement district.

(3) No assessment shall be levied for any capital improvements acquired by the urban district and located or to be located on any land until the board by the adoption of such

resolution or otherwise determines that the district has the right to possession of such land or an interest therein for the purpose of acquiring the improvements.

(4) Such decision and resolution shall be a final determination of the regularity, validity, and correctness of the proceedings, of the assessment plat, of the assessment roll, of each assessment contained therein, and of the amount thereof levied on each tract.

(5) Such determination by the board shall be conclusive upon the owners of the property assessed.

(6) The roll shall be prima facie evidence in all courts and tribunals of the regularity of all proceedings preliminary to the making thereof and of the validity of the assessments and the assessment roll.

Source: L. 69: p. 800, § 152. C.R.S. 1963: § 89-21-152.

32-11-640. Appeal of adverse determination. (1) Within the fifteen days immediately succeeding the publication of the assessment resolution, any person who has filed a complaint, protest, or objection on specific grounds in writing, as provided in this article, has the right to commence an action or a suit in any court of competent jurisdiction to correct or to set aside such determination.

(2) Thereafter all actions or suits attacking the regularity, validity, and correctness of the proceedings of the assessment plat, of the assessment roll, of each assessment contained therein, and the amount thereof levied on each tract, including without limitation the defense of confiscation, shall be perpetually barred.

Source: L. 69: p. 800, § 153. C.R.S. 1963: § 89-21-153.

32-11-641. Transfer of roll to county treasurer. (1) Upon the expiration of such fifteen-day period for any such appeal, the secretary shall forthwith note on the assessment roll or by separate instrument each assessment, if any, the regularity, validity, or correctness of which is challenged in such an action or suit.

(2) Thereupon the secretary shall forthwith certify under the seal of the urban district and transmit to the county treasurer of each county in which the improvement district is located, wholly or in part, the assessment roll with the assessment resolution, with a notation of any pending legal actions and suits and with the secretary's warrant for the collection of the assessments levied against the assessable property within the county. The county treasurer shall receipt for the same and all such rolls shall be numbered for convenient reference.

Source: L. 69: p. 801, § 154. C.R.S. 1963: § 89-21-154.

32-11-642. Thirty-day payment period - deferred payments. (1) All assessments made in pursuance of the assessment resolution shall be due and payable without demand not earlier than thirty-one days after its publication upon its final passage and within sixty days after such publication.

(2) Each such assessment or any part thereof may at the election of the owner be paid in installments with interest as provided in this article, whenever the board so authorizes the payment of assessments.

(3) Failure to pay the whole assessment within such period of thirty days shall be conclusively considered an election on the part of all persons interested, whether under disability or otherwise, to pay in installments the amount of the assessment then unpaid.

(4) All persons so electing to pay in installments shall be conclusively considered as consenting to the project for which each such assessment was levied, and such election shall be conclusively considered as a waiver of all rights to question the power of jurisdiction of the urban district to acquire or improve, or acquire and improve, the project, the quality of the work, the regularity or sufficiency of the proceedings, or the validity or the correctness of the assessment.

(5) The owner of any tract assessed may at any time pay the whole unpaid principal and the interest accrued to the next interest payment date, together with penalties if any. The board may require in the assessment resolution the payment of a premium for any prepayment not exceeding seven percent of each installment of principal so prepaid.

(6) Subject to the foregoing provisions, all installments, both of principal and interest, shall be payable at such times as may be determined in and by the assessment resolution.

Source: L. 69: p. 801, § 155. **C.R.S. 1963:** § 89-21-155.

32-11-643. Acceleration upon delinquency. (1) Failure to pay any installment, whether principal or interest, when due shall ipso facto cause the whole amount of the unpaid principal to become due and payable immediately at the option of the urban district, security holder, or trustee therefor initiating foreclosure proceedings, the exercise of such option to be indicated by the commencement of foreclosure proceedings for not only each delinquent installment but also all other unpaid installments of any assessment.

(2) At any time prior to the day of sale, the owner may pay the amount of delinquent installments, with accrued interest, all penalties, and cost of collection accrued, including but not necessarily limited to any attorneys' fees, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been made.

Source: L. 69: p. 801, § 156. **C.R.S. 1963:** § 89-21-156.

32-11-644. Limitations upon deferred payments. (1) In case of such election to pay in installments, the assessment shall be payable in not less than two nor more than twenty substantially equal annual installments or not less than four nor more than forty substantially equal semiannual installments of principal.

(2) Interest in all cases on the unpaid principal accruing from the date of publishing the assessment resolution upon its final passage until the respective installment due dates shall be payable annually or semiannually at a rate not exceeding eight percent per annum; except that, in the case of an assessment initiated subsequent to July 1, 1984, such interest shall not exceed the maximum rate fixed by the board in the notice of the provisional order hearing given pursuant to sections 32-11-608 and 32-11-609.

(3) Nothing in this article shall limit the discretion of the board in determining whether assessments shall be payable in installments and the time the first installment of principal or of interest, or of both, and any subsequent installments thereof shall become due.

(4) The board in the assessment resolution shall state the number of installments in which assessments may be paid, the period of payment, the rate of interest upon the unpaid installments of principal to their respective due dates, any privileges of making prepayments, and any premium to be paid to the urban district for exercising any such privilege, the rate of interest upon unpaid principal and accrued interest after any delinquency at the rate of one percent per month, or any fraction thereof, and any penalties and any collection costs payable after delinquency.

Source: L. 69: p. 802, § 157. **C.R.S. 1963:** § 89-21-157. **L. 84:** (2) amended, p. 847, § 3, effective July 1.

32-11-645. Assessment liens. (1) The payment of the amount so assessed, including each installment thereof, the interest thereon, and any penalties and collection costs shall be secured by an assessment lien upon the tract assessed from the date of publication of the assessment resolution.

(2) Each such lien upon each tract assessed shall:

(a) Be subordinate and junior to any lien thereon for any general (ad valorem) taxes, whether prior in time or not;

(b) Be prior and superior to any assessment lien thereon subsequently levied by the urban district or by any public body;

(c) Be subordinate and junior to any assessment lien thereon theretofore levied by the urban district or by any public body; and

(d) Be prior and superior to all liens, claims, mortgages, other encumbrances, and titles other than the liens of assessments and general taxes.

(3) All purchasers, mortgagees, or encumbrancers of any such tract shall hold the same subject to such lien so created, whether prior in time or not.

(4) Each such assessment lien shall continue as to unpaid installments, principal, interest, and any penalties and costs until such assessments, the principal thereof, interest thereon, and any penalties and costs pertaining thereto shall be fully paid, unless terminated by the foreclosure of any prior and superior lien on the tract assessed.

(5) But unmatured installments shall not be deemed to be within the terms of any general covenant or warranty.

(6) No statute of limitations shall begin to run against any assessment or the assessment lien to secure its payment until after the last installment of principal thereof becomes due.

(7) The urban district may use any available funds or moneys for the satisfaction of any lien prior in right to any special assessment lien created by the district.

(8) In the resale of any property to which the urban district has so acquired title, the district shall use its best efforts to sell the property for an amount at least equal to the funds or moneys so used plus the amount necessary to satisfy the special assessment lien created by the district, including principal, interest, penalties, and collection costs.

(9) The moneys received from such a resale in payment for the property shall be used first to satisfy such special assessment lien and thereafter to restore to the fund from which any such prior lien was satisfied and the moneys used therefor.

(10) The urban district is authorized to acquire and to dispose of property on which there are delinquent taxes or assessments, or both.

Source: L. 69: p. 802, § 158. C.R.S. 1963: § 89-21-158.

32-11-646. Division of tract. (1) If any tract is divided after an assessment thereon has been levied and divided into installments and before the collection of all the installments, the board may require the county assessor to apportion the uncollected amounts upon the several parts of land so divided according to the proportions thereof based upon their valuation for assessment for taxes.

(2) The report of such apportionment, when approved, shall be conclusive on all the parties, and all assessments thereafter made upon such tracts shall be according to such subdivision.

Source: L. 69: p. 803, § 159. C.R.S. 1963: § 89-21-159.

32-11-647. Surpluses and deficiencies. (1) If any assessment proves insufficient to pay for the project or the work for which it is levied and the expense incident thereto, the amount of such deficiency shall be paid from the capital improvements fund of the urban district or from such other account in which moneys are accounted for which may be made available for such purpose by the board.

(2) If sufficient moneys are not legally available so as to defray the amount of such deficiency as the respective obligations comprising the cost of the project become due, the urban district shall budget, appropriate, and levy taxes therefor, subject to the limitation pertaining to capital improvements in section 32-11-217 (1) (d).

(3) If a greater amount of assessments has been collected than was necessary to defray the cost of the project of any improvement district to which the assessments pertain, the excess shall be transferred to the special surplus and deficiency fund of the urban district as provided in section 32-11-628.

Source: L. 69: p. 803, § 160. C.R.S. 1963: § 89-21-160.

32-11-648. Notice of assessment or installment due. (1) Each county treasurer to whom an assessment roll is transmitted pursuant to section 32-11-641 shall give notice by mail and by publication of the levy of the assessments against the assessable property in the county, of the fact they are payable, and of the last day for their payment, as provided in section 32-11-642 (1).

(2) Each such county treasurer shall give notice by mail and by publication of such installment of such assessments which is payable and of the last day for its payment, as provided in section 32-11-644 and in the assessment resolution.

(3) Each such notice given by the county treasurer shall:

(a) State the amount of the assessment or of the installment due, except in the case of any published notice;

(b) State how unpaid principal is payable in installments; and

(c) State the place of payment and the time for it to close.

(4) The failure of the county treasurer to give notice or to do any other act or thing required by this section shall not affect the assessment or any installment thereof.

Source: L. 69: p. 803, § 161. C.R.S. 1963: § 89-21-161.

32-11-649. When collections paid district. All collections made by the county treasurer upon each assessment roll in any calendar month shall be accounted for and paid over to the district treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement district.

Source: L. 69: p. 804, § 162. C.R.S. 1963: § 89-21-162.

32-11-650. Collections by county treasurer. The county treasurer shall receive payment of all assessments against assessable property located in the county appearing upon the assessment roll, with interest.

Source: L. 69: p. 804, § 163. C.R.S. 1963: § 89-21-163.

32-11-651. Collection of delinquent assessments. (1) As soon as any assessment or any installment thereof pertaining to any improvement district becomes in default, the county treasurer shall mark the same delinquent on the assessment roll, together with the amount of unpaid principal shown on the assessment roll and accrued interest thereon to the date of delinquency, and the county treasurer shall within thirty days after such delinquency certify such amounts as shown thereon to the board of the urban district.

(2) The county treasurer shall collect the delinquent assessment, or the delinquent installment and all other unpaid installments of the assessment, if any, and accrued interest, all penalties, and costs of collection accrued, in accordance with section 32-11-643 and other provisions in this article supplemental thereto, in the same manner and with the same interest and penalties thereon as other taxes collected by the county treasurer on behalf of the urban district. All of the laws of the state for the assessment and collection of general taxes, including the laws for the sale of real property for taxes and redemption therefrom, shall be applicable to and shall have the same effect with respect to the collection of such assessments.

(3) If the board elects by resolution to have the urban district foreclose the lien on any assessable property and secure the payment of any delinquent assessment or delinquent installment thereof as provided in part 11 of article 25 of title 31, C.R.S., the secretary shall notify each county treasurer to whom there has been transmitted an assessment roll pertaining to such delinquent assessments and installments of such election and shall transmit thereto a copy of such resolution. Thereupon the county treasurer shall take no further action unless the board causes him to be informed subsequently that the owner of any tract has been restored the right to pay in installments in accordance with section 32-11-643 (2) and other provisions in this article supplemental thereto.

Source: L. 69: p. 804, § 164. C.R.S. 1963: § 89-21-164. L. 81: (3) amended, p. 1626, § 37, effective July 1.

Cross references: For collection of taxes, see article 10 of title 39; for the sale of tax liens, see article 11 of title 39; for redemptions, see article 12 of title 39.

32-11-652. Optional filing of claim of lien. (1) The board may, but is not required, in any assessment resolution or in any resolution supplemental thereto, provide that the secretary, within thirty days after the expiration of the thirty-day payment period specified in section 32-11-642, shall make out, sign, attest with the seal of the urban district, and file for record in the office of the county clerk of each county in which is located assessable property pertaining to any improvement district, a claim of lien for the unpaid amount due and assessed against each tract on the assessment roll for the improvement district.

(2) When a claim of lien is so filed and any assessment pertaining thereto is paid in full, the secretary shall release the lien against any specific tract either by entering and signing a receipt of payment upon the margin of the record thereof or by filing for record in the office of the county clerk and recorder a separate release wherein payment of the assessment, principal, interest, and any penalty is recited.

Source: L. 69: p. 804, § 165. C.R.S. 1963: § 89-21-165.

32-11-653. Duties imposed when assessments are levied. (1) Whenever the board has provided for any project under this article, has levied assessments therefor, and has issued assessment bonds or assessment debentures or both such types of securities for the financing of the same, then and in such event there shall be imposed upon the urban district the following additional duties:

(a) The district shall act as the agency for the collection of such assessments and in so doing shall act as trustees for the benefit of such holders of assessment debentures or bonds.

(b) If the board creates more than one improvement district, the funds of each such district shall be kept in a separate fund or account to be used for the payment of interest and principal of the assessment securities pertaining to the improvement district.

(c) The urban district shall prepare annually and shall make available for inspection in the district treasurer's office to each holder of assessment securities a statement of the financial condition of the improvement district relating to such securities, which report shall include a statement of all delinquencies existing at such time.

(d) Where there is a delinquency continuing for a period of one year in the payment of any installment of such assessment made for the project, the urban district shall thereafter forthwith proceed with the institution of proceedings to foreclose the assessment lien against the property or properties wherein the delinquency exists, unless the county treasurer has instituted such proceedings, as provided in this article.

(e) The holder of any assessment security issued under this article or any trustee therefor has the right to institute such foreclosure proceedings in the name of the urban district issuing such security, if such a delinquency has continued for a period of one and one-half years and if the urban district has not theretofore instituted such foreclosure proceedings. The failure of any holder of any assessment security or any trustee therefor so to proceed shall not be deemed a waiver of any other right or privilege and shall not relieve the urban district or any of its officers, agents, or employees of any liability for failure to perform any duty.

Source: L. 69: p. 805, § 166. C.R.S. 1963: § 89-21-166.

32-11-654. Procedure to place omitted tracts on roll. (1) Whenever by mistake or inadvertence or for any cause any tract otherwise subject to assessment within any improvement district has been omitted from the assessment roll for any project, the board may, upon its own motion or upon the application of any owner of any tract within such district charged with the lien of an assessment for the project, assess the same in accordance

with the special benefits accruing to such omitted tract by reason of such project and in proportion to the assessments levied upon other tracts in such district.

(2) In any such case the board shall first pass a resolution setting forth that certain tracts therein described were omitted from such assessment, and notifying all persons who may desire to object thereto to appear at a meeting of the board at a time specified in such resolution to present their objection thereto and directing the engineer to report to the board at or prior to the date fixed for such hearing the amount which should be borne by each such tract so omitted, which resolution shall be published at least once by the secretary in a newspaper of general circulation in the improvement district and shall be thereby mailed to the last known owner of each such tract.

(3) At the conclusion of such hearing or any adjournment thereof, the board shall consider the matter as though each such tract had been included upon the original roll and may confirm the same or any portion thereof by resolution.

(4) Thereupon the assessment on such roll of each omitted tract shall be collected, the payment of which shall be secured by an assessment lien; and a claim of lien therefor may be filed for record in the office of the county clerk as other assessments, as provided in section 32-11-652.

Source: L. 69: p. 805, § 167. **C.R.S. 1963:** § 89-21-167.

32-11-655. Irregularities in contracts and assessments. (1) Whenever the board makes any contract pertaining to any project provided in this article or makes any assessment against any tract within any improvement district for any project authorized in this article and, in making such contract or assessment, acts in good faith and without fraud, each such contract and assessment shall be valid and enforceable as such, and the assessment shall be a lien upon the tract upon which the same purports to be a lien.

(2) It shall be no objection to the validity of such contract, assessment, or lien that:

(a) The contract for such project was not awarded in the manner or at the time required hereby, or otherwise;

(b) The contract was made by an unauthorized officer or person if the same has been confirmed by the authorities of the urban district; and

(c) The assessment is based upon an improper basis of benefits to the tract within the improvement district, unless it appears that the urban district authorities acted fraudulently or oppressively in making such assessment.

Source: L. 69: p. 806, § 168. **C.R.S. 1963:** § 89-21-168.

32-11-656. Owner of interest may pay share. The owner of any divided or undivided interest in any tract assessed under this article may pay his share of any assessment, upon producing evidence of the extent of his interest satisfactory to the county treasurer having the roll in charge.

Source: L. 69: p. 806, § 169. **C.R.S. 1963:** § 89-21-169.

32-11-657. Payment of assessments by joint owner. (1) Whenever any assessment or installment thereof is paid or any delinquency therefor is redeemed or any judgment therefor is paid by any joint owner of any tract assessed for any project, such joint owner may, after demand and refusal, by an action brought in the district court recover from each of his co-owners the respective amounts of such payment which each such co-owner should bear with interest thereon at ten percent per annum from the date of such payments, and costs of the action.

(2) The joint owner making such payment shall have a lien upon the undivided interest of his co-owners in and to such property from date of such payment.

Source: L. 69: p. 806, § 170. **C.R.S. 1963:** § 89-21-170.

32-11-658. Assessment paid in error. When, through error or inadvertence, any person pays any assessment or installment thereof upon the tract of another, such payor may, after demand and refusal, by an action in the district court recover from the owner of such tract the amount so paid and costs of the action.

Source: L. 69: p. 807, § 171. C.R.S. 1963: § 89-21-171.

32-11-659. Description of property - notice to transferees. (1) It is sufficient in any case to describe the tract as the same is platted or recorded or described in any official record, although the same belongs to several persons.

(2) Any purchaser, lien holder, assignee, or transferee of any tract subject to assessment as provided in this article, in any improvement district provided for in this article, after the first publication of the notice of the provisional order to create such district, shall be held to notice thereof and of all proceedings with reference thereto the same as the owners of such tract at the time of such notice or proceedings.

Source: L. 69: p. 807, § 172. C.R.S. 1963: § 89-21-172.

32-11-660. Assessment of public property. (1) When the urban district, any public body, or the federal government (except the federal government in the absence of its consent by congress to assessment) owns any tract or holds the title to any tract not used as a street or other public right-of-way of the urban district or other public body, which if owned by a private person would be liable to assessment for benefits to pay for any project mentioned in this article, an assessment shall be made against such tract as though such tract were the property of a private person.

(2) The urban district, the public body, or the federal government, in the case of such consent, shall pay the amount of each such assessment by the levy of taxes or from other funds available therefor.

Source: L. 69: p. 807, § 173. C.R.S. 1963: § 89-21-173.

32-11-661. Collecting assessments against public properties. (1) If any assessment against any tract of a private person operating a public utility or any tract of the urban district, any public body, or the federal government is not paid as provided by law, suit may be brought in the proper district court to enforce the collection of the assessment, and the judgment rendered against any such owner of the tract shall be enforced as are other judgments.

(2) No such tract owned thereby shall be sold under any such judgment, nor as the result of any foreclosure of an assessment, nor otherwise.

Source: L. 69: p. 807, § 174. C.R.S. 1963: § 89-21-174.

32-11-662. Sewer districts and subdistricts. The urban district may establish and maintain separate or combined sewer systems, which systems shall be divided into improvement district and subdistrict sewers for storm drainage, upon initiation by the board.

Source: L. 69: p. 807, § 175. C.R.S. 1963: § 89-21-175.

32-11-663. Sewer acquisitions. Sewers and other drainage facilities shall be established and constructed at such time and in such locations, to such extent, with such dimensions and materials, and in accordance with such full details and specifications as may be prescribed by the board. Whenever necessary, land rights-of-way for any sewer or other drainage facility ordered by the board may be purchased, condemned, or otherwise acquired on behalf of the improvement district and the cost charged to such district.

Source: L. 69: p. 807, § 176. C.R.S. 1963: § 89-21-176.

32-11-664. Classification of sewer districts. (1) The board may order by resolution:

(a) The acquisition of improvement district sewers, other drainage facilities, and appurtenances for storm drainage, to be known as sewer districts; and

(b) The acquisition of relief sewers or other drainage facilities or intercepting sewers or other drainage facilities and appurtenances for storm drainage for districts, to be known as relief districts or as intercepting districts.

(2) Such sewers shall be constructed so as to connect within or without the improvement district with some other sufficient sewer or disposal facilities or with some natural drainage. Such districts may be composed of subdistricts to be specifically named or numbered in such resolution.

(3) District sewers, except as provided in this article, shall include all submains necessary to provide outlets for all subdistrict laterals within the improvement district.

(4) Special district sewers shall include the necessary mains to provide outlets for all laterals within the special sewer district.

Source: L. 69: p. 807, § 177. C.R.S. 1963: § 89-21-177.

32-11-665. Acquisition of subdistrict laterals. The board may at the time of ordering the acquisition of district sewers or at any time thereafter order the acquisition of subdistrict laterals in any such subdistrict so as to connect the same with the submains or with the district main sewer, the same to be approved by resolution as in the case of district sewers.

Source: L. 69: p. 808, § 178. C.R.S. 1963: § 89-21-178.

32-11-666. Assessment of district sewers. (1) The cost of district sewers may be assessed upon all the assessable property in the improvement district, in proportion to the special benefits derived to each of the several tracts comprising the assessable property and on a front-foot, area, zone, or other equitable basis. The cost of subdistrict laterals shall be assessed in like manner upon all the assessable property in the subdistrict.

(2) The acquisition, however, of any submain may be omitted until such time as it may be required, in which case subdistricts so left without submains shall not be assessed for any part of the cost of submains acquired along, with, and as a part of the sewer district.

(3) Whenever submains so omitted are required and are constructed, they may be ordered as provided for other sewers, and their cost shall be assessed to the subdistricts which are supplied with submains.

Source: L. 69: p. 808, § 179. C.R.S. 1963: § 89-21-179.

32-11-667. Issuance of refunding bonds. (1) Any assessment bonds issued under this article may be refunded pursuant to resolution to be adopted by the board in the manner provided in this article for the issuance of other assessment bonds. Refunding bonds so issued may be secured in such manner and may be made payable from such sources as provided in the resolution authorizing their issuance.

(2) The security for the payment of the refunding bonds may be greater or lesser than the security for the payment of the bonds refunded. Bonds pertaining to more than one improvement district may be refunded by the bonds of one series. Such refunding bonds may be payable from the unpaid assessments of such improvement districts, and such payment may be additionally secured in accordance with sections 32-11-628 and 32-11-629 and other provisions in this article supplemental thereto.

(3) Refunding bonds so issued may be sold at public or at private sale or may be exchanged dollar for dollar for the bonds to be refunded.

(4) If sold, the proceeds of sale may be escrowed for the payment of the bonds to be refunded in such manner as may be provided in the resolution authorizing the refunding bonds and in sections 32-11-564 to 32-11-568 and section 32-11-570 for other refunding bonds of the urban district constituting special obligations.

Source: L. 69: p. 808, § 180. C.R.S. 1963: § 89-21-180.

32-11-668. Reassessments. Whenever any assessment for any project under this article, in the opinion of the board, is invalid by reason of any irregularity or informality in the proceedings, or if any court of competent jurisdiction adjudges such assessments to be illegal, the board, whether the project has been effected or not or whether any parts of the assessments have been paid or not, has power to cause a new assessment to be made for the same purpose for which the former assessment was made.

Source: L. 69: p. 809, § 181. C.R.S. 1963: § 89-21-181.

32-11-669. Procedure for relevy. (1) When an assessment is so determined to be invalid or illegal, the board shall by resolution order and shall make a new assessment or reassessment upon the tracts which have been or will be benefited by the project to which the invalid assessment pertains, to the extent of their proportionate part of the expense thereof, and in case the cost exceeds the actual value of such project, the new assessment or reassessment shall be for and shall be based upon the actual value of the same at the time of the project's completion.

(2) To this end the engineer shall make a new assessment roll in an equitable manner with reference to the benefits received, as near as may be in accordance with the law in force at the time such reassessment is made.

(3) When the new roll has been confirmed and approved by the board as provided for the original assessments, the reassessment shall be enforced and collected in the same manner that other assessments for such project are enforced and collected, under the provisions in sections 32-11-635 to 32-11-661.

(4) No proceedings relative to making the cost of any project chargeable upon property benefited thereby, required, and provided by the laws of the urban district prior to the making of the original assessment roll, shall be included or required within the purpose of sections 32-11-668 to 32-11-679.

Source: L. 69: p. 809, § 182. C.R.S. 1963: § 89-21-182.

32-11-670. Resolution for reassessment. The board of the urban district shall by resolution order and make a new assessment or reassessment, as provided in section 32-11-669, upon the tracts which have been or will be benefited by such project to the extent of their proportionate part of the cost of the project.

Source: L. 69: p. 809, § 183. C.R.S. 1963: § 89-21-183.

32-11-671. Assessment roll - certification. Upon the passage of a resolution, as provided in this article, the engineer shall make out an assessment roll according to the provisions of the resolution and shall certify the same to the board, as provided in section 32-11-636.

Source: L. 69: p. 809, § 184. C.R.S. 1963: § 89-21-184.

32-11-672. Notice of filing. Upon receiving the assessment roll, the secretary shall give notice of an assessment hearing, as provided in section 32-11-637.

Source: L. 69: p. 809, § 185. C.R.S. 1963: § 89-21-185.

32-11-673. Hearing. At the time and place appointed for hearing, the board shall hold an assessment hearing and shall otherwise proceed, as provided in section 32-11-638.

Source: L. 69: p. 809, § 186. C.R.S. 1963: § 89-21-186.

32-11-674. Levy of reassessment - cost and value. (1) The fact that the contract has been let or that such project has been acquired or improved, or acquired and improved, and

otherwise completed in whole or in part shall not prevent such assessment from being made, nor shall the omission, failure, or neglect of any officer to comply with the provisions of the laws governing the urban district as to petition, notice, resolution to acquire or improve, or both acquire and improve, estimate, survey, diagram, manner of letting contract or execution of work, or any other matter whatsoever connected with the project and the first assessment thereof operate to invalidate or in any way to affect the making of the new assessment or reassessment, as provided for by sections 32-11-668 to 32-11-679, charging the property benefited with the expense thereof, except as otherwise provided in this article.

(2) Any such reassessment shall be levied by resolution, shall become final, and shall be subject to appeal as provided in sections 32-11-639 and 32-11-640.

(3) Such reassessment shall be for an amount which shall not exceed the actual cost and value of the project, together with any interest that has lawfully accrued thereon; and such amount shall be equitably apportioned upon the tracts benefited thereby according to the provisions of the laws of the urban district.

(4) It is the true intent and meaning of sections 32-11-668 to 32-11-679 to make the cost and expense of each local improvement project payable by the tracts benefited by such project by making a reassessment therefor, notwithstanding that the proceedings of the board, engineer, or other body or any officers thereof may be found irregular or defective, whether jurisdictional or otherwise.

Source: L. 69: p. 809, § 187. C.R.S. 1963: § 89-21-187.

32-11-675. Credits for prior assessment. Whenever any sum or any part thereof levied upon any tract in the assessment so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment of the tract on account of which the same was paid.

Source: L. 69: p. 810, § 188. C.R.S. 1963: § 89-21-188.

32-11-676. Collection of assessments - new warrant or order. (1) In all cases where the county treasurer or other district and county authorities are unable to enforce the collection of any assessment by reason of irregularity or omission in any proceedings subsequent to the confirmation of the assessment, the board is authorized to cause a new warrant or order to issue to the county treasurer or other proper officer for the collection of any assessment which by reason of such irregularity or omission remains unpaid and not collected.

(2) The county treasurer or other proper officer shall proceed under such new warrant or order to enforce and to collect the assessments therein specified in the same manner, as near as may be, as is prescribed by the provisions of sections 32-11-642 to 32-11-651, for the enforcement and the collection of assessments, after the same have been confirmed and reassessed, as provided in sections 32-11-668 to 32-11-679.

(3) As often as any failure occurs by reason of such irregularities or omissions, a new warrant or order may issue, and new proceedings shall be had in like manner until such assessment is fully collected as to each tract charged therewith.

Source: L. 69: p. 810, § 189. C.R.S. 1963: § 89-21-189.

32-11-677. Appeal to district court. Any person who has filed objections to such new assessment or reassessment, as provided in this article, has the right to appeal to the district court of this state in and for the county and district in which the tract assessed is situated, as provided and subject to the limitations in section 32-11-640.

Source: L. 69: p. 810, § 190. C.R.S. 1963: § 89-21-190.

32-11-678. Procedure exclusive. The rights and remedies given in this article to the taxpayer and the property owner for objecting to, contesting, or appealing from the amount,

correctness, regularity, or validity of such new assessment or reassessment are declared to be exclusive of all other rights, remedies, suits, or actions either at law or in equity which might otherwise be available, to afford him a sufficient day in court for the redressing of all rights and grievances that he may have in connection with such new assessment or reassessment.

Source: L. 69: p. 811, § 191. C.R.S. 1963: § 89-21-191.

32-11-679. Application of reassessment funds. Whenever the urban district issues assessment debentures or assessment bonds to obtain funds to pay for any project which has been actually acquired or improved, or both acquired and improved, and the assessments levied therefor fail to be valid or sufficient in whole or in part and a new assessment or reassessment has been levied and confirmed, as provided in sections 32-11-668 to 32-11-679, then the urban district is directed to apply all moneys derived from such assessments, new assessments, and reassessments to the payment of such assessment securities according to their tenor. The securities issued for any project actually acquired or improved, or both acquired and improved, shall be valid and binding obligations of the district, payable out of such assessments, new assessments, and reassessments, which shall be levied and relieved until payment in full has been made, as provided in section 32-11-624.

Source: L. 69: p. 811, § 192. C.R.S. 1963: § 89-21-192.

PART 7

ANNEXATION

32-11-701. Annexation of lands to district. (1) The territorial limits of the urban district may be enlarged by the annexation of additional real property thereto in the following ways:

(a) By petition and consent of the fee owner pursuant to sections 32-11-702 and 32-11-706;

(b) By petition of the taxpaying electors, and approval pursuant to sections 32-11-703, 32-11-704, and 32-11-706; and

(c) By action initiated by the urban district pursuant to sections 32-11-705 and 32-11-706.

Source: L. 69: p. 812, § 201. C.R.S. 1963: § 89-21-201. L. 70: p. 302, § 130.

32-11-702. Petition of fee owners. (1) The fee owner of any real property contiguous to the territorial limits of the district and capable of being served with facilities of the district may file with the board a petition in writing praying that such property be included in the district.

(2) The petition shall set forth an accurate legal description of the property owned by the petitioners and shall state that assent to the annexation of such property in the district is given by the signers thereto, constituting all the fee owners of such property.

(3) The petition must be acknowledged in the same manner required for conveyance of land.

(4) There shall be no withdrawal from a petition after consideration by the board, nor shall further objections be filed except in case of fraud or misrepresentation.

(5) The board shall hear the petition at an open meeting after the publication of a notice of the filing of such petition, and of the place, time, and date of such meeting, and of the names and addresses of the petitioners, in a newspaper of general circulation in the county or counties in which the real property proposed to be annexed is located.

(6) The board shall determine if such annexation is feasible and in the best interests of the district.

(7) If the board so determines, the board shall grant the petition.

(8) If the petition is granted as to all or any of the real property therein described, the board shall by resolution make an order to that effect.

Source: L. 69: p. 812, § 202. C.R.S. 1963: § 89-21-202.

32-11-703. Petition of taxpaying electors. (1) Not less than ten percent or one hundred, whichever number is smaller, of the taxpaying electors of any real property which is contiguous to the district and contains twenty-five thousand or more square feet of land may file a petition with the board in writing praying that such area be annexed to the district; but no single tract or parcel or property, containing ten acres or more, may be included in any district without the consent of the owner thereof.

(2) The petition shall describe the area to be annexed and shall be acknowledged in the same manner as conveyances of land are required to be acknowledged.

(3) The secretary of the board shall cause notice of the filing of the petition to be given by publication in a newspaper of general circulation in the county or counties in which the property is situated.

(4) The notice shall state:

- (a) The fact that such a petition has been filed;
- (b) The names of the petitioners;
- (c) The description of the area desired to be included;
- (d) The date and place of a hearing on the proposed annexation; and
- (e) A statement that all persons interested shall appear at the time and place stated in the notice and show cause in writing why the petition should not be granted.

(5) There shall be no withdrawal from a petition after consideration by the board, nor shall further objections be filed except in case of fraud or misrepresentation.

(6) The board, at the time and place mentioned in the notice, shall proceed to hear the petition and all written objections thereto.

(7) The board shall determine if such annexation is feasible and in the best interests of the district.

Source: L. 69: p. 813, § 203. C.R.S. 1963: § 89-21-203.

32-11-704. Annexation election. (1) If the petition is provisionally granted, the board by resolution shall:

- (a) Make an order to that effect;
- (b) Direct that the question of inclusion of the area within the district be submitted at an election within the area to be included or annexed; and
- (c) Designate the secretary of the board as the designated election official to give notice and conduct the election according to the provisions of articles 1 to 13 of title 1, C.R.S.

(2) The annexation election shall be held within the area sought to be annexed, and only registered electors of the district shall vote on the question.

(3) and (4) (Deleted by amendment, L. 92, p. 917, § 182, effective January 1, 1993.)

(5) If a majority of the votes cast on the question at the election favor inclusion, the board shall by resolution enter an order making the real property a part of the district.

Source: L. 69: p. 813, § 204. C.R.S. 1963: § 89-21-204. L. 70: p. 303, § 131. L. 71: p. 965, § 16. L. 81: (2) amended, p. 1627, § 38, effective July 1. L. 92: Entire section amended, p. 917, § 182, effective January 1, 1993.

32-11-705. Annexation initiated by board. (1) At any time as a condition to an annexation initiated by the board, it may determine by resolution that real property proposed for annexation:

- (a) Is contiguous to the territorial limits of the district;
- (b) Contains six hundred forty or more acres of land;
- (c) Has become urbanized by having a population of at least one thousand persons per square mile and having at least five hundred dwelling units per square mile; and

- (d) Is capable of being served with the facilities of the urban district.
- (2) Such a resolution shall provisionally order the annexation of such area.
- (3) The secretary of the board shall cause notice of the adoption of the provisional resolution to be given by publication in a newspaper of general circulation in the county or counties in which the property is situated.
- (4) The notice shall state:
 - (a) The fact that such a provisional resolution has been adopted;
 - (b) The description of the area desired to be included;
 - (c) The date and place of a hearing on the proposed annexation; and
 - (d) A statement that all persons interested shall appear at the time and place stated in the notice and show cause in writing why the annexation should not be made final.
- (5) The board, at the time and place mentioned in the notice, shall proceed to hear all written objections to the proposed annexation and all other matters in the premises.
- (6) The board shall determine by resolution if such annexation is feasible and in the best interest of the district.
- (7) If the board so determines, the secretary shall furnish by mail to the director of the division of local government within the department of local affairs, under the seal of the district, a copy of the provisional resolution and of the feasibility resolution and shall request the director to approve the annexation.
- (8) If the director approves the annexation in writing, the board, upon the receipt of such approval, may by resolution enter its order making the real property a part of the district.

Source: L. 69: p. 814, § 205. C.R.S. 1963: § 89-21-205.

32-11-706. General provisions about annexations. (1) The failure of any person in the urban district or in the area to be annexed to file a written objection to any proposed annexation in a hearing of the board thereon shall be taken as an assent on such person's part to the inclusion in the district of the area described in the notice of the hearing for annexation.

(2) The action of the board in its determination that any proposed annexation which it orders is feasible and to the best interests of the district shall be final, conclusive, and not subject to review.

(3) Whenever the board by resolution enters an order annexing any real property to the urban district, the secretary of the board shall forthwith file the resolution:

- (a) With the secretary of state;
- (b) With the attorney general of the state;
- (c) With the division of local government; and
- (d) With each county clerk and recorder, county assessor, and county treasurer of the county or counties in which the annexed real property is located.

(4) If an order is so entered annexing real property to the urban district, such order shall be deemed final. The entry of such order shall finally and conclusively establish the annexation of the real property to the district against all persons except the state, in a proceeding in the nature of quo warranto, commenced by the attorney general within thirty days after the resolution entering such order is filed with him and not otherwise. Such an annexation shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (4).

(5) After the date of the annexation of such real property to the urban district by the adoption of such resolution, the annexed property shall be liable for its proportionate share of existing bonded indebtedness of the district; but such real property shall not be liable for any taxes or service charges levied or assessed prior to the inclusion of such annexed property in the district, nor shall the entry of the property into the district be made subject to or contingent upon the payment or assumption of any penalty, toll, or charge, other than the taxes and service charges which are uniformly made, assessed, or levied for the entire district except as otherwise expressly provided in this article.

(6) The urban district acting by and through the board and the owner of the real property sought to be annexed to the district may enter into an agreement with respect to the terms and conditions on which such property may be annexed.

Source: L. 69: p. 815, § 206. C.R.S. 1963: § 89-21-206.

PART 8

MISCELLANEOUS

32-11-801. Budgets, accounts, and audits. The district shall adopt a budget for each fiscal year, shall maintain accounts, and shall cause an annual audit to be made pertaining to the financial affairs of the district as respectively provided in the local government budget law of Colorado, the Colorado local government uniform accounting law, and the Colorado local government audit law, as from time to time amended, except as otherwise provided in this article.

Source: L. 69: p. 760, § 32. C.R.S. 1963: § 89-21-32. L. 77: Entire section amended, p. 289, § 66, effective June 29.

Cross references: For the local government budget law, see part 1 of article 1 of title 29; for the local government uniform accounting law, see part 5 of article 1 of title 29; for the local government audit law, see part 6 of article 1 of title 29.

32-11-802. Effect of extraterritorial functions. All of the powers, privileges, immunities, rights, exemptions from laws, ordinances, and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of the district or any such public body when performing their respective functions within the territorial limits of the respective public agencies shall apply to them to the same degree and extent while engaged in the performance of any of their extraterritorial functions and duties under this article.

Source: L. 69: p. 762, § 35. C.R.S. 1963: § 89-21-35. L. 90: Entire section amended, p. 573, § 68, effective July 1.

32-11-803. Early hearings. (1) All cases in which there may arise a question of validity of any power granted in this article or of any other provision of this article shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

(2) The courts shall be open at all times for the purposes of this article.

Source: L. 69: p. 811, § 193. C.R.S. 1963: § 89-21-193.

32-11-804. Decision of board final. The action and decision of the board proceeding under this article as to all matters passed upon by the board in relation to any action, matter, or thing provided in this article shall be final and conclusive in the absence of fraud.

Source: L. 69: p. 811, § 194. C.R.S. 1963: § 89-21-194.

32-11-805. Correction of faulty notices. In any case where a notice is provided for in this article, if the board or the court finds for any reason that due notice was not given, the board or the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or abated; but the board or court shall order due notice to be given and shall continue any hearing until such time as notice is properly given, and thereupon shall proceed as though notice has been properly given in the first instance.

Source: L. 69: p. 811, § 195. C.R.S. 1963: § 89-21-195.

32-11-806. Correction of errors in proceedings. It is the duty of the board, and it shall have the power by any subsequent proceedings, to correct any mistakes, errors, or irregularities in any of the proceedings mentioned in this article.

Source: L. 69: p. 811, § 196. C.R.S. 1963: § 89-21-196.

32-11-807. Retention of jurisdiction. (1) The board may continue the hearing upon any petition or resolution or remonstrance provided for in this article and shall retain jurisdiction until the same is fully disposed of.

(2) The board shall not lose jurisdiction over the acquiring or improving, or acquiring and improving, of any project, the levy of any taxes, assessments, or service charges, or the issuance of any securities or any other matter provided for in this article by reason of any adjournment or any delays, errors, mistakes, or irregularities on the part of any director or any district officer or any other person.

Source: L. 69: p. 811, § 197. C.R.S. 1963: § 89-21-197.

32-11-808. Conclusiveness of board's determination. The determination of the board that the limitations imposed in this article upon the issuance of bonds or upon the issuance of other securities under this article, both general obligations and special obligations, have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion, regardless of whether the authorizing resolution or the securities thereby authorized contain a recital as authorized by section 32-11-507.

Source: L. 69: p. 812, § 198. C.R.S. 1963: § 89-21-198.

32-11-809. Investments by public bodies. It is legal for any public entity, as defined in section 24-75-601 (1), C.R.S., to invest any permanent state funds or other funds available for investment in any of the bonds or other securities authorized to be issued pursuant to the provisions of this article if the securities satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

Source: L. 69: p. 812, § 199. C.R.S. 1963: § 89-21-199. L. 89: Entire section amended, p. 1131, § 72, effective July 1.

32-11-810. Investments by other persons. (1) It is legal for any bank, trust company, banker, savings bank or institution, any building and loan association, savings and loan association, investment company, and any other person (other than a public body) carrying on a banking or investment business, any insurance company, insurance association, or any other person (other than a public body) carrying on an insurance business, and any executor, administrator, curator, trustee, or any other fiduciary to invest funds or moneys in their custody in any of the bonds or other securities issued in accordance with the provisions of this article.

(2) Nothing contained in this section with regard to legal investments shall be construed as relieving any representative of any corporation or other person of any duty of exercising reasonable care in selecting securities.

(3) It is legal for any securities issued under this article which are general obligation bonds or other general obligation securities or are special assessment bonds or other special assessment securities, the payment of which is additionally secured as required by section 32-11-628 and as permitted by section 32-11-629, to be accepted and held as security for the prompt payment of any public deposits of the state, any agency, instrumentality, or corporation thereof, or any county, city, town, school district, or other political subdivision thereof, including without limitation any quasi-municipal district or any authority.

Source: L. 69: p. 812, § 200. C.R.S. 1963: § 89-21-200.

32-11-811. Delegated powers. The officers of the urban district and of each county in which the district is located are authorized to take all action necessary or appropriate to effectuate the provisions of this article.

Source: L. 69: p. 816, § 207. C.R.S. 1963: § 89-21-207.

32-11-812. Confirmation of contract proceedings. (1) In its discretion, the board may file a petition at any time in the district court in and for any county in which the urban district is located, praying for a judicial examination and determination of any power conferred, or of any securities issued or merely authorized to be issued, or of any taxes, assessments, or service charges levied or otherwise made or contracted to be levied or otherwise made, or of any other act, proceeding, or contract of the district, whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any project, proposed securities of the district to defray wholly or in part the cost of the project, and the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto (or any combination thereof).

(2) Such petition shall:

(a) Set forth the facts whereon the validity of such power, securities, taxes, assessments, charges, act, proceeding, or contract is founded; and

(b) Be verified by the chairman of the board.

(3) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this article.

(4) Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any proceeding or contract therein mentioned may be examined.

(5) The notice shall be served:

(a) By publication at least once a week for five consecutive weeks by five weekly insertions, in at least:

(I) A newspaper of general circulation published in the city and county of Denver; and

(II) A newspaper of general circulation published in each of the counties of Adams, Arapahoe, Boulder, and Jefferson;

(b) By posting in the office of the district at least thirty days prior to the date fixed in the notice for the hearing on the petition.

(6) Jurisdiction shall be complete after such publication and posting.

(7) Any owner of property in the district or any other person interested in the proceeding or contract or proposed proceeding or proposed contract or in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court. The petition shall be taken as confessed by all persons who fail so to appear.

(8) The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(9) Costs may be divided or apportioned among any contesting parties in the discretion of the trial court.

(10) Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within the thirty days.

(11) The Colorado rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this article.

(12) The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

(13) All cases in which there may arise a question of the validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 69: p. 816, § 208. C.R.S. 1963: § 89-21-208.

32-11-813. Tax exemptions. (1) The effectuation of the powers authorized in this article are in all respects for the benefit of the people of the state, for the improvement of their health and living conditions, and for the increase of their commerce and prosperity.

(2) The urban district shall not be required to pay any taxes upon any property pertaining to the facilities of the district or any project authorized in this article and acquired within the state, nor the district's interest in any such property.

Source: L. 69: p. 817, § 209. C.R.S. 1963: § 89-21-209.

32-11-814. Freedom from judicial process. (1) Execution or other judicial process shall not issue against any property of the district authorized in this article, nor shall any judgment against the district be a charge or lien upon its property.

(2) Subsection (1) of this section does not apply to or limit the right of the holder or owner of any district securities, his trustee, or any assignee of all or part of this interest, the federal government when it is a party to any contract with the district, and any other obligee under this article to foreclose, otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the district on the proceeds of any taxes, assessments, pledged revenues, or any other moneys of the district or any combination thereof.

Source: L. 69: p. 817, § 210. C.R.S. 1963: § 89-21-210.

32-11-815. Misdemeanors. Any person who wrongfully or purposely fills up, cuts, damages, injures, or destroys or in any manner impairs the usefulness of the facilities of the district or any property pertaining to any project, or any part thereof, or any other work, structure, improvement, equipment, or other property acquired under the provisions of this article, or wrongfully and maliciously interferes with any officer, agent, or employee of the district in the proper discharge of his duties, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: L. 69: p. 817, § 211. C.R.S. 1963: § 89-21-211.

32-11-816. Civil rights. If the urban district is damaged by any act referred to in section 32-11-815, the district may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

Source: L. 69: p. 817, § 212. C.R.S. 1963: § 89-21-212.

32-11-817. Exemption of district. A district formed under this article shall not be considered a political subdivision for the purposes of section 8-3-104 (12), C.R.S.

Source: L. 69: p. 818, § 213. C.R.S. 1963: § 89-21-213.

Cross references: For the labor peace act, see article 3 of title 8.

ARTICLE 11.5**Fountain Creek Watershed, Flood Control,
and Greenway District****PART 1****GENERAL PROVISIONS**

- 32-11.5-101. Short title.
 32-11.5-102. Legislative declaration.
 32-11.5-103. Definitions.
 32-11.5-104. Public purpose - liberal construction - sufficiency of article.

PART 2**DISTRICT ADMINISTRATION AND
POWERS**

- 32-11.5-201. Creation of district.
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PART 3**SERVICE CHARGES**

- 32-11.5-301. Service charges.

PART 4**TAXES AND BONDS**

- 32-11.5-401. Taxes.
 32-11.5-402. Bonds.

PART 5**IMPROVEMENT DISTRICTS AND
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PART 1**GENERAL PROVISIONS**

32-11.5-101. Short title. This article shall be known and may be cited as the “Fountain Creek Watershed, Flood Control, and Greenway District Act”.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 840, § 1, effective April 30.

32-11.5-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The Fountain creek watershed, including Fountain creek, related wetlands, existing trails, and recreational facilities, is a unique and high quality watershed that is an important resource and asset to the people of El Paso county, Pueblo county, and the state of Colorado;

(b) There are many challenges arising from the unique nature of the Fountain creek watershed, including torrential storms that occur intermittently in urban and rural areas that drain into Fountain creek and result in increased potential for flood danger to property, natural resources, and persons within the urban and rural areas of the watershed;

(c) It is necessary to address flooding, drainage, sedimentation, water quality, water quantity, and erosion problems within the Fountain creek watershed in El Paso county and Pueblo county;

(d) Because the Fountain creek watershed is physically located in both El Paso county and Pueblo county and crosses the jurisdictional boundaries of the two counties, the cities of Colorado Springs, Fountain, Manitou Springs, and Pueblo, and the towns of Palmer Lake, Green Mountain Falls, and Monument, the watershed includes large areas of both incorporated and unincorporated land, which has:

(I) Resulted in the fragmentation and proliferation among the counties and municipalities of powers, rights, privileges, and duties pertaining to storm water, flood mitigation, and attenuation and drainage within the watershed; and

(II) Left the counties and municipalities unable to acquire suitable capital improvements for the mitigation of the flooding, drainage, and erosion problems within the watershed;

(e) In order to address flooding, drainage, sedimentation, water quality, water quantity, and erosion problems and recreational opportunities within the Fountain creek watershed and effectively protect, develop, and use the natural resources within the watershed, it is necessary and appropriate to create the Fountain creek watershed, flood control, and greenway district and to authorize the district to primarily manage, administer, and fund the capital improvements necessary in the Fountain creek watershed and the Fountain creek watershed management area to:

(I) Prevent and mitigate flooding, sedimentation, and erosion;

(II) Improve water quality and otherwise address water quality and water quantity issues;

(III) Improve drainage;

(IV) Fund the acquisition and protection of open space;

(V) Develop public recreational opportunities, including parks, trails, and open space; and

(VI) Improve wildlife and aquatic habitat and restore, enhance, establish, and preserve wetlands.

(2) The general assembly further finds and declares that:

(a) A general law cannot be made applicable to the Fountain creek watershed, flood control, and greenway district, or to the properties, powers, duties, privileges, immunities, rights, liabilities, and disabilities pertaining thereto as provided in this article, because of the number of atypical factors and special conditions concerning them;

(b) The creation of the Fountain creek watershed, flood control, and greenway district promotes the health, comfort, safety, convenience, and welfare of all the people of the state and is of special benefit to the inhabitants of the district and the property within the district;

(c) All property to be acquired by the district under this article shall be owned, operated, administered, and maintained for and on behalf of all of the people of the district;

(d) All legal and available funding sources shall be available to the district, including, but not limited to, mill levies, service fees, special assessments, and gifts, grants, and donations from public, private, and not-for-profit sources.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 840, § 1, effective April 30.

32-11.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Assessable property" means any tract of land in an improvement district specially benefited by a project paid for in whole or in part by the district by the levy of assessments other than:

(a) A tract owned by the federal government absent its consent to the assessment of the tract; or

(b) A street, alley, highway, or other public right-of-way of a public body.

(2) "Assessment unit" means a unit or quasi-improvement district designated by the board for the purpose of petition, remonstrance, and assessment in the case of a combination of projects in an improvement district.

(3) "Board" means the board of directors of the district.

(4) "Bond" means any bond, note, warrant, interim certificate, contract, or other evidence of indebtedness of the district issued or otherwise executed pursuant to this article, including, but not limited to, any obligation to the United States in connection with a loan from or guaranteed by the United States.

(5) "Chairperson" means the presiding officer of the board or his or her successor in functions, if any.

(6) "Citizens advisory group" means the citizens appointed by the board to represent various interests identified in this article and to consult with and offer advice to the board on managing the watershed.

(7) "Condemnation" or "condemn" means the exercise of the power of eminent domain by the district for the purpose of acquiring property for any project, facilities, or interest therein authorized by the district pursuant to this article.

(8) "Corporate district" means a district constituting a body corporate and politic and a political subdivision of the state, including, but not limited to, a school district, a junior college district, a special district created pursuant to article 1 of this title, any other kind of district created pursuant to this title, a public improvement district, or a local improvement district; except that "corporate district" does not include the district or an improvement district.

(9) (a) "Corridor" means an area generally northerly to southerly along Fountain creek that consists of the portion of the one-hundred-year floodplain of Fountain Creek, as defined by the federal emergency management agency and further identified on maps promulgated by the agency, hereinafter referred to as the "FEMA one-hundred-year floodplain", consisting of floodplains in El Paso county that lie south of the municipal limits of the city of Fountain and the floodplain in Pueblo county that lies north of the municipal limits of the city of Pueblo.

(b) Notwithstanding paragraph (a) of this subsection (9), public bodies not represented on the board, through their governing bodies, may consent to the jurisdiction of the district and add property to the corridor. The represented public bodies shall also have the option of adding additional sections of the watershed within their respective jurisdictional boundaries to the corridor and consent to the jurisdiction of the district.

(10) "Director" means a member of the board.

(11) "District" means the Fountain creek watershed, flood control, and greenway district created in section 32-11.5-201, the boundary of which is defined in section 32-11.5-202.

(12) "Eligible elector" means an eligible elector as defined in section 32-1-103 (5).

(13) "Engineer" means any engineer in the permanent employ of the district, any licensed professional engineer, or any firm of professional engineers as determined by the board that:

(a) Has skill and experience in the field of designing and preparing plans and specifications for and supervising the construction of facilities like those the district is authorized to acquire;

(b) Is practicing engineering under the laws of the state; and

(c) Is selected, retained, and compensated by the district as required by section 32-11.5-205 (1) (h) (i).

(14) "Equip" means the furnishing of all necessary or desirable, related, or appurtenant machinery, furnishings, apparatus, paraphernalia, and other gear, or any combination thereof, pertaining to any project or other property of the district, or any interest therein, authorized in this article or otherwise relating to facilities.

(15) "Facilities" means all or any portion of the drainage, flood control, and recreational system of the district, consisting of all property owned or acquired by the district through purchase, construction, or otherwise, that is used by the district in connection with drainage, flood control, and recreation, whether situated within or outside, or both within

and outside, the territory of the district, including, but not limited to, water rights for recreational or flood control uses, or both, natural and artificial watercourses for the collection, channeling, impounding, and disposition of rainfall, other surface and subsurface drainage, and storm and flood waters, including, but not limited to, ditches, ponds, dams, spillways, retarding basins, detention basins, nonpoint source water quality treatment and abatement systems, lakes, reservoirs, canals, channels, levees, revetments, dikes, walls, embankments, bridges, inlets, outlets, connections, laterals, other collection lines, intercepting sewers, outfalls, outfall sewers, trunk sewers, force mains, submains, waterlines, sluices, flumes, syphons, sewer lines, pipes, other transmission lines, culverts, pumping stations, gauging stations, stream gauges, rain gauges, engines, valves, pumps, meters, junction boxes, manholes, other inlet and outlet structures, motor vehicles, bucket machines, inlet and outlet cleaners, backhoes, draglines, graders, other equipment, apparatus, fixtures, structures, and buildings, flood warning services, and appurtenant telephone, telegraph, radio, and television apparatus, other water diversion, drainage, and flood control facilities, trails, open space, habitat for wildlife and aquatic life, and all appurtenances and incidentals necessary, useful, or desirable for any such facilities including real and other property therefor.

(16) "Fiscal year" means the twelve months commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year.

(17) "Fountain creek watershed" or "watershed" means the watershed officially denominated by the United States government as "watershed boundary dataset, hydraulic unit code # 11020003, Fountain creek sub-basin of the Arkansas river, Colorado".

(18) "Fountain creek watershed management area" or "watershed management area" means that portion of the district that consists of townships within the watershed and other townships that will benefit from improvements to the watershed and that is legally described as townships 11s68w, 11s67w, 11s66w, 12s68w, 12s67w, 12s66w, 12s65w, 13s68w, 13s67w, 13s66w, 13s65w, 14s68w, 14s67w, 14s66w, 14s65w, 14s64w, 15s67w, 15s66w, 15s65w, 15s64w, 16s67w, 16s66w, 16s65w, 16s64w, 17s66w, 17s65w, 17s64w, 18s66w, 18s65w, 18s64w, 19s66w, 19s65w, 19s64w, 20s66w, 20s65w, 20s64w, 21s66w, 21s65w, 21s64w of the 6th principal meridian.

(19) "Governing body" means a city council, board of town trustees, board of county commissioners, board of directors, or other entity in which the legislative powers of a public body are vested.

(20) "Improvement" or "improve" means the extension, enlargement, betterment, alteration, reconstruction, replacement, or major repair of facilities, a project, infrastructure, related property, or an interest therein.

(21) "Improvement district" means a contiguous or noncontiguous geographical area within the watershed management area that is designated and delineated by the board by an assigned number or in some other manner that separately identifies it from any other improvement district and contains facilities or a project, or an interest in facilities or a project, the cost of which is to be defrayed wholly or in part by the levy of special assessments against each tract within the area.

(22) "Infrastructure" means one or more elements of a drainage or flood control system that is similar in kind to facilities but owned by a public body or other person other than the district.

(23) "Mailed notice" means any designated written or printed notice addressed to the owner of record of each tract assessed or to be assessed by deposit at least fourteen days prior to the designated hearing or other time or event in the United States mail, postage prepaid, as first-class mail.

(24) "Municipality" means an incorporated city or town.

(25) "Newspaper" means a newspaper printed in the English language at least once each calendar week.

(26) "Project" means any facility or related group of facilities that the board determines to authorize, construct, or acquire at one time.

(27) "Publication" or "publish" means one publication at least fourteen days prior to the date of a hearing or event in each official newspaper designated by the district pursuant to section 32-11.5-205 (1) (l).

(28) (a) "Public body" means the state of Colorado or any agency, instrumentality, or corporation thereof; any county, municipality, corporate district, authority, or state institution of higher education; or any other body corporate and politic and political subdivision of the state.

(b) "Public body" does not include the federal government or the district.

(29) "Represented public body" means a public body that is entitled, alone or in concert with another public body, to appoint one or more directors to the board.

(30) "Service charges" means the fees, rates, and other charges for the use of the facilities of the district or for any related service rendered by the district.

(31) "Small municipalities" means, collectively, the town of Green Mountain Falls, the city of Manitou Springs, the town of Monument, and the town of Palmer Lake, Colorado.

(32) "Special assessment" means a charge levied against any tract specially benefited in an improvement district by any project that shall be made on a front-foot, zone, area, or other equitable basis as determined by the board; except that the charge shall not exceed the estimated maximum special benefits to the tract assessed as determined by the board pursuant to part 5 of this article.

(33) "Technical advisory committee" means the advisory committee made up of technical experts appointed by the board to provide recommendations to the board regarding public policy or expenditure of funds for the benefit of the watershed.

(34) (a) "Tract" means any lot or other parcel of land for assessment purposes, whether platted or unplatted, regardless of lot or land lines.

(b) Lots, plots, blocks, and other subdivisions may be designated in accordance with any recorded plat thereof, and all lands, platted and unplatted, shall be designated by a definite legal description.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 842, § 1, effective April 30.

32-11.5-104. Public purpose - liberal construction - sufficiency of article. (1) The exercise of any power authorized in this article by the board on behalf of the district and any project authorized pursuant to this article effects a public purpose.

(2) This article being necessary to secure and preserve the public health, safety, and general welfare, the rule of strict construction shall not apply to this article. This article shall be liberally construed to effect its purposes.

(3) (a) Except as otherwise provided in the state constitution, section 25-8-102 (4), C.R.S., or this article, this article, without reference to any other law, shall constitute full authority for the exercise of the powers granted in this article, including without limitation the financing of any project authorized in this article wholly or in part and the issuance of bonds to evidence the financing.

(b) Except as otherwise provided in this article, no other law with regard to the authorization or issuance of bonds or the exercise of any other power granted in this article that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized in this article shall apply to proceedings taken under or acts done pursuant to this article.

(c) Except as otherwise provided in this article, no notice, consent, or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any bonds or the making of any contract or the exercise of any other power under this article.

(d) The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law.

(e) Nothing in this article shall repeal or affect any other law except to the extent that this article is inconsistent with any other law, this article being intended to provide a separate method of accomplishing its objectives and not an exclusive one. This article shall not be construed as repealing, amending, or changing any other law except to the extent that

the other law is inconsistent with this article. This article shall not be construed as repealing, modifying, or amending any existing law or court decree concerning the determination or administration of water rights.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 846, § 1, effective April 30.

PART 2

DISTRICT ADMINISTRATION AND POWERS

32-11.5-201. Creation of district. There is hereby created the Fountain creek watershed, flood control, and greenway district, which shall be a body politic and corporate and a political subdivision of the state. The district shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 847, § 1, effective April 30.

32-11.5-202. Boundaries of district. The area comprising the district consists of the counties of El Paso and Pueblo.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 847, § 1, effective April 30.

32-11.5-203. Board of directors - general powers and delegation thereof - manner of appointment - compensation. (1) (a) The district shall be governed by a board of directors, and, subject to paragraph (b) of this subsection (1), the board shall exercise all powers, rights, privileges, and duties of the district as provided in this article.

(b) (I) The board may create an executive committee of the board and may delegate to the committee such power to act on behalf of the district as the board may determine by resolution, except as limited by the supermajority requirements specified in section 32-11.5-204 (1) (b) (II).

(II) The board may appoint an executive director for the district and may delegate the exercise of any of its executive, administrative, and ministerial powers to the executive director and any other staff of the district. The executive director shall have such powers as may be granted by the board, which may include, but are not limited to, the ability to hire employees, consultants, or staff to help carry out the day to day operations of the district and to help execute the spending plan adopted by the board. The board may also contract for professional services, including, but not limited to, financial, legal, and engineering services, to the extent necessary to administer and implement the purposes of this article.

(2) (a) The board shall consist of nine directors appointed as follows:

(I) One Pueblo county commissioner appointed by the Pueblo county board of county commissioners as a representative of Pueblo county;

(II) One El Paso county commissioner appointed by the El Paso county board of county commissioners as a representative of El Paso county;

(III) One city of Pueblo city council member or the mayor of the city of Pueblo appointed by the Pueblo city council as a representative of the city of Pueblo;

(IV) One city of Colorado Springs city council member or the mayor of the city of Colorado Springs appointed by the Colorado Springs city council as a representative of the city of Colorado Springs;

(V) One city of Fountain city council member or the mayor of the city of Fountain appointed by the Fountain city council as a representative of the city of Fountain;

(VI) One director appointed by the Pueblo county board of county commissioners who is either a representative of the lower Arkansas valley conservancy district or a citizen of

Pueblo county and who represents the interests of persons from the portion of the district that lies east of the confluence of Fountain creek and the Arkansas river;

(VII) One director appointed jointly by the Colorado Springs city council and the El Paso county board of county commissioners who is either a representative of the small municipalities selected from candidates nominated by the small municipalities, or, if the small municipalities do not submit at least one candidate, then a citizen of El Paso county;

(VIII) One director appointed jointly by the Pueblo city council and the Pueblo county board of county commissioners who is a citizen at large and resides in Pueblo county; and

(IX) One director appointed jointly by the El Paso county and Pueblo county boards of county commissioners who is a member of the citizens advisory group. The citizens advisory group shall provide two or more nominees for the director position to the boards, but the boards shall not be limited to the nominees in appointing the director.

(b) The term of each director shall commence on February 1; except that the terms of the directors initially appointed shall commence immediately upon their appointment. The directors initially appointed pursuant to subparagraphs (I), (IV), (VII), and (IX) of paragraph (a) of this subsection (2) shall serve initial terms through January 31, 2011, and the directors initially appointed pursuant to subparagraphs (II), (III), (V), (VI), and (VIII) of paragraph (a) of this subsection (2) shall serve initial terms through January 31, 2012. The term of each director appointed after the initial appointments shall be for two years. Each appointing authority or pair of joint appointing authorities has sole discretion to reappoint any director who the authority or authorities initially appointed.

(c) Each appointing authority shall select and appoint its respective director in any lawful manner as determined by the appointing authority. Each appointing authority shall designate and provide notice to the other represented public bodies of the identity of its respective director, and any designee or alternate it may choose to name, within thirty days after the appointment. Each appointing authority may also name an alternate director to attend meetings if the primary director is unavailable to attend or has a conflict of interest.

(d) If a board vacancy occurs for any reason including, but not limited to, a director no longer possessing a mandatory qualification for board membership that the director held at the time of his or her appointment to the board, the appointing authority that appointed the director shall fill the vacancy by appointing a successor director to serve for the unexpired term. The successor director shall possess any mandatory qualification specified in paragraph (a) of this subsection (2).

(3) (a) A director shall not receive a salary or compensation or reimbursement for any expenses incurred in the performance of his or her duties, other than as may be provided by the represented public body or other organization the director represents at the sole discretion of the represented public body or organization or unless authorized by the board.

(b) A director shall not receive any compensation as an officer, engineer, attorney, employee, or other agent of the district.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 847, § 1, effective April 30.

32-11.5-204. Board - meetings - records. (1) (a) Except for the initial board, each board shall meet in January of each year at a regular place of meeting within the district for the qualification of new directors and for the selection of new officers. The initial board at its first meeting, and each successor board at the annual meeting held in January of each year thereafter, shall, by a majority vote of a quorum of the directors, elect the following officers:

(I) A chairperson who shall preside over all meetings of the board and see that the meetings and debate are conducted in an orderly and expeditious manner. Except as otherwise permitted by section 32-11.5-203 (1) (b) (II), the chairperson shall sign all contracts, agreements, and legal documents of the board and in general shall perform all duties incident to the office of chairperson.

(II) A vice-chairperson who shall assume the duties of the chairperson in the chairperson's absence.

(b) (I) A majority of the directors shall constitute a quorum for the transaction of business by the board unless a different number is set by resolution of the board at the annual meeting. Except as otherwise provided in this article or in the bylaws, the affirmative vote of a majority of a quorum of the board of directors shall be sufficient to conduct the business of the board. If less than a quorum is present at a meeting, the chairperson or other presiding officer may compel the attendance of any absent member in such manner and under such penalties as the board may provide or may adjourn the meeting to a different time and place. If the meeting is adjourned, the chairperson shall notify absent directors of the time and place of the adjourned meeting.

(II) Subject to the requirement that a quorum of the board be present to vote, the board shall adopt spending or other fiscal policy resolutions, including, but not limited to, resolutions that, subject to applicable voter approval requirements, establish or increase taxes levied or fees imposed and collected by the district or multiple-fiscal year financial obligations to be incurred by the district, and public policy resolutions, including but not limited to resolutions that initiate condemnation proceedings and resolutions to initiate or voluntarily participate in litigation, only by a supermajority vote as follows:

Board Members Appointed	Votes Required for Approval
2	2
3	2
4	3
5	4
6	4
7	5
8	6
9	7

(III) Each director or director’s alternate shall be entitled to one vote, and voting by proxy shall not be permitted.

(IV) All meetings of the board, the technical advisory committee, the citizens advisory group, or any executive committee or other committee designated by the board shall be held in the district subject to the open meetings provisions of the “Colorado Sunshine Act of 1972”, part 4 of article 6 of title 24, C.R.S.

(V) The directors, the technical advisory committee, the citizens advisory group, or any executive committee or other committee designated by the board may participate in any meeting of the board or committee by means of a telephone conversation or similar communication equipment by which all persons participating in the meeting can hear each other at the same time. Such remote participation shall constitute presence in person at the meeting.

(2) (a) The board shall perform all legislative acts of a general and permanent nature by resolution, which may require approval by a supermajority vote as specified in subparagraph (II) of paragraph (b) of subsection (1) of this section. On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. After passage, all resolutions and orders shall be recorded in the records of the offices of the clerk and recorders of El Paso and Pueblo counties, recorded in a book kept by the district for that purpose, and authenticated by the signature of the presiding officer of the board and the secretary of the board.

(b) The district and the board shall be subject to the “Colorado Open Records Act”, article 72 of title 24, C.R.S.

(c) All district records are subject to audit as provided by law for political subdivisions of the state.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 849, § 1, effective April 30.

32-11.5-205. Powers of district. (1) The district, acting through the board or through other persons to whom the board has delegated any of its powers as authorized by this article, has the following general and administrative powers:

- (a) To have perpetual existence;
- (b) To sue and be sued;
- (c) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (d) To fix the time and place at which its regular meetings shall be held within the district and to provide for the calling and holding of special meetings;

(e) To adopt and use a seal;

(f) To maintain offices at any place within the district it may designate;

(g) (I) To appoint a secretary and a treasurer of the board. Each position may be filled by a director or by another person, and both positions may be filled by the same person.

(II) The secretary of the board shall keep a record of the minutes of all meetings, ensure that all notices required by law are duly given and posted, serve as the custodian of board records, attest to documents as the need arises, and perform such other functions as may be prescribed by the board.

(h) (I) Subject to the provisions of section 32-11.5-203 (1) (b) and subparagraph (II) of this paragraph (h), to hire and fix the compensation of officers and employees and hire or retain other persons, including but not limited to professionals such as engineers, attorneys, accountants, and other financial professionals.

(II) (A) No director, officer, employee, or agent of the district shall be interested in any contract or transaction with the district except in his or her official capacity or as is provided in his or her contract of employment with the district.

(B) Neither the holding of any office or employment of a public body or of the federal government nor the owning of any property within the state, within or outside the district, shall be deemed a disqualification for membership on the board or employment by the district or deemed a disqualification for compensation for services as an officer, employee, or agent of the district.

(C) A director shall not vote on any issue with respect to which the director has a conflict of interest as required by sections 18-8-308, 24-18-108.5, and 24-18-110, C.R.S. An appointing body may name an alternate director to cure the temporary disqualification, and the alternate may vote in place of the disqualified director.

(i) To appoint a technical advisory committee of technical experts to provide recommendations to the board regarding public policy or expenditure of funds for the benefit of the watershed and to carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to facilities, projects, and related property both within and outside the district;

(j) To appoint a citizens advisory group representing various interests pertaining to the watershed to consult with and offer advice to the board regarding the management of the watershed;

(k) To appoint one or more persons to act as custodians of the moneys of the district for purposes of depositing the moneys in any depository authorized in section 24-75-603, C.R.S. Custodians shall give surety bonds in such amounts and form and for such purposes as the board requires.

(l) To designate an official newspaper published in El Paso county and an official newspaper published in Pueblo county and to publish any notice or other instrument in any additional newspaper or newspapers as the board deems necessary;

(m) To enter into contracts and agreements, including, but not limited to, contracts and agreements with any public body or agency thereof or with the federal government;

(n) (I) To trade, exchange, purchase, condemn in the manner provided in articles 1 to 7 of title 38, C.R.S., and otherwise acquire, operate, maintain, and dispose of real and personal property, including interests therein, within or outside the district.

(II) If the construction of any project or part of a project authorized in this article requires the removal and relocation of any public utility facility or any park or utility facility owned or operated by a public body or an enterprise of a public body, whether on private or public right-of-way or otherwise, the district shall cooperate with the public body to determine the necessity of the removal and relocation and, if necessary, the appropriate reimbursement to the owner of the park or public utility facility for the expense of the removal and relocation, including the cost of any necessary land or rights in land and any other resulting costs.

(o) To institute, maintain, and administer a systematic and uniform program of preventive maintenance in the district;

(p) To promulgate such resolutions and issue such orders as the district deems necessary or convenient for the operation, maintenance, management, government, and use of facilities and any other drainage and flood control facilities under its control, whether situated within or outside or both within and outside the territorial limits of the district;

(q) To promote, construct, and manage the protection and improvement of the watershed to prevent and mitigate flooding, erosion, and sedimentation, improve drainage and water quality, address water quantity, provide a healthy riparian habitat with recreational amenities, including, but not limited to, open space and trails, improve wildlife and aquatic habitat, and restore, enhance, establish, and preserve wetlands;

(r) To prepare and submit ballot language to place one or more funding measures before the affected electors in Pueblo and El Paso counties; and

(s) To provide information to educate the public concerning the purposes and benefits of the district.

(2) The district has the following financial powers:

(a) To provide funding derived from both El Paso and Pueblo counties to support the district;

(b) To provide cooperation and financial and technical assistance throughout the Fountain creek watershed;

(c) (I) Subject to the requirements of subparagraph (II) of this paragraph (c), to finance the acquisition, construction, operation, or maintenance of projects and any other lawful operations of the district through:

(A) The establishment of service charges within the watershed management area pursuant to part 3 of this article;

(B) The imposition of mill levies, levied at a total rate of no more than five mills, on all taxable property within the district and the issuance of bonds pursuant to part 4 of this article;

(C) The creation of improvement districts and imposition of special assessments on all property within an improvement district pursuant to part 5 of this article;

(D) The acceptance of gifts, grants, and donations from public, private, and not-for-profit sources;

(E) Certificates of participation; and

(F) Any other lawful means authorized in this article.

(II) (A) No action by the district to establish or increase any special assessment authorized by this article and, in accordance with section 20 (4) (a) of article X of the state constitution, no action by the district to establish or increase any tax or mill levy authorized by this article shall take effect unless first submitted to a vote of the eligible electors of the district or, in the case of a special assessment, the eligible electors of the improvement district in which the special assessment is proposed to be collected.

(B) No action by the district creating a multiple-fiscal year debt or other financial obligation that is subject to section 20 (4) (b) of article X of the state constitution shall take effect unless first submitted to a vote of the eligible electors of the district or, in the case of improvement district bonds to be paid with revenues from a special assessment, the eligible electors of the improvement district in which the special assessment is proposed to be collected.

(C) The questions proposed to the eligible electors under sub-subparagraphs (A) and (B) of this subparagraph (II) shall be submitted at a biennial election of the district, a general election, or any election to be held on the first Tuesday in November of an odd-numbered year. The action shall not take effect unless a majority of the eligible electors voting on the question at the election vote in favor thereof. Elections shall be held and conducted, and the results determined, in the manner provided by articles 1 to 13 of title 1, C.R.S. No district moneys may be used to urge or oppose passage of an election required under this section.

(d) (I) Subject to the limitations specified in part 3 of this article and subparagraph (II) of this paragraph (d), to impose service charges for the availability or use of the facilities

of the district, pledge service charge revenues for the payment of bonds, and enforce the collection of service charge revenues by civil action or by any other means provided by law.

(II) The power of the district to establish service charges is limited to the areas within the counties of El Paso and Pueblo that are within the Fountain creek watershed management area.

(e) To obtain financial statements, appraisals, economic feasibility reports, and valuations of any type pertaining to the facilities or any project or any related property;

(f) To deposit moneys of the district in any depository authorized in section 24-75-603, C.R.S.;

(g) To create special funds and accounts as a source of repayment for bonds, including reserves required or desired for that purpose, or for payment of project acquisition, construction, operation, maintenance, or other related costs;

(h) To invest or deposit any district moneys in the manner provided by part 6 of article 75 of title 24, C.R.S., and to direct a corporate trustee that holds any district moneys to invest or deposit the moneys in investments or deposits other than those specified by said part 6 if the board determines, by resolution, that the investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits specified by said part 6, and the investment will assist the board in the financing, construction, operation, or maintenance of its projects or facilities;

(i) (I) Subject to the limitations set forth in subparagraph (II) of this paragraph (i), until such time as the district has sufficient funding to operate independent of funding from the represented public bodies, to request from the represented public bodies appropriate staff, resources, and funding support. The represented public bodies may fund independent staff or pledge to support the district with their own employees or contribute funding in any manner deemed equitable and appropriate by the represented public bodies and the district.

(II) In accord with the state constitution or any charter of a represented public body, performance of a represented public body's obligations under this article is expressly subject to annual appropriation of funds by the respective governing body of the public body. If sufficient moneys are not appropriated for performance of a public body's obligations under this article or appropriated funds cannot be expended due to applicable spending limitations, performance of the public body under this article shall be null and void by operation of law, and the public body shall thereafter have no liability for compensation or damages to any person in excess of the public body's authorized appropriation for the purposes of this article or the applicable spending limit, whichever is less. A represented public body shall notify all other represented public bodies and the district as soon as practicable in the event of nonappropriation or in the event a spending limitation becomes applicable.

(3) (a) The district has the following jurisdictional and land use powers:

(I) Within the corridor, to exercise full land use authority; and

(II) Outside of the corridor, but within the watershed management area, to exercise advisory land use authority only; except that the district shall be entitled to receive notice from all represented public bodies and to provide comments to such represented public bodies regarding land use applications for projects located outside the corridor, but within the watershed management area, that, in the opinion of the applicable represented public body's planning director or planning director's designee, will have a direct or indirect impact on the Fountain creek watershed. Each represented public body shall send notice to the district identifying its planning director or designee. The district may request to review land use applications of any represented public body for projects located outside the corridor that may directly or indirectly impact the watershed.

(b) Throughout the watershed management area, including within the corridor, the district has the authority to accept and manage funding for the management and construction of any stream improvement authorized by the represented public body or bodies with jurisdiction over the area in which the improvement will be located.

(4) The district has the following cooperative and miscellaneous powers:

(a) To provide for comprehensive planning and, where possible, coordinate with all regional special purpose districts, regional multipurpose planning agencies, local and

regional planning commissions, and other multijurisdictional political subdivisions operating wholly or partly within the district;

(b) To adopt a comprehensive program for the acquisition, construction, operation, and maintenance of facilities;

(c) To establish, operate, and maintain facilities within the watershed management area across or along any public street, highway, bridge, viaduct, or other public right-of-way, or in, upon, under, or over any vacant public lands that are or may become the property of a public body subject to first obtaining consent from the public body having jurisdiction over the same, which consent shall not be unreasonably withheld, but may be contingent upon reasonable conditions being met. The district shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct, or other public right-of-way to its former state of usefulness as nearly as may be, and shall not adversely affect the usefulness thereof.

(d) (I) To the extent consistent with the jurisdictional and land use authority set forth in subsection (3) of this section, to adopt floodplain zoning resolutions and orders pertaining to properties within the watershed management area that affect the collection, channeling, impounding, or disposition of rainfall, other surface and subsurface drainage, or storm and flood waters as it deems necessary or convenient. If a district floodplain zoning resolution or order conflicts with a floodplain zoning resolution or order adopted by any other public body, the more restrictive resolution or order shall control.

(II) No district floodplain resolution or order shall be adopted or amended except by action of the board after a public hearing held by the board at which any public body owning drainage and flood control infrastructure or otherwise exercising powers affecting drainage and flood control in the affected area, whether directly or through an enterprise, and other interested persons have an opportunity to be heard. The board shall provide mailed notice of the hearing to each such public body and shall also publish notice of the hearing for the benefit of other interested persons.

(e) To enter into cooperative or contractual agreements with any government, as defined in section 29-1-202 (1), C.R.S., as authorized in section 29-1-203, C.R.S., concerning comprehensive planning or the provision of any function, service, or facility authorized by this article, including, but not limited to:

(I) Joint operating or service contracts and agreements; acquisition, improvement, equipment, or disposal contracts; personnel sharing agreements; or other arrangements concerning personnel, any facilities, project, or related property or any similar property or equipment owned by the federal government or a public body; and

(II) Contracts and agreements for the provision and operation by the district of any drainage, flood control, or recreational property or equipment related to facilities or projects of the district in exchange for compensation sufficient to defray the cost to the district of providing, operating, and maintaining the property or equipment;

(f) To do all things necessary to be qualified to accept and to accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance, and operation of any project or authorized activity of the district and to enter into contracts and cooperate with the federal government in the financing, planning, acquisition, improvement, equipment, maintenance, and operation of any such project or authorized activity in accordance with any applicable federal legislation under which aid, assistance, and cooperation may be furnished by the federal government;

(g) Subject to any limitations specified in this article or articles 1 to 7 of title 38, C.R.S., to enter upon any land to make surveys, borings, soundings, and examinations and to locate facilities, projects, roadways, and other rights-of-way pertaining to facilities and projects as needed to accomplish the purposes of the district;

(h) To mediate any differences arising among the represented public bodies in connection with any facilities, project, or activity of the district; and

(i) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article.

32-11.5-206. Approval of other infrastructure. (1) Subject to the limitations specified in section 32-11.5-205 (3), on and after April 30, 2009, only the federal government may acquire or improve within the territorial limits of the watershed management area any drainage and flood control or recreational infrastructure, unless a proposal for the acquisition or improvement is reviewed by, and in the case of infrastructure within the corridor approved by, the board; except that a public body or other person may acquire or improve gutters and rainspouts attached to buildings or other structures; curbs and gutters appurtenant to streets, alleys, highways, and other rights-of-way; or a collection or secondary storm drainage system, as defined in the El Paso county drainage criteria manual or the Pueblo county drainage criteria manual, as applicable, or in any successor publications to either manual. If a public body or other person other than the federal government acquires or improves such infrastructure within the corridor without board review and approval, the board may order modification of the infrastructure to meet the reasonable specifications and other requirements of the district.

(2) (a) The board shall not approve a proposal for drainage, flood control, or recreational infrastructure acquisition or improvement within the watershed management area unless the infrastructure to be acquired or improved appropriately complements or supplements facilities, both proposed and acquired, and is consistent with any comprehensive program for the acquisition and construction of facilities adopted by the district pursuant to section 32-11.5-205 (4) (b). The board may withhold its approval or disapprove a proposal for drainage, flood control, or recreational infrastructure acquisition or improvement only if the infrastructure to be acquired or approved does not complement or supplement facilities or does not conform to any comprehensive program of the district.

(b) If a proposal for drainage, flood control, or recreational infrastructure acquisition or improvement within the watershed management area does not sufficiently delineate the infrastructure to be acquired or improved for the board to determine whether the infrastructure complements or supplements facilities and conforms to any comprehensive program of the district, the board may demand such additional information as it deems necessary or desirable to make such a determination. The board may delay its consideration of the proposal until it receives any additional information requested.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 858, § 1, effective April 30.

32-11.5-207. Powers of public bodies. (1) A public body, for the purpose of aiding and cooperating in any project authorized in this article, may:

(a) Sell, lease, loan, donate, grant, convey, assign, transfer, and otherwise dispose to the district any project-related infrastructure, property, or interest therein;

(b) Make available to the district for temporary use, or otherwise dispose of, any machinery, equipment, infrastructure, or other property and any agents, employees, persons with professional training, or other persons to effect the purposes of this article. Any property owned by and persons in the employ or service of a public body shall, while performing any authorized service, activity, or undertaking for the district, have and retain all of the powers, privileges, immunities, rights, and duties, and be deemed to be engaged in the service and employment, of the public body, notwithstanding that the service, activity, or undertaking is being performed for the district.

(c) Enter into any agreement or joint agreement between or among the federal government, the district, a public body, or any combination thereof with respect to action or proceedings pertaining to any power granted in this article and the use or joint use of any infrastructure, facilities, project, or other property;

(d) Sell, lease, loan, donate, grant, convey, assign, transfer, or pay over to the district infrastructure, property, or moneys for the purpose of allowing the district to finance, acquire, improve, equip, operate, or maintain facilities or projects;

(e) Transfer, grant, convey, or assign to the district any contracts awarded by the public body for the acquisition, improvement, or equipment of any project not commenced or not completed; and

(f) Budget and appropriate, as required, the proceeds of taxes, service charges, and other revenues legally available to pay all bonds and other obligations arising from the exercise of any powers granted in this article as payments for the bonds or other obligations become due.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 859, § 1, effective April 30.

PART 3

SERVICE CHARGES

32-11.5-301. Service charges. (1) (a) The district may impose and collect service charges, or special fees as defined by Colorado law, for direct or indirect connection with, or the use or services of, facilities, including, but not limited to, minimum charges and charges for the availability of facilities or related services. Such service charges may only be charged within the watershed management area.

(b) Service charges may be charged to and collected in advance or otherwise by the district at any time from any owner or occupant of real property within the watershed management area that directly or indirectly is, has been, or will be connected with facilities or from which or on which originates or has originated rainfall, other surface and subsurface drainage, or storm and flood waters that have entered or will enter facilities, and the owner or occupant of any such real property shall be liable for and shall pay the service charges to the district when due and payable.

(c) Service charges of the district shall accrue from the date on which the board estimates, in any resolution authorizing the issuance of any bonds to be paid from service charge revenues or in any contract with any person, that the facilities for which the service charge is imposed will be available for service or use.

(2) (a) Service charges:

(I) Shall be imposed at rates reasonably calculated to defray only the costs of the facilities for which they are imposed that are not defrayed by other district revenues;

(II) Shall, as nearly as the district deems practicable and equitable, be uniform throughout the watershed management area for the same type, class, and amount of use of facilities or related services;

(III) May be based or computed:

(A) On measurements of drainage flow devices duly provided and maintained by the district or by any user as approved by the district;

(B) On the consumption of water in, on, or in connection with the real property on which the service charge is imposed, making due allowance for commercial and other use of water discharged into any sanitary sewer system and for any infiltration of groundwater and discharge of surface runoff into the sewer system;

(C) On the capacity of the capital improvements in, on, or connected with the real property on which the service charge is imposed;

(D) On the availability of service of facilities;

(E) On any other factors determining the type, class, and amount of use or service of facilities; or

(F) On any combination of the factors specified in sub-subparagraphs (A) to (E) of this subparagraph (III).

(b) For purposes of determining service charges, the district may give weight to the specific characteristics of any real property, including, but not limited to, location within the watershed, the characteristics of capital improvements, both proposed and existing, in any subdivision or other area in the watershed management area or any other special matter affecting the runoff of rainfall, other surface and subsurface drainage, or storm and flood waters from the real property directly or indirectly into the district's facilities.

(c) The district may set reasonable penalties for any delinquencies in the payment of service charges, including without limitation interest on delinquent service charges from

any date due at a rate not exceeding one percent per month, or fraction of a month, reasonable attorney fees, and other costs of collection.

(3) The district shall prescribe and revise a schedule of any service charges it imposes or collects. The schedule shall comply with the terms of any contract of the district and shall ensure that the service charges of the district are adequate, taking into account other available district revenues and anticipated service charge delinquencies, to:

(a) Pay all facilities operation and maintenance expenses;

(b) Pay punctually the principal of and interest on any bonds payable from revenues of facilities;

(c) Maintain required reserves or sinking funds; and

(d) Pay all expenses incidental to facilities or projects, including, but not limited to, contingencies and acquisition, improvement, and equipment costs, required by the terms of any contract or otherwise deemed necessary or desirable by the district.

(4) The district shall keep a copy of any schedule of service charges in effect on file at its principal office and shall allow inspection of the schedule whenever the office is open for business.

(5) Except as otherwise provided in a contract or agreement entered into by the district as authorized by section 32-11.5-205 (4) (e), only the board may prescribe, supervise, or regulate the performance of services pertaining to facilities or set or alter service charges.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 859, § 1, effective April 30.

PART 4

TAXES AND BONDS

32-11.5-401. Taxes. Subject to the election requirements specified in section 32-11.5-205 (2) (c) (II) and the limitations specified in part 3 of article 1 of title 29 C.R.S., the district may levy and collect ad valorem taxes, levied at a rate of no more than five mills, on and against all taxable property within the district. The proceeds of ad valorem taxes may be used for any authorized purpose of the district including, but not limited to, the funding of reserve funds to be used to repay bonds issued pursuant to section 32-11.5-402, defray maintenance, operation, and depreciation costs of facilities, and improve facilities.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 861, § 1, effective April 30.

32-11.5-402. Bonds. (1) Subject to the election requirements specified in section 32-11.5-205 (2) (c) (II), the district may, from time to time, issue bonds for any of its corporate purposes. The bonds shall be issued pursuant to a resolution of the board or a trust indenture, shall not be secured by an encumbrance, mortgage, or other pledge of real or personal property of the district, and shall be payable from any district revenues unless the bond resolution or trust indenture specifically limits the source of district revenues from which the bonds are payable.

(2) Bonds may be executed and delivered by the district at such times, may be in such form and denominations and include such terms and maturities, may be subject to optional or mandatory redemption prior to maturity with or without a premium, may be in fully registered form or bearer form registrable as to principal or interest or both, may bear such conversion privileges, may be payable in such installments and at such times not exceeding forty years from the date thereof, may be payable at such place or places whether within or without the state, may bear interest at such rate or rates per annum, which may be fixed or vary according to index, procedure, or formula or as determined by the district or its agents, without regard to any interest rate limitation appearing in any other law of the state, may be subject to purchase at the option of the holder or the district, may be evidenced in such manner, may be executed by such officers of the district, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which

may be either of an officer of the district or of an agent authenticating the same, may be in the form of coupon bonds that have attached interest coupons bearing a manual or facsimile signature of an officer of the district, and may contain such provisions not inconsistent with this article, all as provided in the resolution of the district under which the bonds are authorized to be issued or as provided in a trust indenture between the district and any bank or trust company having full trust powers.

(3) Bonds may be sold at public or private sale at such price or prices, in such manner, and at such times as determined by the board, and the board may pay all fees, expenses, and commissions that it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the district. Any outstanding bonds may be refunded by the district pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments.

(4) The resolution or a trust indenture authorizing the issuance of the bonds may pledge all or a portion of the special fund, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds as the district deems appropriate, may set forth the rights and remedies of the holders of any of the bonds, and may contain provisions that the district deems appropriate for the security of the holders of the bonds, including, but not limited to, provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds, including the redemption price or the purchase price.

(5) Any lawful pledge of moneys or other property made by the district or by any person or governmental unit with which the district contracts shall be valid and binding from the time the pledge is made. The special fund or other property so pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party regardless of whether the claiming party has notice of the lien. The instrument by which the pledge is created need not be recorded or filed.

(6) Neither the members of the board, employees of the district, nor any person executing the bonds shall be liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

(7) The district may purchase its bonds out of any available moneys and may hold, pledge, cancel, or resell such bonds subject to and in accordance with agreements with the holders thereof.

(8) The state hereby pledges and agrees with the holders of any bonds and with those parties who enter into contracts with the district pursuant to this article that the state will not limit, alter, restrict, or impair the rights vested in the district or the rights or obligations of any person with which it contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of bonds until the bonds have been paid or until adequate provision for payment has been made. The district may include this provision and undertaking for the state in its bonds.

(9) All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued under this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in bonds only if the bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(10) The income or other revenues of the district, all properties at any time owned by the district, bonds, and the transfer of and the income from bonds shall be exempt from all taxation and assessments in the state. In the resolution or indenture authorizing bonds, the district may waive the exemption from federal income taxation for interest on the bonds. Bonds shall be exempt from the provisions of article 51 of title 11, C.R.S.

PART 5

IMPROVEMENT DISTRICTS AND SPECIAL ASSESSMENTS

32-11.5-501. Improvement districts, special assessments, and bonds - general authority of district. Subject to the election requirements specified in section 32-11.5-205 (2) (c) (II) and the procedural and other requirements of this part 5, the district may create one or more improvement districts, levy special assessments against all of the assessable property in an improvement district, and cause the assessments to be collected to defray wholly or in part the cost of acquiring, constructing, or improving one or more projects. Subject to the election requirements specified in section 32-11.5-205 (2) (c) (II), the district may also issue bonds to be repaid from the revenues generated by special assessments and, if applicable, any other moneys pledged to secure the payment of the bonds.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 864, § 1, effective April 30.

32-11.5-502. Initiating procedure. (1) The procedure for acquiring, constructing, or improving any project to be funded in whole or in part with revenues generated by special assessments can be initiated by the provisional order method described in subsection (2) of this section or the petition method described in subsection (3) of this section.

(2) (a) Whenever the board determines that the interest of the district requires any project to be funded in whole or in part with revenues generated by special assessments, the board, by resolution approved by a supermajority vote as specified in section 32-11.5-204 (1) (b) (II), shall direct the engineer to prepare:

(I) Preliminary plans showing:

(A) A typical section of the contemplated project; and

(B) The types of material, approximate thickness, and width;

(II) A preliminary estimate of the total cost of the project; and

(III) An assessment plat showing:

(A) The area to be assessed; and

(B) The amount of maximum benefits estimated to be assessed against each tract.

(b) The resolution of the board shall describe the project in general terms but may provide for one or more types of construction, and the engineer shall separately estimate the cost of each type of construction. The estimate may be made in a lump sum or by unit process, as deemed most appropriate by the engineer for the completed facilities.

(c) The resolution of the board shall state:

(I) What part or portion of the expense of the described project is of special benefit and is to be paid for with revenues generated by special assessments;

(II) What part of the project, if any, has been or is proposed to be funded with revenues generated from sources other than special assessments; and

(III) The basis by which the cost of the project will be apportioned and special assessments will be levied.

(d) In case a special assessment is not to be made according to front feet, the resolution of the board shall:

(I) By apt description designate the improvement district, including the tracts to be assessed;

(II) Describe definitely the location of the project; and

(III) State that the special assessment is to be made upon all the tracts benefited by the project proportionately to the benefits received.

(e) In case a special assessment is to be upon the abutting property on a frontage basis, it shall be sufficient for the resolution so to state and to define the location of the project to be made.

(f) The resolution of the board need not describe in detail each particular tract to be assessed but may simply designate the property, improvement district, or location so that the various tracts to be assessed can be determined to be within the proposed improvement district.

(g) The engineer shall forthwith prepare and file with the district:
(I) The preliminary plans;
(II) The preliminary estimate of cost; and
(III) The assessment plat.
(h) Upon the filing of the plans, preliminary estimate of cost, and plat, the board shall examine the same. If the board finds the plans, estimate, and plat to be satisfactory, it shall make a provisional order by resolution to the effect that the project shall be acquired, constructed, or improved.

(3) (a) The owner or owners of tracts to be assessed in a proposed improvement district for not less than ninety-five percent of the entire cost of a project, comprising more than fifty percent of the area of the proposed improvement district and also comprising a majority of the landowners residing in the proposed improvement district, may, by written petition, initiate the acquisition, construction, or improvement of any assessment project that the board is authorized to initiate subject to the following limitations:

(I) The board may incorporate the project in one or more existing or alternative proposed improvement districts;

(II) The board is not required to proceed with the construction, acquisition, or improvement of the project or any part thereof if, after holding a provisional order hearing pursuant to section 32-11.5-507, the board determines that it is not in the public interest for the proposed project or part thereof to go forward; and

(III) A particular kind of project, material therefor, or a part thereof need not be constructed, acquired, improved, or located as provided in the petition if the board determines that it is not in the public interest.

(b) The board is not required to take any further action regarding a petition if the board determines by resolution that the construction, acquisition, or improvement of the proposed project is probably not feasible, the resolution requires a cash deposit or a pledge of property in at least an amount designated by the board probably to be sufficient to defray the costs likely to be incurred by the board before and during the attempted acquisition, construction, or improvement of the project designated in the petition, and the deposit or pledge is not provided to the board within twenty days after mailed notice is given to the person presenting the petition or after one publication in a newspaper of general circulation in the district of a notice of the resolution's adoption and of its content in summary form. The board may subsequently, as it deems necessary, require one or more additional deposits or pledges as a condition precedent to the continuation of action by the district.

(c) Whenever a deposit or pledge is made and thereafter the board determines that acquisition, construction, or improvement of a project proposed by petition is not feasible within a reasonable period, the board may require that all or any portion of the costs incurred by the district in connection with the petition or project be defrayed from the deposit or proceeds of the pledged property unless the petitioners or other interested persons defray the costs within twenty days after the board determines the amount to be defrayed by resolution.

(d) Any surplus moneys remaining from a deposit or pledge shall be returned by the district to the person making the same.

(4) Except as otherwise provided in subsection (3) of this section, upon the filing of a petition pursuant to said subsection (3), the board shall proceed in the same manner as provided in subsection (2) of this section for proceedings initiated by the board.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 864, § 1, effective April 30.

32-11.5-503. Combination of projects. (1) More than one project may be combined in an improvement district if the board determines that the combination will be efficient and economical.

(2) If projects combined in one improvement district are separate and distinct due to substantial differences in their character or location or other substantial differences, each project shall be considered as a separate assessment unit or quasi-improvement district for the purpose of petition, remonstrance, and assessment.

(3) If projects are combined, the board shall designate the project and the area constituting each assessment unit, and, in the absence of arbitrary and capricious action or abuse of discretion, its determination that there is or is not such a combination and its determination of the project and the area constituting the assessment unit shall be final and conclusive.

(4) The costs of acquiring, constructing, or improving each project shall be segregated for the levy of assessments, and an equitable share of the incidental costs shall be allocated to each assessment unit.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 867, § 1, effective April 30.

32-11.5-504. Effect of estimates. (1) Unless otherwise specifically provided in this article, no estimate of the cost of a project required or authorized in this part 5 shall constitute a limit on the cost or a limit on the powers of the board or of any officers, agents, or employees of the district.

(2) No assessment shall exceed the amount of the estimate of maximum special benefits from the project to any tract assessed.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 867, § 1, effective April 30.

32-11.5-505. Fixing hearing and notice. (1) In a resolution constituting a provisional order pursuant to section 32-11.5-502 (2), the board shall set a time at least twenty days after the date of the resolution and a place at which the owners of the tracts to be assessed or any other interested persons may appear before the board and be heard as to the propriety and advisability of acquiring, constructing, or improving the provisionally ordered project.

(2) Notice of the meeting required by subsection (1) of this section shall be given by publication and by mail to all owners of record of the tracts to be assessed.

(3) The notice required by subsection (2) of this section shall include the following information:

(a) The kind of project proposed;

(b) The estimated cost of the project and the portion, if any, to be paid from sources other than special assessments;

(c) The basis for apportioning the special assessments, which shall be in proportion to the special benefits derived to each of the several tracts comprising the assessable property and on a front-foot, area, zone, or other equitable basis;

(d) The number of installments and the time in which the special assessments are payable;

(e) The maximum rate of interest on unpaid installments of special assessments;

(f) The area of the improvement district to be assessed;

(g) The time and place at which the board will consider the ordering of the proposed project and hear all complaints, protests, and objections that may be made in writing and filed with the district at least three days in advance or may be made verbally at the hearing by the owner of any tract to be assessed or by any other interested person;

(h) The fact that the description of the tracts to be assessed, the maximum amount of benefits estimated to be conferred on each tract, and all related proceedings are on file and may be examined at main offices of the district during business hours by any interested person; and

(i) A statement that regardless of the basis used for apportioning assessments, in cases of wedge-shaped, V-shaped, or any other irregular-shaped tracts, an amount apportioned thereto shall be in proportion to the special benefits thereby derived.

(4) The district shall maintain proof of publication and proof of mailing of the notice required by subsections (1) and (2) of this section and described in subsection (3) of this

section in the records of the district until any special assessments imposed to fund the project that is the subject of the provisional order have been paid in full.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 867, § 1, effective April 30.

32-11.5-506. Subsequent modifications. (1) Except as otherwise provided in subsection (2) of this section, the board may modify or rescind by resolution any board action relating to the creation of an improvement district or the imposition of special assessments at any time before adopting a resolution creating the improvement district pursuant to section 32-11.5-509 and authorizing a project to be funded in whole or in part with revenues generated by special assessments.

(2) No substantial change in a proposed improvement district, details, preliminary plans, specifications, or estimates shall be made after the first publication or mailing of notice to property owners, whichever occurs first; except that the board may delete a portion of a project or any tract from the proposed improvement district or from any assessment unit, and the engineer may make minor changes in time, plans, and materials for a project at any time before its completion.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 868, § 1, effective April 30.

32-11.5-507. Provisional order hearing. (1) At the provisional order hearing, any property owners interested in a proposed project to be funded in whole or in part with revenues generated by special assessments may present their views to the board. The board may adjourn the hearing from time to time.

(2) If the board determines, after considering all views presented at the provisional order hearing, that it is not in the public interest that the proposed project or a portion of the proposed project go forward, the board shall order by resolution that the proceeding for the rejected project or portion shall stop. The rejected project or portion may only resume if the board adopts a new resolution.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 869, § 1, effective April 30.

32-11.5-508. Post-hearing procedure. (1) After the provisional order hearing, the board shall determine whether to form the proposed improvement district and any assessment unit within the proposed improvement district.

(2) If the board desires to form the proposed improvement district but also desires to modify the district, the board shall direct the engineer to prepare and present to the board:

(a) A revised and detailed estimate of the total cost, including without limitation the cost of acquiring, constructing, or improving each proposed project. Unless otherwise specifically provided in this article, the revised estimate shall not constitute a limitation for any purpose.

(b) Full and detailed plans and specifications for each proposed project designed to permit and to encourage competition among the bidders if any projects are to be acquired, constructed, or improved by construction contract; and

(c) A revised map and assessment plat showing the location of each proposed project and the tracts to be assessed therefor.

(3) The board, in the resolution creating the improvement district or in a separate resolution, may combine or divide the proposed projects into suitable construction units for the purpose of letting separate and independent contracts, regardless of the extent of any project constituting an assessment unit and regardless of whether or not a portion of the cost of any project is to be defrayed with revenues other than revenues generated by special assessments.

(4) Nothing in this part 5 shall be construed as not requiring the segregation of costs of unrelated improvement programs for assessment purposes.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 869, § 1, effective April 30.

32-11.5-509. Creation of improvement district. (1) When an accurate estimate of cost, full and detailed plans and specifications, and the map and assessment plat are prepared, presented, and are satisfactory to the board, regardless of whether the preliminary estimate of cost, plans and specifications, and map and assessment plat are modified pursuant to section 32-11.5-508 and any required election has been held, the board shall by resolution create the improvement district and order the proposed project to be acquired, constructed, or improved.

(2) The resolution shall prescribe:

(a) The extent of the improvement district and of any assessment within the improvement district by boundaries or by other brief description;

(b) The kind and location of each proposed project;

(c) The amount or the proportion of the total cost to be defrayed by special assessments, the method of levying special assessments, the number of installments, and the times at which special assessments will be payable; and

(d) The character and the extent of any construction units pursuant to section 32-11.5-508 (3).

(3) The engineer may further revise the cost, plans and specifications, and the map and assessment plat for all or any part of a project, and the board may amend the resolution creating the improvement district accordingly prior to letting any construction contract and prior to any property being acquired or any work being done other than by independent contract let by the district.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 869, § 1, effective April 30.

32-11.5-510. Construction contracts. No contract for construction work to acquire or improve the project contemplated shall be made or awarded nor shall the board incur any expense or any liability in relation thereto, except for maps, plats, diagrams, estimates, plans, specifications, and notices, until after the provisional order hearing and notice provided for in this part 5 have been had and given.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 870, § 1, effective April 30.

32-11.5-511. Division of tract. If a tract is divided after a special assessment has been levied and divided into installments and before the collection of all the installments, the board may require the county assessor to apportion the uncollected amounts upon the several parts of the tract so divided proportionally based upon their valuation for assessment for taxes. The apportionment shall be conclusive on all parties, and all subsequent assessments shall be according to the apportionment.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 870, § 1, effective April 30.

PART 6

ANNEXATION

32-11.5-601. Annexation of lands to watershed management area. (1) The territorial limits of the watershed management area may be enlarged by the annexation of additional real property thereto:

- (a) By petition and consent of the fee owner pursuant to sections 32-11.5-602 and 32-11.5-606;
- (b) By petition of the eligible electors pursuant to sections 32-11.5-603, 32-11.5-604, and 32-11.5-606;
- (c) By action initiated by the district pursuant to sections 32-11.5-605 and 32-11.5-606 with the consent of the governing body of each county or municipality that includes any of the real property to be annexed; or
- (d) By petition by the governing body of each county or municipality that includes any of the real property to be annexed.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 870, § 1, effective April 30.

32-11.5-602. Petition of fee owners. (1) The fee owner of any real property contiguous to the territorial limits of the watershed management area and capable of being served with facilities of the district may file with the board a petition in writing seeking the inclusion of the property in the watershed management area.

- (2) The petition authorized in subsection (1) of this section shall:
 - (a) Set forth an accurate legal description of the property owned by the petitioners;
 - (b) State that assent to the annexation of the property is given by the signers thereto, constituting all the fee owners of the property; and
 - (c) Be acknowledged in the same manner required for conveyance of land.
- (3) A fee owner may not withdraw a petition after consideration by the board or file further objections except in the case of fraud or misrepresentation.
- (4) The board shall hear a petition filed pursuant to subsection (1) of this section at an open meeting after publishing notice of the filing of the petition, the place, time, and date of the meeting, and the names and addresses of the petitioners in a newspaper of general circulation in the county or counties in which the real property proposed to be annexed is located.
- (5) The board shall grant a petition by resolution if it determines that the proposed annexation is feasible and in the best interests of the district. The board may determine that annexation of only a portion of the property proposed to be annexed is appropriate.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 871, § 1, effective April 30.

32-11.5-603. Petition of eligible electors. (1) Not less than ten percent or one hundred, whichever number is smaller, of the eligible electors of any real property that is contiguous to the watershed management area and contains twenty-five thousand or more square feet of land may file a petition with the board in writing seeking the annexation of the property to the watershed management area; except that no single tract or parcel or property containing ten acres or more may be included in the watershed management area without the consent of the owner.

- (2) A petition shall describe the area to be annexed and shall be acknowledged in the same manner required for conveyances of land.
- (3) The board shall cause notice of the filing of a petition to be published in a newspaper of general circulation in the county or counties in which the property proposed to be annexed is located, and the notice shall state:
 - (a) That a petition has been filed;
 - (b) The names of the petitioners;
 - (c) A description of the area proposed to be annexed;
 - (d) The place, time, and date of a board hearing on the proposed annexation at which the board will consider the petition and all written objections to the petition; and
 - (e) A statement that all interested persons may appear at the board hearing and show cause in writing why the petition should not be granted.

(4) The eligible electors may not withdraw a petition after consideration by the board or file further objections except in the case of fraud or misrepresentation.

(5) The board shall grant a petition by resolution if it determines that the proposed annexation is feasible and in the best interests of the district.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 871, § 1, effective April 30.

32-11.5-604. Annexation election. (1) If a petition is provisionally granted pursuant to section 32-11.5-602 or 32-11.5-603, the board by resolution shall:

(a) Make an order to that effect;

(b) Direct that the question of inclusion of the real property proposed to be annexed within the watershed management area be submitted to the eligible electors of the area that includes the real property only; and

(c) Designate the secretary of the board as the designated election official to give notice and conduct the election according to the provisions of articles 1 to 13 of title 1, C.R.S.

(2) If a majority of the votes cast on the question at the election favor inclusion, the board shall by resolution enter an order making the real property a part of the watershed management area.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 872, § 1, effective April 30.

32-11.5-605. Annexation initiated by the board. (1) (a) At any time and as a condition to an annexation initiated by the board, the board may adopt a resolution determining that real property proposed for annexation:

(I) Is contiguous to the territorial limits of the watershed management area;

(II) Contains six hundred forty or more acres of land;

(III) Has become urbanized by having a population of at least one thousand persons per square mile and having at least five hundred dwelling units per square mile; and

(IV) Is capable of being served by the facilities of the district.

(b) A resolution adopted pursuant to paragraph (a) of this subsection (1) shall provisionally order the annexation of the real property proposed to be annexed.

(2) The board shall cause notice of the adoption of a resolution pursuant to subsection (1) of this section to be given by publication in a newspaper of general circulation in the county or counties in which the property proposed to be annexed is located, and the notice shall state:

(a) That the resolution has been adopted;

(b) The description of the area proposed to be annexed;

(c) The place, time, and date of a board hearing on the proposed annexation at which the board will consider all written objections to the finalization of the annexation; and

(d) That all interested persons may appear at the board hearing and show cause in writing why the annexation should not be made final.

(3) Prior to the board hearing, the board shall obtain written consent to annex the property from the governing body of each county or municipality that includes any of the real property proposed to be annexed.

(4) If, after the board hearing, the board determines by resolution that the proposed annexation is feasible and in the best interest of the district, the board shall furnish by mail to the director of the division of local government within the department of local affairs copies of both the resolution adopted pursuant to subsection (1) of this section and the post-hearing resolution and shall request that the director approve the annexation.

(5) If the director approves the annexation in writing, the board, upon the receipt of such approval, shall by resolution enter a final order annexing the real property to the district.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 873, § 1, effective April 30.

32-11.5-606. General annexation provisions. (1) The failure of any person in the watershed management area or in an area proposed to be annexed to the watershed management area to file a written objection to a proposed annexation in a properly noticed hearing of the board thereon constitutes the assent of the person to the inclusion in the watershed management area of the area described in the notice of the hearing for annexation.

(2) A determination by the board that a proposed annexation is feasible and in the best interests of the district shall be final, conclusive, and not subject to review.

(3) Whenever the board by resolution enters an order annexing real property to the watershed management area, the board shall file the resolution with:

- (a) The secretary of state;
- (b) The state attorney general;
- (c) The division of local government; and
- (d) The county clerk and recorder, county assessor, and county treasurer of each county in which the annexed real property is located.

(4) A board resolution annexing real property to the watershed management area is a final order and shall finally and conclusively establish the annexation of the real property to the watershed management area against all persons; except that the attorney general, on behalf of the state, within thirty days of the filing of the resolution with the attorney general as required by paragraph (b) of subsection (3) of this section, may file a proceeding in the nature of quo warranto against the annexation. An annexation shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (4).

(5) After the date of the final annexation of real property to the watershed management area by resolution of the board, the annexed real property shall be liable for its proportionate share of existing bonded indebtedness of the district but shall not be liable for any taxes or service charges levied or assessed prior to its annexation to the watershed management area. The annexation of the real property to the watershed management area shall not be made subject to or contingent upon the payment or assumption of any penalty, toll, or charge, other than the taxes and service charges that are uniformly made, assessed, or levied within the watershed management area except as otherwise expressly provided in this article.

(6) The district and the owner of any real property sought to be annexed to the watershed management area may enter into an agreement with respect to the terms and conditions on which the property may be annexed.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 874, § 1, effective April 30.

PART 7

MISCELLANEOUS

32-11.5-701. Budgets, accounts, audits, and construction contracting. (1) The district shall adopt a budget for each fiscal year, shall maintain accounts, and shall cause audits to be made pertaining to the financial affairs of the district as respectively provided in the "Local Government Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S., the "Colorado Local Government Uniform Accounting Law", part 5 of article 1 of title 29, C.R.S., and the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, C.R.S.

(2) The district shall be subject to the provisions of article 91 of title 24, C.R.S., regarding construction contracting. In accordance with section 24-101-105 (2), C.R.S., the district may adopt all or any part of the "Procurement Code", articles 101 to 112 of title 24, C.R.S. The district may also award contracts using an integrated project delivery method pursuant to the "Integrated Delivery Method for Special District Public Improvements Act", part 18 of article 1 of this title.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 875, § 1, effective April 30.

32-11.5-702. No action maintainable. An action or proceeding at law or in equity to review any acts or proceedings or to question the validity or enjoin the performance of any act or proceedings or the issuance of any bonds or for any other relief against or from any acts or proceedings done under this article, whether based upon irregularities or jurisdictional defects, shall not be maintained unless commenced within thirty days after the performance of the act or proceedings and is thereafter perpetually barred.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 875, § 1, effective April 30.

32-11.5-703. Early hearings. Any civil action in which there may arise a question regarding the validity of any power granted in this article or of any other provision of this article shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 875, § 1, effective April 30.

32-11.5-704. Freedom from judicial process. (1) Execution or other judicial process shall not issue against any property of the district authorized in this article, nor shall any judgment against the district be a charge or lien upon its property.

(2) Subsection (1) of this section does not apply to or limit the right of any bondholder, trustee, or assignee of a bondholder, the federal government when it is a party to any contract with the district, or any other obligee under this article to foreclose, otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the district on the proceeds of any taxes, assessments, revenues, or any other moneys of the district.

Source: L. 2009: Entire article added, (SB 09-141), ch. 194, p. 875, § 1, effective April 30.

ARTICLE 12

Rail District Act

32-12-101.	Short title.	32-12-113.	Revenues of rail district - collection.
32-12-102.	Legislative declaration.	32-12-114.	Levy and collection of taxes.
32-12-103.	Definitions.	32-12-115.	Power to issue revenue bonds - terms.
32-12-104.	Territorial requirements for rail districts.	32-12-116.	Power to incur indebtedness - interest - maturity - denominations.
32-12-105.	Petition for formation.	32-12-117.	Debt question submitted to eligible electors - resolution.
32-12-106.	Court appoints organizational commission and election committee.	32-12-118.	Effect - subsequent elections.
32-12-107.	Rail district organizational commission.	32-12-119.	Correction of faulty notices.
32-12-108.	Election for formation - acquisitions - services - mill levy limit - board.	32-12-120.	Refunding bonds.
32-12-109.	Board of directors.	32-12-121.	Anticipation warrants.
32-12-110.	General powers.	32-12-122.	Inclusion of additional territory in existing rail district - procedures.
32-12-111.	Powers, to be exercised without franchise - condition.	32-12-123.	Grant of operating privileges and use of railroad and facilities.
32-12-112.	Limitations.		

32-12-124.	Arrangements for operating and providing railroad service.	32-12-126.	Disposition of property of rail district.
32-12-125.	Public purpose and necessity for acquisitions.	32-12-127.	Dissolution.
		32-12-128.	Early hearings.
		32-12-129.	Elections.

32-12-101. Short title. This article shall be known and may be cited as the “Rail District Act of 1982”.

Source: L. 82: Entire article added, p. 503, § 1, effective April 23.

32-12-102. Legislative declaration. Any loss of railroad service within certain regions of Colorado may seriously interfere with the flow of commerce within this state, and the general assembly hereby declares that the following measures are adopted to allow for the formation of rail districts permitting local participation in the ownership of certain railroad properties and in the conduct of providing railroad services, subject to the limitations contained in this article.

Source: L. 82: Entire article added, p. 503, § 1, effective April 23.

32-12-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Board” means the board of directors of a rail district.
- (2) “Chairman” means the chairman of the board.
- (3) “County” means a home rule or statutory county and includes a city and county.
- (3.5) “Eligible elector” or “elector” of a rail district means an individual qualified pursuant to section 32-1-103 (5).
- (4) “Municipality” means a home rule or statutory city or town, a territorial charter city, or a city and county.
- (5) “Population” means the population as estimated by the organizational commission or secretary of state, based upon census tract data or other officially compiled data.
- (6) “Publication” means printing, once a week for three consecutive weeks, by three publications in one or more newspapers of general circulation in the rail district or proposed rail district if there is such a newspaper and, if not, then in a newspaper in the county in which the rail district or proposed rail district is located. It is not necessary that publication be made on the same day of the week in each of the three weeks, but not less than twelve days, excluding the day of the first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.
- (7) (Deleted by amendment, L. 92, p. 918, § 183, effective January 1, 1993.)
- (8) “Rail district” means a special district which may acquire and operate railroad facilities subject to the following:
 - (a) Any such purchase of railroad facilities shall be:
 - (I) From a railroad which is subject to the jurisdiction of a federal bankruptcy court pursuant to federal bankruptcy laws; or
 - (II) From a railroad that has been granted the right to abandon such railroad facilities by the federal surface transportation board; and
 - (III) Limited to a railroad facility which has been in operation within the five years prior to such purchase by a rail district.
 - (b) Upon acquisition, any such railroad facility shall be operated to haul freight or passengers or both.
 - (c) No rail district may be formed containing any area of the regional transportation district, created by article 9 of this title.
 - (9) “Railroad facilities” or “facilities” means all property either real, personal, or mixed which is used or useful in the conduct of railroad services.
 - (10) “Rates, fees, tolls, or charges” shall apply only to rates, fees, tolls, or charges required by a rail district and shall not apply to rates, fees, tolls, or charges which are

prescribed by federal or other state laws or regulations and which are subject to the jurisdiction of federal or other state agencies.

(11) "Regular special district election" means the election held on the Tuesday succeeding the first Monday of May in every even-numbered year, as provided in section 32-1-103 (17), for the purpose of electing members of the board and for submission of other public questions, if any.

(12) "Secretary" means the secretary of the board.

(13) "Service" means a function or service which a rail district is authorized to provide in accordance with this article.

(14) "Special election" means any election called by the board for submission of public questions, which election shall be held on a Tuesday other than a regular election day.

Source: L. 82: Entire article added, p. 503, § 1, effective April 23. L. 92: (3.5) added and (7), (11), and (14) amended, p. 918, § 183, effective January 1, 1993. L. 2001: (8)(a)(II) amended, p. 1276, § 43, effective June 5.

32-12-104. Territorial requirements for rail districts. (1) A rail district may include any or all of the territory of one or more counties, as may be proposed, if each county has some contiguity with another county within the rail district or proposed rail district.

(2) The boundaries of any rail district shall not be such as to create any enclave.

Source: L. 82: Entire article added, p. 505, § 1, effective April 23.

32-12-105. Petition for formation. (1) The formation of a rail district shall be initiated by a petition signed by eligible electors of the proposed rail district in number not less than five percent of the votes cast in the proposed rail district for all candidates for the office of secretary of state at the last preceding general election. The petition shall be filed with the district court of the county which has the largest population within the proposed rail district and a copy thereof delivered to the organizational commission upon its appointment by the court. In addition, a copy thereof shall also be filed with the division of local government in the department of local affairs.

(2) (a) The petition shall state the name proposed for the rail district, shall contain a description of the territory to be included within the boundaries of such rail district, shall list the counties and municipalities or portions thereof to be included within the rail district, and shall also state the proposed rail facilities to be acquired and operated.

(b) Upon the filing of the petition, the court shall fix a time for a hearing, which shall be not less than twenty nor more than forty days after the petition is filed. At least seven days prior to the hearing date, the clerk of the court shall give notice by publication of the pendency of the petition and of the time and place of the hearing. At the hearing, the court shall determine whether the requisite number of eligible electors has signed the petition. No petition with the requisite signatures shall be declared void on account of minor defects, and the court may at any time permit the petition to be amended to correct any defects.

(3) If it appears at the conclusion of the hearings that the petition conforms with the requirements of this article, the court, by order entered of record, shall appoint a rail district organizational commission according to the procedures required under section 32-12-106.

(4) At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, or a cash deposit made sufficient to pay all expenses connected with the proceedings in case the organization of the rail district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and, upon failure of the petitioner to execute or deposit the same, the petition shall be dismissed.

Source: L. 82: Entire article added, p. 505, § 1, effective April 23. L. 92: (1) and (2)(b) amended, p. 919, § 184, effective January 1, 1993.

32-12-106. Court appoints organizational commission and election committee.

(1) The court shall appoint an odd number of at least five rail district organizational commission members selected from the membership of the governing bodies of the counties and municipalities having territory within the boundaries of the proposed rail district, subject to the following limitation: If the proposed rail district is comprised of more than one county or portion thereof, no more than a majority of the members of the organizational commission shall be residents of any one county or any one municipality, and at least one member shall be appointed from every county situated wholly or partially within the boundaries of the proposed rail district. If the proposed rail district is within the boundaries of only one county and includes one or more municipalities, at least two members shall be residents of one or more municipalities within the county.

(2) (a) At the hearing specified in section 32-12-105 (2) (b), the court shall appoint the county clerk and recorder of each county located wholly or partially within the boundaries of the proposed rail district as members of an election committee to administer the election provided for in the formation of such rail district and shall within seven days of such appointment notify said county clerk and recorders of their appointments.

(b) A majority of the county clerk and recorders shall constitute a quorum. A chairman shall be elected by the county clerk and recorders at their first meeting, who may call additional meetings as necessary to accomplish the purposes of the election committee.

Source: L. 82: Entire article added, p. 505, § 1, effective April 23.

32-12-107. Rail district organizational commission. (1) The rail district organizational commission appointed pursuant to section 32-12-106 shall meet within twenty days after its appointment on a date designated by the district court. The rail district organizational commission shall elect a chairman and a vice-chairman from among its membership. Further meetings of the commission shall be held upon call of the chairman or a majority of the members of the commission. All meetings shall be open to the public. A majority of the commission shall constitute a quorum. The commission may adopt other such rules for its operations and proceedings as it deems necessary or desirable. Members of the commission shall receive no compensation but may be reimbursed for necessary expenses incurred during the performance of their official duties as organizational costs. Such organizational costs may be paid from the bond or cash deposit provided in section 32-12-105 (4) if the organization is not effected or by the rail district if the organization is effected.

(2) (a) The rail district organizational commission shall determine which rail facilities are to be acquired and rehabilitated and what rail services are to be provided, together with the maximum ad valorem tax mill levy, if any, necessary to support the acquisition and rehabilitation by the proposed rail district upon its formation, subject to the approval of the eligible electors as provided in this article.

(b) The rail district organizational commission shall determine the manner in which the railroad facility acquisitions and services are to be submitted for consideration by the eligible electors at the formation election to be called by the district court, as provided in section 32-12-108. Prior to the submission of the report to the district court, pursuant to paragraph (a) of subsection (3) of this section, the commission shall conduct a public hearing and cause notice to be published, stating the time and place of the public hearing, and shall apprise the general public of its right to attend the hearing and make comments regarding the proposals to be placed on the ballot.

(3) (a) Within ninety days after its initial meeting, the commission shall present to the district court a report listing proposed railroad facilities to be acquired and proposed services to be considered by the eligible electors in each county included in the rail district. A majority vote of the members of the rail district organizational commission shall determine the proposed railroad facilities acquisitions, the proposed services, and the maximum mill levy that shall be presented to the eligible electors for their approval or rejection.

(b) The commission report shall also divide the rail district into five zones of approximately equal population in accordance with the provisions of section 32-12-109 for the

purpose of electing candidates to the board. The board shall consist of seven members, including one member from each of the five zones and two at-large members. Such zones shall be numbered consecutively starting with number one, and the terms of office shall be as specified in section 32-12-109.

(c) The commission shall specify the date for a special election for formation of the rail district, but, if the organizational commission's report is completed not more than one hundred eighty days and not less than eighty days before the next general election, the election may be held jointly or concurrently with the next general election.

(d) The rail district organizational commission shall be dissolved as of the day on which the election is held pursuant to section 32-12-108.

Source: L. 82: Entire article added, p. 506, § 1, effective April 23. L. 92: (2), (3)(a), and (3)(c) amended, p. 919, § 185, effective January 1, 1993.

32-12-108. Election for formation - acquisitions - services - mill levy limit - board.

(1) (a) Within seven days after receipt of the rail district organizational commission's report, the district court shall direct the election committee, as provided in section 32-12-106 (2), to conduct an election on the date designated by the organizational commission for the purpose of deciding whether a rail district is to be formed, to provide an opportunity for the eligible electors to approve the proposed railroad facilities to be acquired, the maximum mill levy, and the services proposed for the rail district, and to elect the board of directors of the rail district.

(b) The court shall direct the election committee to publish notice of the election setting forth the list of proposed railroad facilities acquisitions, proposed services, and maximum mill levy and to conduct the election pursuant to articles 1 to 13 of title 1, C.R.S.

(2) (Deleted by amendment, L. 92, p. 920, § 186, effective January 1, 1993.)

(3) At the election, eligible electors shall "approve" or "disapprove" the formation of the rail district, the railroad facilities proposed to be acquired, the services proposed, and the maximum mill levy and shall elect candidates to serve on the board of directors of the rail district. The candidate receiving the highest number of votes within each zone shall be elected, and the two candidates receiving the highest number of votes within the entire rail district shall be elected members at large. In the event of tie votes for the last available vacancy for the board, the committee shall determine by lot the person who shall be elected. No rail district may be formed, no facility acquired, no service established, and no maximum mill levy established unless approved by a majority of the eligible electors voting thereon in each county, or portion thereof, within the rail district.

(4) Within seven days following the election, the committee shall certify the results of the election to the court. If a majority of the eligible electors in each county, or portion thereof, voting thereon approve formation, the court shall declare, by order entered of record, that the rail district is formed in the corporate name designated in the petition and shall designate those railroad facilities to be acquired, the services to be provided, and the maximum mill levy which were authorized by a majority of the eligible electors voting thereon in each county, or portion thereof, at the election. Upon the filing with the court of the oath of office of members elected to the board, the court, by order entered of record, shall declare the members of the board elected and qualified, and the formation shall be complete. At that time, the election committee shall be dissolved. The board shall be charged with acquiring, rehabilitating, and operating those approved facilities in accordance with this article.

(5) The entry of an order forming a rail district shall finally and conclusively establish its regular formation against all persons except the state of Colorado, which may commence an action in the nature of quo warranto, within thirty-five days after entry of such order, and not otherwise. The formation of the rail district shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized in this section.

(6) All necessary expenses for the elections and other proceedings conducted pursuant to sections 32-12-106 and 32-12-107 and this section, including the expenses and reimbursements for the organizational commission, shall be paid from the bond or cash deposit

required pursuant to section 32-12-105 (4) if the organization is not effected or by the rail district if the organization is effected.

(7) Within fifteen days after the entry of the order forming a rail district, the clerk of the court shall file a copy of the decree with the board of county commissioners and the assessor of each county, or portion thereof, within the rail district and with the division of local government.

Source: **L. 82:** Entire article added, p. 507, § 1, effective April 23. **L. 92:** (1) to (4) amended, p. 920, § 186, effective January 1, 1993. **L. 94:** (1)(b) amended, p. 1644, § 72, effective May 31. **L. 98:** (1)(b) amended, p. 827, § 47, effective August 5. **L. 2012:** (5) amended, (SB 12-175), ch. 208, p. 882, § 151, effective July 1.

Editor's note: Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (5) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

32-12-109. Board of directors. (1) The governing body of the rail district shall be a board of directors in which all legislative power of the rail district is vested. The board shall consist of seven members, five of whom shall reside in and be elected by the eligible electors of the respective zones and two of whom shall be elected at large. Of those members first elected, the terms for representatives from odd-numbered zones and the at-large member receiving the greater number of votes shall continue until their successors are elected at the second regular special district election thereafter and are qualified, and the terms for those elected from even-numbered zones and the other at-large member shall continue until their successors are elected at the first regular special district election thereafter and are qualified. Thereafter, all terms shall be for four years. Any eligible elector of the rail district who resides in the rail district shall be eligible to hold office. Notwithstanding any provision in the charter of any municipality or county to the contrary, mayors, councilmen, trustees, and county commissioners may additionally hold elective office with the rail district and be compensated as provided in this section.

(2) At least ninety days prior to the first regular special district election after the formation of the rail district, the board may change the boundary of any board of director zone within the rail district. Thereafter, the boundaries may be changed no more frequently than every four years or after announcement of the results of a decennial census. The board shall zone only by resolution passed by a majority of the members elected to the board, and any rezoning shall be such as to provide compact zones of approximately equal population. No rezoning shall extend or shorten the term of office of any member of the board.

(3) The board has power, by appointment, to fill all vacancies on the board, and the person so appointed shall hold office until the next regular special district election and until a successor is elected and qualified. Any person appointed to represent a zone shall reside in the zone in which the vacancy occurred. If the term of the member creating the vacancy extends beyond the next regular special district election, the election shall be for the unexpired term.

(4) The board shall elect a chairman, vice-chairman, secretary, and such other officers as it deems necessary. The chairman and vice-chairman shall be members of the board. The board may appoint or contract for a chief administrator, who shall serve at the pleasure of the board. The board shall prescribe by resolution the duties of said officers pursuant to the powers granted in this article. In addition to other powers provided by resolution, the chairman shall preside over meetings of the board and shall vote as a member of the board.

(5) The board may provide by resolution for the compensation of its members which shall be the same per diem compensation as provided in section 2-2-307, C.R.S., for members of interim legislative committees for each day a member is necessarily engaged in the business of the district, in addition to the reasonable and necessary expenses incurred by each member while so engaged. Except for the initial board, the compensation of a member shall not be increased nor diminished during his term of office.

(6) Except as specifically provided otherwise, a majority of board members shall constitute a quorum, and a majority of the members elected to the board shall be necessary

for any action taken by the board; except that a majority of a quorum may adjourn from day to day.

(7) In addition to any acts of the board specifically required to be accomplished by resolution, any action adopting or revising a budget or establishing the administrative organization and structure shall be passed by resolution. At least six days shall elapse between introduction and final passage of a resolution. Such resolution shall not take effect and be enforced until the expiration of thirty days after final passage except resolutions calling for special elections or those necessary to the immediate preservation of the public health or safety, which shall contain the reasons making the same necessary in a separate section. All other actions of the board may be accomplished by motion.

(8) Any board member may be recalled from office pursuant to the provisions and subject to the conditions of sections 32-1-906 and 32-1-907.

(9) It is the duty of the board to comply with the provisions of parts 1, 5, and 6 of article 1 of title 29, C.R.S. It is the further duty of the board to publish the results of its annual audit statement or report which shall be certified by the person making the audit, or by the board if unaudited, in one issue of a newspaper of general circulation in the rail district. Such publication shall be no later than thirty days following completion of the audit statement or report.

(10) The fiscal and budget year for all rail districts organized or operating under the provisions of this article shall be from January 1 through December 31 of each year.

(11) All special and regular meetings of the board shall be held at locations which are within the boundaries of the rail district or which are within the boundaries of any county in which the rail district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (11) may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (11) and further stating the date, time, and place of such meeting.

Source: L. 82: Entire article added, p. 508, § 1, effective April 23. L. 90: (11) added, p. 1500, § 10, effective July 1. L. 92: (1) to (3) amended, p. 921, § 187, effective January 1, 1993.

32-12-110. General powers. (1) The rail district shall be a body corporate and a political subdivision of the state, and the board has the following general powers:

(a) To have and use a corporate seal;

(b) To sue and be sued and be a party to suits, actions, and proceedings. The provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., shall be applicable to any rail district, or employee thereof, formed under this article.

(c) To enter into contracts and agreements affecting the affairs of the rail district and to accept all funds resulting therefrom pursuant to the provisions and limitations of part 2 of article 1 of title 29, C.R.S.;

(d) To contract with private persons, associations, or corporations for the provision of any service related to the operations of the rail district within or without its boundaries and to accept all funds and obligations resulting therefrom;

(e) To borrow money and incur indebtedness and other obligations and to evidence the same by certificates, notes, or debentures and to issue general obligation or revenue bonds, or any combinations thereof, in accordance with the provisions of this article;

(f) To refund any bonded or other indebtedness or special obligations of the rail district without an election in accordance with the provisions and limitations of this article;

(g) To acquire, dispose of, and encumber real and personal property, including, without limitation, rights and interests in property, including leases and easements, necessary to accomplish the purposes of the rail district;

(h) To acquire, construct, equip, operate, rehabilitate, and maintain those rail facilities as authorized in section 32-12-108 to accomplish the purposes of the rail district;

(i) To operate such acquired facility itself or subcontract such operation to a private or common carrier;

(j) To have the management, control, and supervision of all the business affairs and properties of the rail district;

(k) To hire and retain agents, employees, engineers, attorneys, and financial or other consultants and to provide for the powers, duties, and qualifications thereof;

(l) To construct, establish, and maintain works and facilities in, across, or along any easement dedicated to a public use, or any public street, road, or highway, subject to the provisions of section 32-12-111, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Colorado, and to construct, establish, and maintain works and facilities in, across, or along any stream of water or watercourse; however, in the exercise of such powers, the rail district shall not displace or force the relocation of public utility facilities except by agreement between the district and the public utility;

(m) To provide for the revenues needed to finance the rail district, subject to the limitations of this article; to fix and from time to time increase or decrease and to collect rates, fees, tolls, and other service charges pertaining to the services of the rail district, including without limitation minimum charges and charges for availability of the facilities or services relating thereto; to pledge such revenues for the payment of securities; and to enforce the collection of such revenues by civil action or by any other means authorized by law;

(n) To adopt and amend bylaws setting forth rules of procedure for the conduct of its affairs and providing for the administrative organization and structure of the rail district, consistent with this article;

(o) To adopt by resolution regulations not inconsistent with state law which are necessary, appropriate, or incidental to any authorized service provided by the rail district. Said regulations shall be compiled and kept by the secretary so as to be readily available for public inspection.

(p) To appoint citizen advisory committees to assist and advise with respect to services and powers of the rail district;

(q) To accept on behalf of the rail district gifts, grants, and conveyances upon such terms and conditions as the board may approve;

(r) To have and exercise all rights and powers necessary to or implied from the powers granted in this article.

Source: L. 82: Entire article added, p. 510, § 1, effective April 23.

32-12-111. Powers to be exercised without franchise - condition. (1) The board has authority, without the necessity of a franchise, to cut into or excavate and use any easements dedicated to a public use or any public street, road, or highway pursuant to the construction, maintenance, or provision of services provided by the rail district.

(2) The legislative body or other authority having jurisdiction over any such public street, road, or highway has authority to make such reasonable rules as it deems necessary in regard to any such work or use, and may require the payment of such reasonable fees by the rail district as may be fixed by said body to insure proper restoration of such streets, roads, or highways.

(3) When any such fee is paid by the rail district, it shall be the responsibility of the legislative body or other authority to promptly restore such street, road, or highway. If such fee is not fixed or paid, the rail district shall promptly restore any such street, road, or highway to its former condition, as nearly as possible.

(4) In the course of such construction, the rail district shall not impair the normal use of any street, road, or highway more than is reasonably necessary.

Source: L. 82: Entire article added, p. 511, § 1, effective April 23.

32-12-112. Limitations. (1) No rail district shall purchase any real property, or any lesser interest therein, without first submitting the proposition to a vote by the eligible

electors of the rail district and obtaining the approval of a majority of the electors voting on the issue. Any such election may be held separately or may be held jointly or concurrently with any other election authorized by this article.

(2) A rail district shall have no power of eminent domain.

(3) A rail district shall be subject to the provisions of part 3 of article 1 of title 29, C.R.S., to the extent such provisions are applicable.

Source: L. 82: Entire article added, p. 512, § 1, effective April 23. L. 92: (3) amended, p. 2180, § 47, effective June 2; (1) amended, p. 921, § 188, effective January 1, 1993.

32-12-113. Revenues of rail district - collection. In any rail district, all rates, fees, tolls, and charges shall constitute a perpetual lien on and against the property served until paid, and any such lien may be enforced by civil action or by any other means authorized by law.

Source: L. 82: Entire article added, p. 512, § 1, effective April 23.

32-12-114. Levy and collection of taxes. (1) To provide for the levy and collection of taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the rail district, and shall fix a rate of levy not to exceed the maximum mill levy authorized pursuant to section 32-12-108 which, when levied upon all taxable property within the rail district, and together with other revenues, will raise the amount required by the rail district annually to supply funds for paying expenses of organization and the costs of constructing, operating, and maintaining the rail district, and promptly to pay in full, when due, all interest on, the principal of, and any redemption premium of bonds and other obligations of the rail district payable from taxes. The authority of the board under this section is subject to mill levy limitations provided in this article; but if the board determines that the maximum mill levy authorized under this article is insufficient to support any service of the district, the board may submit the question of an increased mill levy authorization to the eligible electors of the rail district at the next regular special district election or special election of the district, and each election shall be held at least one hundred twenty days after any preceding election of the rail district, and no more than two elections concerning an increased rail levy authorization shall be held in any year.

(2) The board may apply a portion of such taxes and other revenues for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the rail district for maintenance, operating expenses, depreciation, and improvement of the facilities of the rail district.

(3) The board, in accordance with the schedule prescribed by section 39-5-128, C.R.S., shall certify to the board of county commissioners of each county within the rail district, or having a portion of its territory within the rail district, the rate so fixed, in order that, at the time and in the manner required by law for levying taxes, such board of county commissioners shall levy such tax upon all taxable property which is located within the rail district.

(4) All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting same, shall constitute, until paid, a perpetual lien on and against the property, and such lien shall be on a parity with the tax lien of other general ad valorem taxes.

(5) Property taxes provided for in this article shall be levied, assessed, collected, remitted, and accounted for in the manner provided for other general ad valorem taxes.

(6) The board has the power to deposit or to invest surplus funds in the manner and form it determines to be most advantageous; but said deposits or investments must meet the requirements and limitations of part 6 of article 75 of title 24, C.R.S. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the moneys of the district. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(7) The board has the power to accept on behalf of the rail district all funds tendered it from the state, the federal government, or any political subdivision or agency of either, which funds are specifically intended as incentive to, or assistance in, the formation, operation, or extension of rail district activities.

(8) No rail district shall levy a tax for the entire district for the calendar year during which it shall have been formed unless, prior to the date specified by section 39-5-128, C.R.S., for certification of the rate of levy for such year, the assessor and board of county commissioners of each county within the rail district have received from the board a map and a legal description of such rail district, and a copy of a budget of such rail district as provided by section 29-1-113, C.R.S., and increased property tax levies shall be subject to the provisions of section 29-1-301, C.R.S.

Source: **L. 82:** Entire article added, p. 512, § 1, effective April 23. **L. 90:** (8) amended, p. 1436, § 6, effective January 1, 1991. **L. 92:** (1) amended, p. 922, § 189, effective January 1, 1993.

32-12-115. Power to issue revenue bonds - terms. (1) To carry out the purposes of this article, the board is authorized to issue negotiable coupon bonds payable solely from the revenues derived, or to be derived, from the facility or combined facilities of the rail district. The terms, conditions, and details of said bonds, and the procedures related thereto shall be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited. Revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute a debt or indebtedness of the rail district or any county, municipality, or other political subdivision of this state within the meaning of any provision or limitation of the state constitution or statutes or any home rule charter and shall not constitute nor give rise to a pecuniary liability of any such rail district, county, municipality, or political subdivision of this state or a charge against its general credit or taxing powers. Each bond issued under this section shall recite in substance that said bond, including the interest thereon, is payable solely from the revenues pledged for the payment thereof and that said bond does not constitute a debt of the rail district within the meaning of any constitutional or statutory limitations or provisions. Such revenue bonds may be issued to mature at such time, not exceeding the estimated life of the facility to be acquired with the bond proceeds, as determined by the board, but in no event beyond thirty years from their respective dates.

(2) Negotiable coupon bonds payable from revenues derived, or to be derived, from a facility or combined facilities of the rail district as authorized by subsection (1) of this section may further be secured by and be payable from tax revenues of the rail district to the same extent as general obligation bonds authorized in section 32-12-116. The form, terms, and limitations on the bonds shall be as specified in section 32-12-116. The question of the issuance of the bonds shall be submitted to and approved by the eligible electors of the rail district voting thereon, as provided by section 32-12-117.

Source: **L. 82:** Entire article added, p. 513, § 1, effective April 23. **L. 92:** (2) amended, p. 922, § 190, effective January 1, 1993.

32-12-116. Power to incur indebtedness - interest - maturity - denominations. (1) To carry out the purposes of this article, the board is authorized to issue general obligation negotiable coupon bonds of the rail district. Said bonds shall bear interest at a rate such that the net effective interest rate of the issue of said bonds does not exceed that maximum net effective interest rate authorized and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than thirty years from the date of issuance. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, said bonds may be redeemable prior to maturity with or without payment of a premium, not exceeding three percent of the principal thereof. In any event, said bonds

shall be subject to call not later than fifteen years from date. Said bonds shall be executed in the name and on behalf of the rail district and signed by the chairman with the seal of the rail district affixed thereto and attested by the secretary. Said bonds shall be issued in such denominations as the board determines, and the bonds and coupons, if any, thereto attached may be payable to bearer or may be in fully registered form. Interest coupons shall bear the original or facsimile signature of the chairman.

(2) Bonds voted for different purposes by separate propositions submitted at the same or different bond elections may, at the discretion of the board, be combined and issued as a single issue of bonds so long as the security therefor is the same.

Source: L. 82: Entire article added, p. 514, § 1, effective April 23.

32-12-117. Debt question submitted to eligible electors - resolution. (1) Whenever the board determines by resolution that the interest of the rail district and the public interest or necessity demand the acquisition, construction, installation, or completion of any work or other improvements or facilities, or the making of any contract to carry out the objects or purposes of the rail district which requires the creation of any indebtedness of the rail district, the board shall order the submission of the proposition of incurring the indebtedness to the eligible electors of the rail district at an election held for that purpose. Any such election may be held separately or may be held jointly or concurrently with any other election authorized by this article.

(2) The declaration of public interest or necessity required and the provision for the holding of the election may be included within the same resolution, which resolution, in addition to the declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works, improvements, or facilities, as the case may be, the principal amount of the indebtedness to be incurred therefor, and the maximum net effective interest rate to be paid on the indebtedness. The resolution shall also fix the date of the election and shall name a designated election official who shall be responsible for conducting the election pursuant to articles 1 to 13 of title 1, C.R.S.

Source: L. 82: Entire article added, p. 514, § 1, effective April 23. **L. 92:** Entire section amended, p. 922, § 191, effective January 1, 1993.

32-12-118. Effect - subsequent elections. If any proposition authorized by section 32-12-117 is approved by a majority of electors voting thereon, the rail district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contracts, or issue and sell such bonds of the rail district, as the case may be, all for the purposes and objects provided for in the proposition submitted under said section, in the amount so provided, and at a price and at a rate of interest such that the maximum net effective interest rate recited in the resolution is not exceeded. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose, but no new election creating an indebtedness may be held within one hundred twenty days after the date of the election at which a proposal was defeated. No more than two such elections may be held within any twelve-month period.

Source: L. 82: Entire article added, p. 515, § 1, effective April 23.

32-12-119. Correction of faulty notices. In any case where a notice is provided for in this article, if the court or the board reviewing the proceedings finds for any reason that due notice was not given, said body shall not thereby lose jurisdiction, and the proceedings in question shall not thereby be void or be abated, but said body shall order due notice to be given, shall continue the proceeding until such time as notice is properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 82: Entire article added, p. 515, § 1, effective April 23.

32-12-120. Refunding bonds. Any bonds issued by any rail district may be refunded without an election as provided in article 56 of title 11, C.R.S.

Source: L. 82: Entire article added, p. 515, § 1, effective April 23.

32-12-121. Anticipation warrants. The board may defray any costs of the rail district by the issuance of notes or warrants to evidence the amount due therefor, in anticipation of taxes or revenues or both. Interest on such notes or warrants shall be governed by the provisions of section 5-12-104, C.R.S. Notes and warrants may mature at such time not exceeding one year from their date of issuance as the board may determine. If such notes or warrants are not paid during the fiscal year in which they are issued, the board shall, at the end of its fiscal year, budget the amount necessary to pay in full the amount of notes and warrants outstanding and due during the next fiscal year.

Source: L. 82: Entire article added, p. 515, § 1, effective April 23.

32-12-122. Inclusion of additional territory in existing rail district - procedures. (1) Proceedings for inclusion of a portion of a county or portions of two or more counties or an entire additional county, counties, or a municipality, or portion thereof, in a rail district shall be in accordance with the provisions of part 4 of article 1 of this title, subject to the provisions of this article. Inclusion may be initiated by petitions signed by eligible electors in an amount equal to at least five percent of the total number of electors who cast votes in the area seeking to be included for all candidates for the office of secretary of state at the last preceding general election.

(2) The board shall initiate negotiations for the purchase and operation of the additional rail facilities in the newly included area.

(3) If negotiations fail to acquire any additional authorized railroad facilities, upon petition by the board, the court shall order the newly expanded portion of the rail district excluded.

Source: L. 82: Entire article added, p. 515, § 1, effective April 23. **L. 92:** (1) amended, p. 923, § 192, effective January 1, 1993.

32-12-123. Grant of operating privileges and use of railroad and facilities. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by this article, a rail district may by contract, lease, or otherwise, for such consideration and term as it may determine, grant to any person the privilege of operating or using any railroad or railroad facilities or property owned or controlled by the rail district. No person may be granted any authority to operate a railroad other than as a common carrier or switching service.

Source: L. 82: Entire article added, p. 516, § 1, effective April 23.

32-12-124. Arrangements for operating and providing railroad service. (1) The rail district may enter into contracts, leases, and other arrangements for such term as the rail district may determine with any persons:

(a) Granting the privilege of using or improving the railroad or any portion or facility or space for commercial purposes;

(b) Conferring the privilege of supplying goods, commodities, services, or facilities along the railroad;

(c) Making available services to be furnished by the rail district or its agents.

(2) In each case the district may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service.

Source: L. 82: Entire article added, p. 516, § 1, effective April 23.

32-12-125. Public purpose and necessity for acquisitions. Any land and other property and privileges acquired and used by or on behalf of any rail district are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity; however, public utilities may acquire rights-of-way across or along such land in accordance with their powers of eminent domain.

Source: L. 82: Entire article added, p. 516, § 1, effective April 23.

32-12-126. Disposition of property of rail district. Except as may be limited by the terms and conditions of any grant, loan, or agreement made or received by the rail district, a rail district may, by sale, lease, or otherwise, dispose of any of its property or portion thereof or interest therein.

Source: L. 82: Entire article added, p. 516, § 1, effective April 23.

32-12-127. Dissolution. Except as otherwise provided in this article, a rail district may be dissolved in a manner pursuant, as nearly as practicable, to the provisions of part 7 of article 1 of this title. Dissolution may be initiated by petitions signed by eligible electors in an amount equal to at least five percent of the total number of electors who cast votes within the rail district for all candidates for the office of secretary of state at the last preceding general election. No dissolution shall be effected unless approved by a majority of the eligible electors of the rail district voting thereon and unless satisfactory arrangements have been made for payment of any obligations or debts and for the continuation of any services essential for the health, welfare, and safety of residents of the rail district.

Source: L. 82: Entire article added, p. 516, § 1, effective April 23. **L. 92:** Entire section amended, p. 923, § 193, effective January 1, 1993.

32-12-128. Early hearings. All court actions involving the validity of any proceeding under this article which is a matter of immediate public interest and concern shall be advanced and heard at the earliest practical moment.

Source: L. 82: Entire article added, p. 517, § 1, effective April 23.

32-12-129. Elections. (1) Elections shall be conducted pursuant to articles 1 to 13 of title 1, C.R.S.

(2) All necessary expenses of any rail district regular special district election or special election subsequent to the organization of the rail district and other proceedings conducted pursuant to the election shall be paid by the rail district.

Source: L. 82: Entire article added, p. 517, § 1, effective April 23. **L. 92:** Entire section amended, p. 923, § 194, effective January 1, 1993.

ARTICLE 13

Scientific and Cultural Facilities District

Editor’s note: For a discussion of the difference between service authorities authorized by § 17 of article XIV of the Colorado constitution and statutorily created special districts, see *Anema v. Transit Const. Authority*, 788 P.2d 1261 (Colo. 1990).

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

32-13-101.	Short title.	32-13-103.	Definitions.
32-13-102.	Legislative declaration.	32-13-104.	Creation of district - area of

	district.	32-13-108.	Petition or resolution for formation and levy of tax -
32-13-104.3.	Additional district area - petition - required filings.		petition or resolution for extension of tax - verification of signatures - election.
32-13-104.5.	Additional district area - Douglas county.	32-13-109.	Board of directors - powers and duties.
32-13-104.7.	Annexation of enclaves.	32-13-110.	Tax imposed - collection - administration of tax - use.
32-13-105.	Authorizing elections.	32-13-111.	No impairment of contractual obligations.
32-13-106.	Board of directors - powers and duties.	32-13-112.	Discount rates.
32-13-107.	Sales and use tax imposed - collection - administration of tax - use.	32-13-113.	Report. (Repealed)
32-13-107.5.	Legislative declaration - submission to voters - severability.	32-13-114.	Repeal of article. (Repealed)

32-13-101. Short title. This article shall be known as the “Scientific and Cultural Facilities District Act”.

Source: L. 87: Entire article added, p. 1254, § 1, effective July 1.

32-13-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the scientific and cultural facilities located in the state of Colorado are a rich source of knowledge and inspiration to all of the residents of the state, that the preservation and development of such facilities are vital to the cultural and intellectual life of the state, that scientific and cultural facilities are an important factor to the economic well-being of the state, that economic development and tourism are needed to maintain and to promote such facilities, and that creation of scientific and cultural facilities districts will promote the health, safety, and welfare of the residents of the state.

Source: L. 87: Entire article added, p. 1254, § 1, effective July 1.

32-13-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Annual operating expenses” means expenditures for all purposes except capital construction, endowment, and payment of debt principal or interest.

(1.5) “Annual operating income” means operating income from all sources, except capital construction fund income, designated funds raised for the purchase of specified capital needs, income for endowment corpus, and any distribution of moneys by the board.

(2) “Board” means the board of directors of a scientific and cultural facilities district created pursuant to this article.

(3) “County cultural council” means a council comprised of members appointed by the county commissioners of the county, the city council of the city and county of Denver, or the city council of the city and county of Broomfield who reside within the boundaries of the district and proportionately represent the population of the incorporated and unincorporated portions of the county.

(4) “Cultural facility” means a nonprofit institutional organization having as its primary purpose the advancement and preservation of art, music, theater, or dance. “Cultural facility” also includes any agency of local government charged with the advancement and preservation of art, music, theater, or dance but does not include any agency of the state, any educational institution, any radio or television broadcasting network or station, any cable communications system, or any newspaper or magazine.

(5) “District” means a scientific and cultural facilities district created pursuant to this article.

(6) “Paid attendance” means the total paid attendance at all programs as verified by annual audit reports.

(6.5) “Reasonable costs related to a coordinated election” means the amount that the district owes a county or a city and county under the terms of an agreement entered into pursuant to the provisions of section 1-7-116, C.R.S., for the district’s share of the costs of

a coordinated election; except that such amount shall not exceed the total county or city and county election costs multiplied by one-half of the sum of the weighted population average and the weighted ballot average. Weighted population average equals the active registered voters who reside in both the district and the county or city and county divided by the sum of all active registered voters for each political subdivision, as such term is defined in section 1-7-116 (1), C.R.S., for which the county or city and county conducts the coordinated election. Weighted ballot average equals the number of district referred measures, as such term is defined in section 1-1-104 (34.5), C.R.S., on the ballot in question divided by the total number of referred measures, initiatives, and candidate elections in the coordinated election.

(7) (a) With respect to the Denver metropolitan scientific and cultural facilities district, "scientific facility" means a nonprofit institutional organization having as its primary purpose the advancement and preservation of zoology, botany, natural history, or cultural history. "Scientific facility" also includes any agency of local government charged with the advancement and preservation of zoology, botany, natural history, or cultural history but does not include any agency of the state, any educational institution, any radio or television broadcasting network or station, any cable communications system, any newspaper or magazine, or any organization that is engaged solely in the acquisition or physical restoration of historic buildings, structures, or sites.

(b) (I) With respect to scientific and cultural facilities districts other than the Denver metropolitan scientific and cultural facilities district, "scientific facility" means a nonprofit institutional organization having as its primary purpose the advancement and preservation of zoology, botany, anthropology, cultural history, or natural history. "Scientific facility" also includes any agency of local government charged with the advancement and preservation of zoology, botany, anthropology, cultural history, or natural history but does not include any agency of the state, any educational institution, any radio or television broadcasting network or station, any cable communications system, or any newspaper or magazine.

(II) (Deleted by amendment, L. 94, p. 480, § 1, effective March 31, 1994.)

(c) For purposes of this subsection (7), "cultural history" means the history that concentrates upon the social, intellectual, and artistic aspects or forces in the life of a people, region, state, or nation, for which an understanding and appreciation may be gained through buildings, structures, sites, architecture, objects, and activities significant in said history.

Source: **L. 87:** Entire article added, p. 1254, § 1, effective July 1. **L. 92:** (7) amended, p. 990, § 1, effective April 24. **L. 94:** (7)(a) and (7)(b)(II) amended and (7)(c) added, p. 480, § 1, effective March 31. **L. 2001:** (3) amended, p. 267, § 9, effective November 15. **L. 2004:** (1) and (3) amended and (1.5) added, p. 284, § 1, effective July 1, 2006. **L. 2006:** (6.5) added, p. 1779, § 2, effective June 6.

32-13-104. Creation of district - area of district. There is hereby created a district to be known and designated as the "Denver Metropolitan Scientific and Cultural Facilities District". The area comprising the district shall consist of all of the area within the boundaries of the counties of Adams, Arapahoe, Boulder, and Jefferson, all of the area within the boundaries of the city and county of Broomfield and the city and county of Denver, and all of the area within the county of Douglas; except that the area within the boundaries of the town of Castle Rock and the area within the boundaries of the town of Larkspur in the county of Douglas shall not be included in the district.

Source: **L. 87:** Entire article added, p. 1255, § 1, effective July 1. **L. 94:** Entire section amended, p. 1339, § 4, effective May 25. **L. 96:** (1)(b) amended, p. 308, § 4, effective April 15. **L. 99:** (1)(b) amended, p. 420, § 4, effective April 30. **L. 2004:** Entire section amended, p. 285, § 2, effective July 1, 2006.

32-13-104.3. Additional district area - petition - required filings. (1) For any area that is contiguous to any boundary of the district, the area may be included in the district if the following requirements are satisfied:

(a) A petition signed by one hundred percent of the owners of the land comprising the area proposed to be included, including the owners of any land constituting a planned unit development or subdivision, is presented to the board. The petition shall contain a legal description of the land comprising the area proposed to be included, state that assent to the inclusion is given by the fee owner thereof, and be acknowledged by the fee owner in the same manner as required for the conveyance of land.

(b) The board resolves to accept the area specified in the petition into the district.

(2) Prior to including any additional area in the district pursuant to this section, the district shall file a notice and map containing a legal description of the area with the county clerk and recorder of any county in which the area is located, the division of local government in the department of local affairs, and the department of revenue. Upon receiving a notice and map pursuant to this subsection (2), the department of revenue shall communicate with any taxing jurisdictions affected by the inclusion of the additional area in the district in order to facilitate the administration and collection of taxes within the additional area and to identify all retailers affected by the inclusion of the additional area. The department of revenue shall make copies of any such notices and maps available to all taxing jurisdictions in the state, including special districts that impose a sales tax.

(3) A map of the land comprising the area proposed to be included in the district shall be available for review by the landowners of such area when the landowners sign a petition to be included in the district pursuant to paragraph (a) of subsection (1) of this section.

Source: L. 2004: Entire section added, p. 924, § 1, effective August 4.

32-13-104.5. Additional district area - Douglas county. (1) In addition to the areas described in section 32-13-104, all or any portion of the area within the boundaries of Douglas county that is not included in the Denver metropolitan scientific and cultural facilities district but is contiguous with the district may be included in the district if the following requirements are met:

(a) A proposal to include the area proposed to be included in the district is initiated by any of the following methods:

(I) A petition requesting an election for the purpose of including the area proposed to be included in the district is signed by at least five percent of the eligible electors of the unincorporated portion of such area and of each portion of such area that is within a municipality; or

(II) The governing bodies of all municipalities that include portions of the area proposed to be included in the district and the board of county commissioners of Douglas county adopt resolutions requesting an election for the purpose of including the area in the district. The board of county commissioners of Douglas county shall adopt such a resolution only after all municipalities that include portions of the areas proposed to be included have adopted such resolutions.

(b) An election is held and conducted in accordance with articles 1 to 13 of title 1, C.R.S., and the following requirements:

(I) The election is held at a general or odd-year election prior to 2017, as determined by intergovernmental agreement of the governing bodies of all municipalities that include portions of the area proposed to be included in the district and the board of county commissioners of Douglas county;

(II) The ballot provides for the eligible electors in the area proposed to be included in the district to vote for or against the inclusion of the proposed area in the district;

(III) The ballot is in a single form determined by intergovernmental agreement of the governing bodies of all municipalities that include portions of the area proposed to be included in the district and the board of county commissioners of Douglas county;

(IV) The ballot contains a description of the area proposed to be included within the district;

(V) The ballot contains the current rates of sales tax levied by the district; and

(VI) The ballot contains the following question: "Shall the area described in the ballot be included in the Denver metropolitan cultural and scientific facilities district?"

(2) The governing bodies of all municipalities that include portions of the area proposed to be included in the district and the board of county commissioners of Douglas county shall, pursuant to an intergovernmental agreement, adopt resolutions calling the election authorized by this section. The resolutions shall state:

- (a) The object and purpose of the election;
- (b) A description of the area proposed to be included in the district;
- (c) The date of the election; and
- (d) The name of the designated election official responsible for conducting the election pursuant to articles 1 to 13 of title 1, C.R.S.

Source: **L. 98:** Entire section added, p. 357, § 1, effective April 20. **L. 99:** (1)(b)(I) amended, p. 452, § 9, effective August 4. **L. 2004:** IP(1), IP(1)(a), (1)(a)(I), and (1)(b)(I) amended, p. 285, § 3, effective July 1, 2006.

32-13-104.7. Annexation of enclaves. (1) When any unincorporated territory has been entirely contained within the boundaries of the Denver metropolitan scientific and cultural facilities district, the board may, by resolution, annex the territory to the district. The board shall give notice of a proposed annexation resolution by publishing a copy of the resolution once a week for four successive weeks in a newspaper of general circulation in the territory proposed to be annexed. The board shall also send a copy of the proposed annexation resolution by registered mail to the board of county commissioners and county attorney of the county containing the territory to be annexed, to any special district or school district having territory within the territory to be annexed, and to the executive director of the department of revenue. The first publication of the notice and the mailing of the proposed annexation resolution shall occur at least thirty days prior to the final adoption of the resolution, and the board shall allow interested persons to testify for or against the resolution at a public hearing held prior to the final adoption of the resolution.

(2) No territory may be annexed pursuant to subsection (1) of this section if any part of the district boundary or area surrounding the territory consists of public rights-of-way, including streets and alleys, that are not immediately adjacent to the district on the side of the right-of-way opposite to the territory.

Source: **L. 2001:** Entire section added, p. 822, § 2, effective August 8.

32-13-105. Authorizing elections. (1) The district created in section 32-13-104 may submit to the registered electors within the geographical boundaries of the district, at one or more general elections, the question of whether the district shall be authorized to levy and collect the following sales and use taxes:

(a) A uniform sales and use tax throughout said geographical area at a rate of sixty-five one-thousandths of one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S., except such sales and use tax shall be levied on purchases of machinery or machine tools which are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to the Denver museum of nature and science, the Denver zoological gardens, the Denver art museum, and the Denver botanical gardens, pursuant to the provisions of section 32-13-107 (3) (a);

(b) A uniform sales and use tax throughout said geographical area at a rate of twenty-five one-thousandths of one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S., except such sales and use tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (b);

(c) A uniform sales and use tax throughout said geographical area at a rate of ten one-thousandths of one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S., except such sales and use tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (c).

(2) The board shall decide at which general election the question shall be submitted to the registered electors. Notice of the question to be submitted to the registered electors within the geographical boundaries of the district and at which election shall be filed in the office of the secretary of state prior to fifty-five days before such election.

(3) If in any such election a majority of the registered electors within the geographical area of the district voting on the question vote affirmatively on the question authorizing the district to levy and collect the sales and use taxes specified in subsection (1) of this section, then such sales and use taxes shall be levied and collected as provided for in this article.

(4) (a) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution and upon proper submittal of a valid initiative petition to or upon the adoption of a resolution by the board of the district created in section 32-13-104, the district may submit to the registered electors within the geographical boundaries of the district, at a general election or an election held on the first Tuesday in November of an odd-numbered year, the question of whether the district shall be authorized to levy and collect the following sales and use taxes in lieu of the sales and use taxes specified in subsection (1) of this section for a period of time not to exceed ten years from the date upon which the authority of the district to levy and collect the sales and use taxes specified in subsection (1) of this section is scheduled to expire:

(I) A uniform sales and use tax throughout said geographical area at a rate of fifty-nine one-thousandths of one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S., except such sales and use tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to the Denver museum of nature and science, the Denver zoological gardens, the Denver art museum, and the Denver botanical gardens pursuant to the provisions of section 32-13-107 (3) (a);

(II) A uniform sales and use tax throughout said geographical area at a rate of twenty-eight one-thousandths of one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S., except such sales and use tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (b);

(III) A uniform sales and use tax throughout said geographical area at a rate of thirteen one-thousandths of one percent upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S., except such sales and use tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (c).

(b) Such resolution or the summary for such petition shall include, but shall not be limited to, the following statements:

(I) That the district would levy and collect the sales and use taxes specified in paragraph (a) of this subsection (4) for a period of time not to exceed ten years from the date upon which the authority of the district to levy and collect the sales and use taxes specified in subsection (1) of this section is scheduled to expire; and

(II) The month, day, and year on which the authority of the district to levy and collect the sales and use taxes specified in paragraph (a) of this subsection (4) shall expire.

(c) The district may submit the question set forth in paragraph (a) of this subsection (4) to the registered electors of the district:

(I) After being presented with a petition requesting the submittal of the question which is signed by the registered electors within the geographical boundaries of the district in an amount equal to at least five percent of the total number of votes cast within the geographical boundaries of the district for all candidates for the office of secretary of state at the previous general election and after verification of the signatures on the petition by the secretary of state in accordance with subsection (7) of this section; or

(II) After the adoption of a resolution by the board of the district.

(d) (I) Except as otherwise provided in subparagraph (III) of this paragraph (d), at the election, the question appearing on the ballot shall be as follows:

“SHALL THERE BE AN EXTENSION UNTIL (MONTH, DAY, AND YEAR) OF THE AGGREGATE 0.1 PERCENT SALES AND USE TAXES CURRENTLY LEVIED AND COLLECTED BY THE DENVER METROPOLITAN SCIENTIFIC AND CULTURAL FACILITIES DISTRICT WHICH ARE SCHEDULED TO EXPIRE ON (MONTH, DAY, AND YEAR) AND WHICH PROVIDE A MAXIMUM AMOUNT OF (DOLLAR AMOUNT OF DISTRICT'S FISCAL YEAR SPENDING LIMIT FOR CURRENT FISCAL YEAR) IN (CURRENT FISCAL YEAR) AND A MAXIMUM AMOUNT OF (DOLLAR AMOUNT OF DISTRICT'S FISCAL YEAR SPENDING LIMIT FOR CURRENT FISCAL YEAR) AS ADJUSTED FOR INFLATION AND LOCAL GROWTH FOR EACH FISCAL YEAR AFTER THE CURRENT FISCAL YEAR FOR ASSISTING SCIENTIFIC AND CULTURAL FACILITIES WITHIN THE DISTRICT WHILE MODIFYING THE RATES OF THE THREE INDIVIDUAL SALES AND USE TAXES COLLECTED BY THE DISTRICT AS FOLLOWS: DECREASING THE .065 PERCENT SALES AND USE TAX TO .059 PERCENT; INCREASING THE .025 PERCENT SALES AND USE TAX TO .028 PERCENT; AND INCREASING THE .010 PERCENT SALES AND USE TAX TO .013 PERCENT?”

(II) Except as otherwise provided in subparagraph (III) of this paragraph (d), the ballot title shall be a statement of the language included in the question set forth in subparagraph (I) of this paragraph (d); except that the words “SHALL THERE BE” shall not be included in the statement, and the statement shall end with a period instead of a question mark.

(III) The ballot question specified in subparagraph (I) of this paragraph (d) and the ballot title specified in subparagraph (II) of this paragraph (d) may be modified by the proponents of an initiative petition or the board of the district, as applicable, only to the extent necessary to conform to the requirements of any final decision of a district or appellate court regarding the legal requirements for ballot questions and titles.

(IV) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question authorizing the district to levy and collect the sales and use taxes specified in paragraph (a) of this subsection (4) until the date specified in the question, then the sales and use taxes shall be levied, collected, and distributed as provided for in this article until said date.

(5) (a) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution and upon proper submittal of a valid initiative petition to or upon the adoption of a resolution by the board of the district created in section 32-13-104, the district may submit to the registered electors within the geographical boundaries of the district, at a general election or an election held on the first Tuesday in November of an odd-numbered year, the question of whether the district shall be authorized to continue the levy and collection of the aggregate one-tenth of one percent sales and use tax as specified in paragraph (a) of subsection (4) of this section, as modified pursuant to subparagraphs (I), (II), and (III) of this paragraph (a), for a period of twelve years from the date upon which the authority of the district to levy and collect the sales and use taxes is scheduled to expire, as follows:

(I) A uniform sales and use tax throughout said geographical area at a rate of six hundred fifty-five ten-thousandths of one percent for total annual revenues collected by the

district up to and including thirty-eight million dollars and at a rate of sixty-four one-thousandths of one percent after total annual revenues collected by the district exceed thirty-eight million dollars, upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax shall not be levied on the sale or use of cigarettes and shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to the Denver museum of nature and science, the Denver zoological gardens, the Denver art museum, the Denver botanical gardens, and the Denver center for the performing arts pursuant to the provisions of section 32-13-107 (3) (a);

(II) A uniform sales and use tax throughout said geographical area at a rate of twenty-one one-thousandths of one percent for total annual revenues collected by the district up to and including thirty-eight million dollars and at a rate of twenty-two one-thousandths of one percent after total annual revenues collected by the district exceed thirty-eight million dollars, upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax shall not be levied on the sale or use of cigarettes and shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (b);

(III) A uniform sales and use tax throughout said geographical area at a rate of one hundred thirty-five ten-thousandths of one percent for total annual revenues collected by the district up to and including thirty-eight million dollars and at a rate of fourteen one-thousandths of one percent after total annual revenues collected by the district exceed thirty-eight million dollars, upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax shall not be levied on the sale or use of cigarettes and shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (c).

(b) Such resolution or the summary for such petition shall include, but shall not be limited to, the following statements:

(I) That the district would continue to levy and collect the aggregate one-tenth of one percent sales and use tax specified in paragraph (a) of subsection (4) of this section, as modified pursuant to subparagraphs (I), (II), and (III) of paragraph (a) of this subsection (5), for a period of twelve years from the date upon which the authority of the district to levy and collect the sales and use taxes is scheduled to expire; and

(II) The month, day, and year on which the authority of the district to levy and collect the sales and use taxes shall expire.

(c) The district may submit the question set forth in paragraph (a) of this subsection (5) to the registered electors of the district:

(I) After being presented with a petition requesting the submittal of the question which is signed by registered electors within the geographical boundaries of the district in an amount equal to at least five percent of the total number of votes cast within the geographical boundaries of the district for all candidates for the office of secretary of state at the previous general election and after verification of the signatures on the petition by the secretary of state in accordance with subsection (7) of this section; or

(II) After the adoption of a resolution by the board of the district.

(d) (I) Except as otherwise provided in subparagraph (III) of this paragraph (d), at the election, the question appearing on the ballot shall be as follows:

“SHALL THERE BE AN EXTENSION UNTIL JUNE 30, 2018, OF THE AGGREGATE 0.1 PERCENT SALES AND USE TAXES CURRENTLY LEVIED AND COL-

LECTED BY THE DENVER METROPOLITAN SCIENTIFIC AND CULTURAL FACILITIES DISTRICT THAT ARE SCHEDULED TO EXPIRE ON JUNE 30, 2006, FOR ASSISTING SCIENTIFIC AND CULTURAL FACILITIES WITHIN THE DISTRICT WHILE AUTHORIZING THE DISTRICT TO CONTINUE TO COLLECT, RETAIN, AND SPEND ALL REVENUE GENERATED BY SUCH TAX IN EXCESS OF THE LIMITATION PROVIDED IN ARTICLE X OF SECTION 20 OF THE COLORADO CONSTITUTION AND WHILE MODIFYING THE RATES OF THE THREE INDIVIDUAL SALES AND USE TAXES COLLECTED BY THE DISTRICT AS FOLLOWS: INCREASING THE .059 PERCENT SALES AND USE TAX TO .0655 PERCENT; DECREASING THE .028 PERCENT SALES AND USE TAX TO .021 PERCENT; AND INCREASING THE .013 PERCENT SALES AND USE TAX TO .0135 PERCENT; EXCEPT THAT, FOR TOTAL ANNUAL REVENUES COLLECTED BY THE DISTRICT THAT EXCEED THIRTY-EIGHT MILLION DOLLARS, INCREASING THE .059 PERCENT SALES AND USE TAX TO .064 PERCENT; DECREASING THE .028 PERCENT SALES AND USE TAX TO .022 PERCENT; AND INCREASING THE .013 PERCENT SALES AND USE TAX TO .014 PERCENT?"

(II) Except as otherwise provided in subparagraph (III) of this paragraph (d), the ballot title shall be a statement of the language included in the question set forth in subparagraph (I) of this paragraph (d); except that the words "SHALL THERE BE" shall not be included in the statement, and the statement shall end with a period instead of a question mark.

(III) The ballot question specified in subparagraph (I) of this paragraph (d) and the ballot title specified in subparagraph (II) of this paragraph (d) may be modified by the proponents of an initiative petition or the board of the district, as applicable, only to the extent necessary to conform to the requirements of any final decision of a district or appellate court regarding the legal requirements for ballot questions and titles.

(IV) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question authorizing the district to continue the levy and collection of the sales and use taxes specified in paragraph (a) of subsection (4) of this section, as modified pursuant to subparagraphs (I), (II), and (III) of paragraph (a) of this subsection (5), until the date specified in the question, then such sales and use taxes shall continue to be levied, collected, and distributed as provided for in this article until said date.

(e) (Deleted by amendment, L. 2004, p. 286, § 4, effective August 4, 2004.)

(f) All of the electors within the area of the boundaries of the counties of Adams, Arapahoe, Boulder, and Jefferson, all of the electors within the boundaries of the city and county of Broomfield and the city and county of Denver, and all of the electors within Douglas county excluding the electors within the boundaries of the town of Castle Rock or the town of Larkspur, shall be eligible electors for the purpose of the election to be held pursuant to this subsection (5).

(6) Repealed. (See Editor's note at the end of this section.)

(7) (a) The provisions of article 40 of title 1, C.R.S., regarding the following subject matter shall apply to petitions that may be submitted pursuant to subsection (4), (5), or (10) of this section: Form requirements and approval; circulation of petitions; elector information and signatures on petitions; affidavits and requirements of circulators of petitions; and verification of signatures, including but not limited to cure of an insufficiency of signatures and protests regarding sufficiency statements and procedures for hearings or further appeals regarding such protests. The provisions of article 40 of title 1, C.R.S., regarding review and comment, the setting of a ballot title, including but not limited to the duties of the title board, rehearings, and appeals, and the number of signatures required shall not apply to petitions that may be submitted pursuant to subsection (4), (5), or (10) of this section.

(b) Any petition shall be filed with the secretary of state at least three months before the general election or the election held on the first Tuesday of November in an odd-numbered year, whichever is applicable, at which it may be voted upon. Notice of any question to be submitted to the registered electors within the geographical boundaries of the district after verification of the signatures on any petition filed with the secretary of state and at which

election such question shall be submitted shall be filed by the board in the office of the secretary of state prior to fifty-five days before such election.

(c) Notice of any question to be submitted to the registered electors within the geographical boundaries of the district upon the adoption of a resolution by the board of the district pursuant to subsection (4), (5), or (10) of this section and at which election such question shall be submitted shall be filed in the office of the secretary of state prior to fifty-five days before such election.

(8) The provisions of subsections (4) to (6) of this section shall not be applicable if the authority of the district to levy and collect any sales and use taxes approved by the registered electors or to continue to levy and collect any sales and use taxes approved by the registered electors has expired pursuant to the provisions of this article.

(9) (a) For purposes of complying with the provisions of section 20 of article X of the state constitution and upon the adoption of a resolution by the board of the district created in section 32-13-104, the district may submit to the registered electors within the geographical boundaries of the district, at a general election or at an election held on the first Tuesday in November of an odd-numbered year, the question of whether the district is authorized to collect, retain, and spend excess revenues until the date specified in the question.

(b) If at any such election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question of whether the district is authorized to collect, retain, and spend excess revenues until the date specified in the question, then the district shall collect, retain, and spend such revenues as provided for in this article.

(10) (a) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution and upon proper submittal of a valid initiative petition to or upon the adoption of a resolution by the board, the district may submit to the registered electors within the geographical boundaries of the district, at a general election or an election held on the first Tuesday in November of an odd-numbered year, the question of whether the district shall be authorized to continue the levy and collection of the aggregate one-tenth of one percent sales and use tax as specified in paragraph (a) of subsection (5) of this section for a period not to exceed twelve years from the date upon which the authority of the district to levy and collect the sales and use taxes is scheduled to expire.

(b) A resolution or the summary for a petition pursuant to paragraph (a) of this subsection (10) shall include, but shall not be limited to, the following statements:

(I) That the district would continue to levy and collect the aggregate one-tenth of one percent sales and use tax as specified in paragraph (a) of subsection (5) of this section for a period not to exceed twelve years from the date upon which the authority of the district to levy and collect the sales and use taxes is scheduled to expire; and

(II) The month, day, and year on which the authority of the district to levy and collect the sales and use taxes shall expire.

(c) The district may submit the question set forth in paragraph (a) of this subsection (10) to the registered electors of the district:

(I) After being presented with a petition requesting the submittal of the question that is signed by registered electors within the geographical boundaries of the district in an amount equal to at least five percent of the total number of votes cast within the geographical boundaries of the district for all candidates for the office of secretary of state at the previous general election and after verification of the signatures on the petition by the secretary in accordance with subsection (7) of this section; or

(II) After the adoption of a resolution by the board.

(d) (I) Except as otherwise provided in subparagraph (III) of this paragraph (d), at the election, the question appearing on the ballot shall be as follows:

“SHALL THERE BE AN EXTENSION UNTIL (MONTH, DAY, AND YEAR) OF THE AGGREGATE 0.1 PERCENT SALES AND USE TAXES CURRENTLY LEVIED AND COLLECTED BY THE DENVER METROPOLITAN SCIENTIFIC AND CULTURAL FACILITIES DISTRICT THAT ARE SCHEDULED TO EXPIRE ON (MONTH, DAY, AND YEAR) FOR ASSISTING SCIENTIFIC AND CULTURAL FACILITIES WITHIN THE DISTRICT, WHILE AUTHORIZING THE DISTRICT TO CONTINUE TO COL-

LECT, RETAIN, AND SPEND ALL REVENUE GENERATED BY SUCH TAX IN EXCESS OF THE LIMITATION PROVIDED IN ARTICLE X OF SECTION 20 OF THE COLORADO CONSTITUTION?"

(II) Except as otherwise provided in subparagraph (III) of this paragraph (d), the ballot title shall be a statement of the language included in the question set forth in subparagraph (I) of this paragraph (d); except that the words "SHALL THERE BE" shall not be included in the statement, and the statement shall end with a period instead of a question mark.

(III) The ballot question specified in subparagraph (I) of this paragraph (d) and the ballot title specified in subparagraph (II) of this paragraph (d) may be modified by the proponents of an initiative petition or the board, as applicable, only to the extent necessary to conform to the requirements of any final decision of a district or appellate court regarding the legal requirements for ballot questions and titles.

(IV) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question authorizing the district to continue the levy and collection of the sales and use taxes specified in paragraph (a) of subsection (5) of this section until the date specified in the question, then such sales and use taxes shall continue to be levied, collected, and distributed as provided for in this article until said date.

(e) The provisions of this subsection (10) shall be applicable only if prior voter approval has been obtained to levy and collect the sales and use taxes specified in paragraph (a) of subsection (5) of this section.

Source: **L. 87:** Entire article added, p. 1255, § 1, effective July 1. **L. 94:** (1) and (3) amended and (4) to (8) added, pp. 471, 464. §§ 2, 1, effective March 31. **L. 95:** (9) added, p. 859, § 111, effective July 1. **L. 2004:** (1) and (4)(a) amended, p. 1040, § 7, effective July 1; (5)(a), (5)(b)(I), (5)(d)(I), (5)(d)(IV), (5)(e), (7)(a), and (7)(c) amended and (5)(f) and (10) added, pp. 286, 288. §§ 4, 5, effective August 4. **L. 2005:** (1)(a), (4)(a)(I), (5)(a)(I), and (5)(a)(II) amended, p. 777, § 66, effective June 1. **L. 2006:** (5)(a)(III) amended, p. 1506, § 52, effective June 1. **L. 2009:** (5)(a) amended, (HB 09-1342), ch. 354, p. 1848, § 7, effective July 1.

Editor's note: (1) The original election detailed in subsections (1) to (3) of this section concerning the question of authorizing the district to levy and collect sales taxes was held November 8, 1988, and a majority of the registered electors voted affirmatively on the question.

(2) (a) Subsection (5)(e) states that subsection (5) is applicable only if the question set out in subsection (4) is approved by the voters.

(b) Subsection (6)(f) provided for the repeal of subsection (6) effective upon the affirmative vote on the question set forth in subsection (4) of this section.

(c) The subsequent election detailed in subsection (4) concerning the question of extending the levy and collection of sales taxes until June 30, 2006, was held November 8, 1994, and was approved by a vote of:

For:	316,825
Against:	239,159

32-13-106. Board of directors - powers and duties. (1) The district created in section 32-13-104 shall be governed by a board of directors, to be appointed as follows:

(a) One director each shall be appointed by the boards of county commissioners of each county in the district, one director shall be appointed by the city council of the city and county of Denver, one director shall be appointed by the city council of the city and county of Broomfield; and

(b) If an odd number of directors is appointed pursuant to paragraph (a) of this subsection (1), four directors shall be appointed by the governor, and if an even number of directors is appointed pursuant to paragraph (a) of this subsection (1), three directors shall be appointed by the governor; except that the total number of directors appointed pursuant to this subsection (1) shall not exceed eleven. In the event that a new county or city and county elects a director pursuant to paragraph (a) of this subsection (1) that would cause the number of directors to exceed eleven, the longest-serving director appointed by the

governor shall become an ex officio director of the board and shall no longer have the authority to vote in any board action pursuant to subsection (3) of this section. The directors appointed by the governor shall be individuals who represent different segments of society, including, but not limited to, business, education, government, accounting, and foundation management.

(c) A director appointed pursuant to this subsection (1) shall be appointed to serve for a term of three years, but no director shall serve more than two succeeding terms. Any such director may be removed at any time during his or her term by the appointing authority. The board shall be appointed prior to the submission to the registered electors of the district of the question specified in section 32-13-105.

(2) The board shall have the following powers and duties:

(a) To fix the time and place at which its regular meetings shall be held. Meetings shall be held within the district and shall be open to the public.

(b) To adopt and amend rules of procedure;

(c) To select a chairman;

(d) To hire such staff as may be necessary to assist the board in its duties;

(e) To enter into contracts including but not limited to contracts for the provision of cultural services for the district;

(f) To sue and be sued;

(g) To decide at which election the question specified in section 32-13-105 shall be submitted to the registered electors;

(g.5) To submit any question specified in section 32-13-105 (4), (5), or (6) to the registered electors within the geographical boundaries of the district at the appropriate election upon the proper submittal of a valid initiative petition to or upon the adoption of a resolution by the district;

(h) To administer and use moneys collected pursuant to section 32-13-107, in accordance with the guidelines specified in section 32-13-107 (3);

(i) To develop reporting and review requirements governing receipt and expenditures of tax district funds;

(j) To submit the question specified in section 32-13-105 (9) to the registered electors within the geographical boundaries of the district at a general election or at an election held on the first Tuesday in November of an odd-numbered year, upon the adoption of a resolution by the district; and

(k) To determine the eligibility of organizations that apply to the district for the moneys that the board distributes pursuant to section 32-13-107 (3) (b) and (3) (c). In determining such eligibility, the board may take into consideration the applicant's financial and organizational capacity to expend tax dollars to serve the public and achieve the mission of the organization.

(3) All business of the board shall be conducted at regular meetings which shall be open to the public, and board action shall require the affirmative vote of a majority of the total membership of the board. Members of the board shall receive no compensation for their services but may be reimbursed for their necessary expenses while serving as members of the board.

Source: L. 87: Entire article added, p. 1256, § 1, effective July 1. L. 94: (2)(g.5) added, p. 476, § 5, effective March 31. L. 95: (2)(j) added, p. 860, § 112, effective July 1. L. 2001: (1) amended, p. 267, § 10, effective November 15. L. 2004: (1) amended and (2)(k) added, pp. 290, 291, §§ 6, 7, effective July 1, 2006.

32-13-107. Sales and use tax imposed - collection - administration of tax - use.

(1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), upon the approval of the registered electors pursuant to the provisions of section 32-13-105, the board shall have the power to levy such uniform sales and use taxes throughout the district created in section 32-13-104 upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax shall not be levied the on sale or use of cigarettes and shall be levied on:

(I) Purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such sales and purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., on and after the January 1 following the election in which such sales and use taxes were approved;

(II) Sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.; and

(III) Vending machine sales of food that are otherwise exempt pursuant to section 39-26-714 (2), C.R.S.

(b) (I) Notwithstanding any law to the contrary, the authority of the district to levy and collect the sales and use taxes approved by the registered electors pursuant to the provisions of section 32-13-105 shall expire July 1, 1996, unless the district is authorized to continue to levy and collect the sales and use taxes by the registered electors pursuant to the provisions of said section.

(II) Notwithstanding any law to the contrary, the authority of the district to continue to levy and collect the sales and use taxes approved by the registered electors pursuant to the provisions of section 32-13-105 shall expire on the date specified in the question submitted to the registered electors unless the district is subsequently authorized to continue to levy and collect the sales and use taxes by the registered electors pursuant to the provisions of said section.

(2) The collection, administration, and enforcement of said sales and use tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales and use tax imposed under article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of said tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of such sales and use tax collections to the district. The district shall pay the net incremental cost incurred by the department of revenue in the administration and collection of such sales and use taxes; except that in no event shall the district pay in any given fiscal year commencing on or after July 1, 1994, more than an amount equal to the amount paid by the district in the 1993-94 fiscal year, as adjusted in accordance with changes in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area. The department may make expenditures for such costs subject to annual appropriation by the general assembly.

(3) The proceeds of such sales and use tax collections shall be used by the board to assist scientific and cultural facilities within the district. After deducting costs, not exceeding three-fourths of one percent of the sales and use tax revenues annually collected, which are incurred by the district for the administration of such moneys, and after deducting an amount necessary to pay the district's actual or anticipated reasonable costs related to a coordinated election, distributions by the board to scientific and cultural facilities shall be made as follows:

(a) Upon voter approval of the levy and collection of the sales and use tax specified in section 32-13-105 (1) (a), (4) (a) (I), or (5) (a) (I), as applicable, the sales and use tax revenues levied and collected by the district shall be distributed annually by the board as follows:

(I) Except as otherwise provided in subparagraph (II) of this paragraph (a), ninety-five percent of said sales and use tax revenues shall be distributed for annual operating expenses as follows:

(A) Twenty-five percent shall be distributed to the Denver museum of nature and science;

(B) Twenty and eighty-three one hundredths percent shall be distributed to the Denver art museum;

(C) Twenty-four and twenty-four one hundredths percent shall be distributed to the Denver zoological gardens;

(D) Eleven and seventy-five one hundredths percent shall be distributed to the Denver botanical gardens;

(E) Eighteen and eighteen one hundredths percent shall be distributed to the Denver center for the performing arts.

(II) After the first five years said sales and use tax is levied and collected, up to five percent of said sales and use tax revenues specified in subparagraph (I) of this paragraph (a) may be distributed by the board to the Denver museum of nature and science, the Denver art museum, the Denver zoological gardens, the Denver botanical gardens, and the Denver center for the performing arts pursuant to a formula adopted by the board. Such formula shall be binding on the board and may only be modified every five years thereafter.

(III) Up to five percent of said sales and use tax revenues may be distributed by the board to the Denver museum of nature and science, the Denver art museum, the Denver zoological gardens, the Denver botanical gardens, and the Denver center for the performing arts in such amounts as the board may determine appropriate based upon one or more of the following factors: Regional impact, accessibility, quality, need, enhanced or innovative programs, and collaboration with the Denver museum of nature and science, the Denver art museum, the Denver zoological gardens, the Denver botanical gardens, or the Denver center for the performing arts or with scientific and cultural facilities that qualify to receive moneys pursuant to subparagraph (I) of paragraph (b) or subparagraph (I) of paragraph (c) of this subsection (3).

(IV) (Deleted by amendment, L. 94, p. 481, 2, effective January 1, 1996.)

(V) Any moneys not distributed pursuant to the provisions of subparagraph (III) of this paragraph (a) shall be distributed at the same time and in the same manner as other moneys are annually distributed pursuant to the provisions of subparagraph (I) of this paragraph (a).

(b) Upon voter approval of the levy and collection of the sales and use tax specified in section 32-13-105 (1) (b), (4) (a) (II), or (5) (a) (II), as applicable, the sales and use tax revenues levied and collected by the district shall be distributed annually by the board for annual operating expenses as follows:

(I) Ninety-five percent of said sales and use tax revenues shall be distributed to scientific and cultural facilities within the district that are not receiving moneys pursuant to paragraph (a) of this subsection (3) and that meet the following criteria:

(A) Any such facility shall be a nonprofit organization that has a determination letter in effect from the internal revenue service confirming that the organization meets the requirements of section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, whose primary purpose is to provide for the enlightenment and entertainment of the public through the production, presentation, exhibition, advancement, or preservation of art, music, theater, dance, zoology, botany, or natural history or shall be an agency of local government that has such primary purpose.

(B) Any such facility shall have its principal office within the district, shall conduct the majority of its activities within the state of Colorado, and shall principally benefit the residents of the district.

(C) For any facility that applies to receive district moneys prior to July 1, 2006, such facility shall have had an annual operating income of more than seven hundred thousand dollars for the previous year as adjusted for the annual change in the consumer price index as specified in this sub-subparagraph (C). For any facility that applies to receive district moneys on or after July 1, 2006, such facility shall have had an annual operating income of more than one million two hundred fifty thousand dollars for the previous year as adjusted for the annual change in the consumer price index as specified in this sub-subparagraph (C); except that any facility that qualified to receive a distribution pursuant to this paragraph (b) on or before June 30, 2006, shall be subject to the one million two hundred fifty thousand dollar threshold as adjusted for the annual change in the consumer price index as specified in this sub-subparagraph (C), as of July 1, 2009. For distributions made pursuant to this paragraph (b) in 1996 and in each year thereafter, the board shall annually adjust the amount specified in this sub-subparagraph (C), as applicable, in accordance with the annual percentage change in the consumer price index for the previous year for the Denver-Boulder-Greeley consolidated metropolitan statistical area for all urban consumers, all goods, as published by the United States department of labor, bureau of labor statistics.

(D) For any facility that applies to receive district moneys prior to July 1, 2006, such facility shall have been in existence, operating, and providing service to the public for at least two years prior to such distribution. For any facility that applies to receive district moneys for the first time on or after July 1, 2006, such facility shall have been in existence, operating, and providing service to the public for at least five years prior to the distribution. For any facility that applies to receive district moneys on or after July 1, 2006, that has had a recommencement after bankruptcy or nonconsensual reorganization, such facility shall have been operating and providing service to the public for at least five years from the original date of recommencement. For purposes of this sub-subparagraph (D), "operating" means engaged in some form of activity that is in furtherance of the advancement and preservation of art, music, theater, dance, zoology, botany, or natural history, including but not limited to activities relating to production, exhibition, and presentation.

(II) (A) Distribution of moneys pursuant to subparagraph (I) of this paragraph (b) shall be based upon a formula to be applied annually which gives equal weight to the annual operating income of such facilities and the annual paid attendance at such facilities.

(B) After the first five years said sales and use tax is levied and collected, the board may modify, in its discretion, the weight to be given the factors of annual operating income and the annual paid attendance in the formula specified in sub-subparagraph (A) of this subparagraph (II). Such determination by the board of the weight to be given said factors shall be binding on the board and may only be modified every five years thereafter.

(III) Up to five percent of said sales and use tax revenues may be distributed by the board to the scientific and cultural facilities that qualify to receive moneys pursuant to the provisions of subparagraph (I) of this paragraph (b) in such amounts as the board determines appropriate based upon one or more of the following factors: Regional impact, accessibility, quality, need, enhanced or innovative programs, and collaboration with the Denver museum of nature and science, the Denver art museum, the Denver zoological gardens, the Denver botanical gardens, or the Denver center for the performing arts or with scientific and cultural facilities that qualify to receive moneys pursuant to subparagraph (I) of this paragraph (b) or subparagraph (I) of paragraph (c) of this subsection (3).

(IV) (Deleted by amendment. L. 94, p. 481, § 2, effective January 1, 1996.)

(V) Any moneys not distributed pursuant to the provisions of subparagraph (III) of this paragraph (b) shall be placed by the board in an interest-bearing account with a federally insured bank or savings and loan association located in the state of Colorado. Such moneys shall remain in such account until the board, in its discretion, determines to distribute such moneys at the same time and in the same manner as other moneys are annually distributed pursuant to the provisions of subparagraph (III) of this paragraph (b).

(b.5) (I) Prior to July 1, 2006, notwithstanding any other provision, a scientific and cultural facility that qualifies to receive moneys pursuant to the provisions of subparagraph (I) of paragraph (b) of this subsection (3) shall not receive in any given year more than thirty-three percent of the total amount of sales and use tax revenues distributed pursuant to paragraph (b) of this subsection (3) in such year. If the amount of moneys received by any scientific and cultural facility in any given year exceeds the allowable amount, the scientific and cultural facility shall refund to the district the amount of moneys in excess of the allowable amount.

(II) On and after July 1, 2006, notwithstanding any other provision, a scientific and cultural facility that qualifies to receive moneys pursuant to the provisions of subparagraph (I) of paragraph (b) of this subsection (3) for the first time prior to July 1, 2006, shall not receive in any given year more than twenty-five percent of the total amount of sales and use tax revenues distributed pursuant to paragraph (b) of this subsection (3) in such year. If the amount of moneys received by any scientific and cultural facility in any given year exceeds the allowable amount, the scientific and cultural facility shall refund to the district the amount of moneys in excess of the allowable amount.

(III) On and after July 1, 2006, notwithstanding any other provision, a scientific and cultural facility that qualifies to receive moneys pursuant to the provisions of subparagraph (I) of paragraph (b) of this subsection (3) for the first time on or after July 1, 2006, shall not receive more than fifteen percent of the total amount of sales and use tax revenues distributed pursuant to paragraph (b) of this subsection (3) in the first year of distribution,

twenty percent of such total amount in the second year of distribution, and twenty-five percent of such total amount in the third and any subsequent year of distribution. If the amount of moneys received by any scientific and cultural facility in any given year exceeds the allowable amount, the scientific and cultural facility shall refund to the district the amount of moneys in excess of the allowable amount.

(c) Upon voter approval of the levy and collection of the sales and use tax specified in section 32-13-105 (1) (c), (4) (a) (III), or (5) (a) (III), as applicable, the sales and use tax revenues levied and collected by the district shall be distributed annually by the board for annual operating expenses as follows:

(I) Ninety-five percent of said sales and use tax revenues collected in each county comprising the district shall be distributed by the board to scientific and cultural facilities within such county pursuant to the provisions of the plan submitted by each county cultural council as specified in subparagraph (II) of this paragraph (c). Said moneys shall be distributed to scientific and cultural facilities within the district which are not receiving moneys pursuant to paragraph (a) of this subsection (3) and which meet the following criteria:

(A) Any such facility shall be a nonprofit organization that has a determination letter in effect from the internal revenue service confirming that the organization meets the requirements of section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, whose primary purpose is to provide for the enlightenment and entertainment of the public through the production, presentation, exhibition, advancement, or preservation of art, music, theater, dance, zoology, botany, or natural history or shall be an agency of local government that has such primary purpose.

(B) Any such facility shall have its principal office within the district, shall conduct the majority of its activities within the state of Colorado, and shall principally benefit the residents of the district.

(C) Any such facility that applies to receive district moneys for the first time on or after July 1, 2006, shall have been in existence, operating, and providing service to the public for at least three years prior to such distribution. For any facility that applies to receive district moneys on or after July 1, 2006, that has had a recommencement after bankruptcy or nonconsensual reorganization, such facility shall be operating and providing service to the public for at least three years from the original date of recommencement. For purposes of this sub-subparagraph (C), "operating" means engaged in some form of activity that is in furtherance of the advancement and preservation of art, music, theater, dance, zoology, botany, or natural history, including but not limited to activities relating to production, exhibition, and presentation.

(II) The county cultural council of each county comprising the district shall submit to the board an annual plan specifying the distribution of such revenues as provided for in subparagraph (I) of this paragraph (c) to scientific and cultural facilities in such county which meet the criteria set forth in subparagraph (I) of this paragraph (c). In creating such plan, a county cultural council may give priority to scientific and cultural facilities within such county which qualify to receive moneys pursuant to the provisions of subparagraph (I) of paragraph (b) of this subsection (3). Such plans submitted by such county cultural councils to the board shall be binding upon the board.

(III) Up to five percent of said sales and use tax revenues collected in each county comprising the district may be distributed by the board to the scientific and cultural facilities that qualify to receive moneys pursuant to subparagraph (I) of this paragraph (c) as the board may determine appropriate based upon one or more of the following factors: Accessibility, quality, need, enhanced or innovative programs, and collaboration with the Denver museum of nature and science, the Denver art museum, the Denver zoological gardens, the Denver botanical gardens, or the Denver center for the performing arts or with scientific and cultural facilities that qualify to receive moneys pursuant to subparagraph (I) of paragraph (b) of this subsection (3) or subparagraph (I) of this paragraph (c). Any distribution made pursuant to this subparagraph (III) shall be based upon the provisions of the plan submitted by each county cultural council as required by subparagraph (II) of this paragraph (c).

(IV) (Deleted by amendment, L. 94, p. 481, § 2, effective January 1, 1996.)

(V) Any moneys not distributed pursuant to the provisions of subparagraph (III) of this paragraph (c) shall be placed by the board in an interest-bearing account with a federally insured bank or savings and loan association located in the state of Colorado. Such moneys shall remain in such account until the board, in its discretion, determines to distribute such moneys at the same time and in the same manner as other moneys are annually distributed pursuant to the provisions of subparagraph (III) of this paragraph (c).

(d) No scientific and cultural facility which receives moneys pursuant to the provisions of paragraph (c) of this subsection (3) shall use or expend such moneys for the acquisition, physical preservation, or restoration of any historic building, structure, or site.

(4) Upon any extension of the sales and use taxes levied and collected by the district in accordance with section 32-13-105, the amount of sales and use tax proceeds expended and distributed by the district in any given year shall not exceed the amount specified in the ballot question for the current fiscal year and shall not exceed the amount specified in the ballot question as adjusted for inflation plus annual local growth for each fiscal year after the current fiscal year. For purposes of this subsection (4), "inflation" has the meaning set forth in section 20 of article X of the state constitution and in section 24-77-102 (8), C.R.S., and "local growth" has the meaning set forth in section 20 of said article X. Whenever the amount of sales and use tax proceeds collected in any fiscal year pursuant to this article exceeds the permissible amount to be expended and distributed, the provisions of section 20 of said article X governing tax refunds shall apply.

(5) Pursuant to section 1-7-116, C.R.S., and any agreement enacted pursuant thereto, the district shall pay a county or a city and county for its share of the expenses associated with a coordinated election; except that the amount the district is required to pay for any coordinated election shall be limited to and not exceed the district's reasonable costs related to a coordinated election.

Source: **L. 87:** Entire article added, p. 1257, § 1, effective July 1. **L. 94:** (2) amended, p. 319, § 5, effective March 29; (1), (2), IP(3), IP(3)(a), IP(3)(a)(I), (3)(a)(II), (3)(a)(III), IP(3)(a)(IV), IP(3)(b), IP(3)(b)(I), (3)(b)(II)(B), (3)(b)(III), IP(3)(b)(IV), IP(3)(c), IP(3)(c)(I), (3)(c)(III), and IP(3)(c)(IV) amended and (4) added, p. 472, § 3, effective March 31; (3)(d) added, p. 484, § 3, effective March 31; (3)(a)(III) to (3)(a)(V), (3)(b)(I)(C), (3)(b)(I)(D), (3)(b)(III) to (3)(b)(V), (3)(c)(III) to (3)(c)(V) amended and (3)(b.5) added, p. 481, § 2, effective January 1, 1996. **L. 99:** (1)(a) amended, p. 982, § 6, effective May 28; (1)(a) amended, p. 1357, § 7, effective January 1, 2000. **L. 2004:** (1)(a) amended, p. 1041, § 8, effective July 1; (3)(a), IP(3)(b), (3)(b)(I), (3)(b)(III), (3)(b.5), IP(3)(c), IP(3)(c)(I), (3)(c)(I)(A), and (3)(c)(III) amended and (3)(c)(I)(C) added, p. 291, § 8, effective July 1, 2006. **L. 2005:** (3)(a)(I)(A), (3)(a)(II), (3)(a)(III), (3)(b)(III)(A), and (3)(c)(III) amended, p. 779, § 67, effective June 1. **L. 2006:** IP(3) amended and (5) added, p. 1780, § 3, effective June 6. **L. 2009:** IP(1)(a) amended, (HB 09-1342), ch. 354, p. 1849, § 8, effective July 1.

Editor's note: (1) Amendments to subsection (2) by House Bill 94-1222 and House Bill 94-1024 were harmonized. Amendments to subsections (3)(a)(III), (3)(b)(III), and (3)(c)(III) to (3)(c)(V) by House Bill 94-1222 and House Bill 94-1223 were harmonized.

(2) Amendments to subsection (1)(a) by House Bill 99-1015 and House Bill 99-1271 were harmonized.

ANNOTATION

Law reviews. For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

32-13-107.5. Legislative declaration - submission to voters - severability. (1) The general assembly hereby finds, determines, and declares that the extension of the sales and use taxes imposed pursuant to section 32-13-105 are extensions of expiring taxes subject to the provisions of section 20 (4) (a) of article X of the state constitution and are subject to

voter approval; that the tax proceeds resulting from the taxes which the voters may be asked to extend are subject to the fiscal year spending limit of the Denver metropolitan scientific and cultural facilities district imposed by section 20 (7) (b) of said article X; that said constitutional provision limits the growth of district revenues by restricting the increase of fiscal year spending to the rate of inflation plus annual local growth; that the ballot questions specified in section 32-13-105 fully disclose to the voters that the amount of tax proceeds resulting from the taxes which they may be asked to extend will be subject to increase after the current fiscal year based upon the factors of inflation and annual local growth specified in section 20 (7) (b) of said article X; and that this disclosure in said ballot questions is for informational purposes only as the growth in the amount of tax proceeds is permitted to occur only at the rate permitted by section 20 (7) (b) of said article X.

(2) The purpose of this article is to secure a dependable source of revenue to be used by the Denver metropolitan scientific and cultural facilities district to assist scientific and cultural facilities within said district as set forth in this article and to provide for a source of revenue which will grow in proportion to the expanding financial needs of scientific and cultural facilities. However, in the event that it is found by a court of competent jurisdiction that the provisions of section 20 of article X of the state constitution do not permit an extension of an expiring tax which incorporates such growth in revenues, the portions of the ballot questions set forth in section 32-13-105 which provide for an adjustment of permissible revenues based on inflation and annual local growth shall be deemed to be severable from the remainder of such ballot questions and that the valid portions of the ballot questions are not so essentially and inseparably connected with or dependent upon the invalid portions that the valid portions would not have been enacted without the invalid portions.

Source: L. 94: Entire section added, p. 475, § 4, effective March 31.

32-13-108. Petition or resolution for formation and levy of tax - petition or resolution for extension of tax - verification of signatures - election. (1) (a) A scientific and cultural facilities district may include a portion of one county, an entire county, or areas contained within multiple counties of the state; except that no county shall include more than one scientific and cultural facilities district composed of areas located solely within that county.

(b) The formation of a scientific and cultural facilities district other than the district created in section 32-13-104 shall be initiated by a petition signed by registered electors of each unincorporated area of a county and of each area within a municipality that is to be included in the proposed scientific and cultural facilities district in number not less than five percent of the votes cast in each area for all candidates for the office of governor at the last preceding general election, by resolution adopted by the board, or by resolution of each board adopted pursuant to an intergovernmental agreement entered into by the boards of county commissioners of the county or counties in which a scientific and cultural facilities district is proposed.

(c) Such petition or resolution shall state that the proposed scientific and cultural facilities district would levy and collect for a period of time not to exceed ten years a uniform sales tax throughout the geographical area of the district at a rate not to exceed thirty one-hundredths of one percent upon every transaction or other incident with respect to which a sales tax is levied by the county in which the transaction or other incident occurs, pursuant to the provisions of article 2 of title 29, C.R.S.

(d) Such petition or resolution shall be filed with the board or boards of county commissioners of the county or counties in which the proposed scientific and cultural facilities district would be formed at least three months before the general election or the election held on the first Tuesday of November in an odd-numbered year, whichever is applicable, at which it may be voted upon.

(2) (a) The petition or resolution for the formation of a scientific and cultural facilities district shall state:

(I) The name proposed for the scientific and cultural facilities district; and

(II) A description of the geographical area to be included in the scientific and cultural facilities district sufficient to enable a property owner to determine whether his or her property lies within the district.

(b) The petition or resolution for the formation of a scientific and cultural facilities district may state any formula or criteria concerning the distribution of sales tax collections pursuant to section 32-13-110 (3); including criteria that scientific and cultural facilities must meet in order to receive moneys from the district which are in addition to the criteria specified in section 32-13-110 (3) (a) and (3) (b). If the petition or resolution does include such formula or criteria and the registered electors voting on the question vote affirmatively on the question of creation of the district and the levy of the tax specified in paragraph (c) of subsection (1) of this section, then such formula or criteria contained in such petition or resolution shall be binding upon the board.

(c) The petition or resolution for the formation of a scientific and cultural facilities district shall state the month, day, and year on which the authority of the scientific and cultural facilities district to levy and collect the sales tax shall expire.

(2.5) (a) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution, the question of whether the board of a district created pursuant to this section shall be authorized to continue the levy and collection of the sales tax throughout the district upon every transaction or other incident with respect to which a sales tax is levied by the county in which the transaction or other incident occurs, pursuant to the provisions of article 2 of title 29, C.R.S., for a period of time not to exceed ten years from the date upon which the authority of the board to levy and collect the sales taxes is scheduled to expire shall be initiated by a petition signed by the registered electors of the district in a number not less than five percent of the votes cast in the each incorporated and unincorporated area included within the district for all candidates for the office of governor at the last preceding general election or initiated by a resolution adopted by the board of the scientific and cultural facilities district.

(b) Such petition or resolution shall state the name of the scientific and cultural facilities district and that the district would continue to levy and collect a uniform sales tax throughout the geographical area of the district at a rate not to exceed thirty one-hundredths of one percent upon every transaction or other incident with respect to which a sales tax is levied by the county in which the transaction or other incident occurs, pursuant to the provisions of article 2 of title 29, C.R.S., for a period of time not to exceed ten years from the date upon which the authority of the district to levy and collect the sales tax is scheduled to expire.

(c) Such petition or resolution shall be filed with the board or boards of county commissioners of the county or counties in which the scientific and cultural facilities district is located at least three months before the general election or the election held on the first Tuesday of November in an odd-numbered year, whichever is applicable, at which it may be voted upon.

(3) (Deleted by amendment, L. 94, p. 476, 6, effective March 31, 1994.)

(3.5) Upon the filing of any petition pursuant to this section, each affected board of county commissioners shall transmit the petition to its county clerk and recorder for verification of signatures. Each county clerk and recorder shall verify the signatures of registered electors from areas within such county within thirty days of receiving the petition. Any county clerk and recorder who declares that the petition appears not to have a sufficient number of signatures from areas within a county shall grant a fifteen-day extension to the petitioners to cure the insufficiency by filing an addendum to the original petition for the purpose of offering the number of signatures as will cure the insufficiency. No addendum offered as a cure shall be considered unless the addendum conforms to the same requirements imposed upon the original petition and unless filed with the county clerk and recorder within the fifteen-day period after the insufficiency is declared. Any protest regarding the verification or sufficiency of signatures on the petition shall be made pursuant to section 1-40-118, C.R.S., and any hearing or further appeals regarding such protest shall be held in accordance with section 1-40-119, C.R.S.

(4) (a) If a petition or resolution for the formation of a scientific and cultural facilities district and the levy and collection of the sales tax satisfies the requirements specified in this

section, each affected board of county commissioners shall submit, in identical form determined by intergovernmental agreement, the question of the organization of the scientific and cultural facilities district at the next general election or election held on the first Tuesday in November of an odd-numbered year, whichever is held first after the filing of the petition or resolution. Any question submitted shall comply with the requirements of section 20 of article X of the state constitution, as applicable.

(b) If a petition or resolution for the extension of the authority to levy and collect a sales tax by the scientific and cultural facilities district satisfies the requirements specified in this section, the question of whether the scientific and cultural facilities district shall be authorized to continue the levy and collection of sales tax throughout the district shall be submitted at the next general election or election held on the first Tuesday in November of an odd-numbered year, whichever is held first after the filing of the petition or resolution. Any question submitted shall comply with the requirements of section 20 of article X of the state constitution, as applicable.

(5) (a) If at any such election a majority of the registered electors of the proposed district voting on the question vote affirmatively on the question of the creation of the district and the levy of the tax specified in paragraph (c) of subsection (1) of this section, then the district shall come into existence, and such tax may be levied and collected as provided in this article. If a majority of the registered electors of said area vote "No" on the question, the district shall not come into existence.

(b) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question authorizing the district to continue the levy and collection of the sales tax specified in subsection (1) of this section until the date specified in the question, then such sales tax shall continue to be levied, collected, and distributed as provided for in this article until said date.

Source: **L. 87:** Entire article added, p. 1261, § 1, effective July 1. **L. 90:** (2) amended, p. 1515, § 1, effective April 3. **L. 92:** (1)(a) and (1)(b) amended, p. 991, § 2, effective April 24. **L. 94:** (1)(b), (1)(c), (2), (3), (4), and (5) amended and (2.5) and (3.5) added, p. 476, § 6, effective March 31. **L. 98:** Entire section amended, p. 358, § 2, effective April 20.

32-13-109. Board of directors - powers and duties. (1) A district created pursuant to section 32-13-108 shall be governed by a board of directors which shall be appointed by the board of county commissioners. A director appointed pursuant to this subsection (1) shall be appointed to serve a term of three years, but no director shall serve more than two succeeding terms. Any such director may be removed at any time during his term by the appointing authority.

(2) The board shall have the following powers and duties:

(a) To fix the time and place at which its regular meetings shall be held. Meetings shall be held within the district and shall be open to the public.

(b) To adopt and amend rules of procedure;

(c) To select a chairman;

(d) To hire such staff as may be necessary to assist the board in its duties;

(e) To enter into contracts including but not limited to contracts for the provision of cultural services for the district;

(f) To sue and be sued;

(g) To administer and use moneys collected pursuant to section 32-13-110, in accordance with the guidelines specified in section 32-13-110.

Source: **L. 87:** Entire article added, p. 1262, § 1, effective July 1.

32-13-110. Tax imposed - collection - administration of tax - use. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-13-108, the board shall have the power to levy such uniform sales tax throughout the district upon every

transaction or other incident with respect to which a sales tax is levied by the county, pursuant to the provisions of article 2 of title 29, C.R.S.

(2) (a) If such sales tax is levied pursuant to the provisions of this article, the collection, administration, and enforcement of said sales tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax imposed under article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of said tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of such sales tax collections to the district. The district shall pay the net incremental cost incurred by the department of revenue in the administration and collection of such sales taxes; except that in no event shall any district pay in any given fiscal year commencing after the first full fiscal year of operation more than an amount equal to the amount paid by the district in the first full fiscal year of operation, as adjusted in accordance with changes in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area. The department may make expenditures for such costs subject to annual appropriation by the general assembly.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to this article. A vendor or retailer that has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) The proceeds of such sales tax collections shall be used by the board to assist scientific and cultural facilities within the district. After deducting any costs incurred by the district for the administration of such moneys, distributions shall be made by the board, in accordance with any formula or criteria, if any, contained in the petition or resolution pursuant to section 32-13-108 (2) (b), to scientific and cultural facilities which meet the criteria, if any, specified in such petition or resolution, and which meet the following criteria:

(a) Any such facility shall be a nonprofit organization which meets the requirements of section 501 (c) of the federal "Internal Revenue Code of 1986", as amended, whose primary purpose is to provide for the enlightenment and entertainment of the public through the production, presentation, exhibition, advancement, or preservation of art, music, theater, dance, zoology, botany, anthropology, cultural history, or natural history or shall be an agency of local government which has such primary purpose; and

(b) Any such facility shall have its principal office within the district, shall conduct the majority of its activities within the state of Colorado, and shall principally benefit the residents of the district.

Source: **L. 87:** Entire article added, p. 1262, § 1, effective July 1. **L. 90:** IP(3) amended, p. 1515, § 2, effective April 3. **L. 92:** (3)(a) amended, p. 991, § 3, effective April 24. **L. 94:** (2) amended, p. 319, § 6, effective March 29. **L. 99:** (2) amended, p. 15, § 8, effective January 1, 2000.

ANNOTATION

Law reviews. For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

32-13-111. No impairment of contractual obligations. Nothing in this article shall be construed to affect or impair any obligations of contracts between any governmental entity and any cultural facility.

Source: L. 87: Entire article added, p. 1263, § 1, effective July 1.

32-13-112. Discount rates. Any day designated by a scientific and cultural facility within any district as a “free day” or a “discounted rate day”, on which the amount of admission to such facility is waived or the amount of admission is reduced, shall be made available to all residents of the state.

Source: L. 87: Entire article added, p. 1263, § 1, effective July 1.

32-13-113. Report. (Repealed)

Source: L. 87: Entire article added, p. 1263, § 1, effective July 1. L. 2002: Entire section repealed, p. 867, § 4, effective August 7.

32-13-114. Repeal of article. (Repealed)

Source: L. 87: Entire article added, p. 1263, § 1, effective July 1. L. 94: Entire section repealed, p. 485, § 4, effective March 31.

ARTICLE 14

Denver Metropolitan Major League
Baseball Stadium District

Editor’s note: For a discussion of the difference between service authorities authorized by § 17 of article XIV of the Colorado constitution and statutorily created special districts, see *Anema v. Transit Const. Authority*, 788 P.2d 1261 (Colo. 1990).

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the Colorado constitution; for the provisions of the “Colorado Baseball Spectator Safety Act of 1993”, see § 13-21-120; for the provisions concerning the prohibition on bringing alcoholic beverages or any bottles or cans into the stadium, see § 18-9-123.

32-14-101.	Short title.		
32-14-102.	Legislative declaration.		institute - Colorado baseball
32-14-103.	Definitions.		commission - consideration
32-14-104.	Creation of district - area of district.	32-14-113.	of recommendations.
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32-14-106.	Board of directors - membership - qualifications.	32-14-114.	site - construction of stadium - use of public mon-
32-14-107.	Board of directors - powers and duties.		neys - target percentage.
32-14-108.	Conflicts of interest prohibited.	32-14-115.	Sales tax imposed - collection
32-14-109.	Records of board - audits - legislative oversight - powers and duties of state auditor.	32-14-116.	- administration of tax - discontinuance.
32-14-110.	Privatization - study and consideration.	32-14-117.	Sales tax revenues - use.
32-14-111.	Criteria - stadium site - stadium.	32-14-118.	Operating revenues - use.
32-14-112.	Consultation with urban land	32-14-119.	Issuance of special obligation bonds.
		32-14-120.	Pledge of sales tax revenues and net operating revenues.
		32-14-121.	Payment, recital, and securities.
			Incontestable recital in securities.
			Limitation upon payment.

32-14-122.	Negotiability.	32-14-129.	Sale of real and personal property of district.
32-14-123.	Sale of special obligation bonds.	32-14-130.	Limitations upon promotional activities.
32-14-124.	Contracts.	32-14-131.	Colorado baseball commission - creation - membership.
32-14-125.	Management agreement - operation of stadium.	32-14-132.	Commission - powers and duties.
32-14-126.	Lease of stadium - major league baseball franchise.	32-14-133.	Repeal of article.
32-14-126.5.	Revenue sharing.		
32-14-127.	Report. (Repealed)		
32-14-128.	Limitations upon liabilities.		

32-14-101. Short title. This article shall be known and may be cited as the “Denver Metropolitan Major League Baseball Stadium District Act”.

Source: L. 89: Entire article added, p. 1327, § 1, effective June 2.

32-14-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the location of a major league baseball franchise in the state of Colorado would be a source of recreational entertainment for the residents of the state; that a major league baseball franchise would stimulate economic development throughout the state resulting in increased tourism, the creation and maintenance of new jobs, and the attraction and retention of sports and entertainment events; that, in order to be considered for the location of a major league baseball franchise, it is essential that the mechanism exist for financing and constructing a major league baseball stadium in the Denver metropolitan area; and that the creation of a major league baseball stadium district will promote the health, safety, and welfare of the residents of the state.

Source: L. 89: Entire article added, p. 1327, § 1, effective June 2.

32-14-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Board” means the board of directors of the Denver metropolitan major league baseball stadium district created by this article.
- (2) “Commission” means the Colorado baseball commission created by this article.
- (3) “Commissioner” means a member of the commission.
- (4) “Director” means a member of the board.
- (5) “District” means the Denver metropolitan major league baseball stadium district created by this article.
- (6) “Major league baseball” means the organization which controls the administrative functions for the ownership and operation of major league baseball operations in the United States and Canada.
- (7) “Major league baseball franchise” means the contractual right granted by major league baseball to any individual, group of individuals, or entity to own and operate a major league baseball team in a specified location.
- (8) “Minor league baseball franchise” means the contractual right granted to any individual, group of individuals, or entity to own and operate a minor league baseball team in a specified location.
- (9) “Special obligation bonds” means the bonds issued by the district pursuant to the provisions of section 32-14-117.
- (10) “Stadium” means a sports facility which is designed for use primarily as a major league baseball stadium, which meets the criteria established by the board, which meets criteria which may be established by major league baseball, and which may include, but is not limited to, such features as parking areas, sky boxes, and press boxes which are necessary or desirable for such a sports facility.

Source: L. 89: Entire article added, p. 1327, § 1, effective June 2.

32-14-104. Creation of district - area of district. (1) There is hereby created a district to be known and designated as the Denver metropolitan major league baseball stadium district. The district shall be a body corporate and politic and a political subdivision of the state. The area comprising the district shall consist of:

(a) That area comprising the regional transportation district, as specified in section 32-9-106 as it existed on June 2, 1989; and

(b) That area comprising the regional transportation district as specified in sections 32-9-106.3 as it existed on May 25, 1994, 32-9-106.4 as it existed on April 15, 1996, and 32-9-106.6 as it existed on May 25, 1994, unless rejected by the eligible electors as provided in said sections. Except as otherwise provided by law, the area shall not include areas included in the regional transportation district pursuant to section 32-9-106.7.

(2) Each of the directors, officers, and employees of the district shall be a public employee for purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: **L. 89:** Entire article added, p. 1328, § 1, effective June 2. **L. 90:** Entire section amended, p. 1517, § 1, effective April 16. **L. 94:** Entire section amended, p. 1339, § 5, effective May 25. **L. 96:** (1)(b) amended, p. 309, § 5, effective April 15. **L. 99:** (1)(b) amended, p. 420, § 5, effective April 30. **L. 2007:** (1) amended, p. 835, § 8, effective May 14.

32-14-105. Authorizing election. (1) The board created in section 32-14-106 may submit to the registered electors within the geographical boundaries of the district, at a general election, at a special election not paid for with public funds, or at a primary election for which the additional cost of the ballot question is prepaid and is not paid with public funds, the question of whether, upon the granting of a major league baseball franchise by major league baseball to be located in the district, the district shall be authorized to levy and collect for a period not to exceed twenty years a uniform sales tax throughout the district at a rate not to exceed one-tenth of one percent upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent that such purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be held and distributed pursuant to the provisions of section 32-14-115.

(2) The board may include, in the question submitted to the registered electors pursuant to subsection (1) of this section, additional information which it deems to be relevant including, but not limited to, a statement that a target amount of fifty percent of the costs of constructing the stadium has been established for the district to attempt to obtain funding through sources of funding other than the sales tax if approved, such as private funding sources and revenues generated from the operation of the stadium.

(3) The board shall decide at which general, primary, or special election the question shall be submitted to the registered electors. The question may be submitted to the registered electors at a special election only if major league baseball decides to grant a major league baseball franchise to be located within the district or to increase the number of major league baseball franchises prior to the next general election and only upon the affirmative vote of two-thirds of the directors of the board. Such special election shall be held on the first Tuesday after the first Monday in February, May, September, or December. Notice of the question to be submitted and the general, primary, or special election at which it is to be submitted shall be filed in the office of the secretary of state prior to ninety days before such general, primary, or special election.

(4) Prior to any general, primary, or special election at which the question is to be submitted to the registered electors pursuant to subsection (1) of this section, the board shall hold at least two public hearings in each of the counties included, in whole or in part, within the district.

(5) No public moneys from the state, any city, town, city and county, or county shall be expended by the public entity or by any private entity or private person to advertise,

promote, or purchase commercial promotion or advertisement to urge electors to vote in favor of or against the question submitted at the election.

(6) If, in any general, primary, or special election, a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question authorizing the district, upon the granting of a major league baseball franchise by major league baseball to be located within the district, to levy and collect for a period not to exceed twenty years the sales tax specified in subsection (1) of this section, then such sales tax shall be levied and collected as provided for in this article.

Source: **L. 89:** Entire article added, p. 1328, § 1, effective June 2. **L. 90:** (1), (3), (4), and (6) amended, p. 1517, § 2, effective April 16. **L. 2004:** (1) amended, p. 1042, § 9, effective July 1.

Editor's note: The election detailed in this section concerning the question of authorizing the district to levy and collect a sales tax was held August 14, 1990, and a majority of the registered electors voted affirmatively on the question. The vote count was as follows:

FOR:	187,710
AGAINST:	158,283

32-14-106. Board of directors - membership - qualifications. (1) The district created in section 32-14-104 shall be governed by a board of directors which shall consist of seven directors. No director shall be an elected official. Initial appointments to the board shall be made within ninety days after June 2, 1989.

(2) The seven directors shall be appointed by the governor, with the consent of the senate, for four-year terms. Appointments made to the board while the senate is not in session shall be temporary appointments, and the appointees shall serve on a temporary basis until the senate is in session and is able to confirm such appointments. Each director shall hold office until his successor is appointed and qualified.

(3) All directors shall have expertise in one or more areas which are relevant to the performance of the powers and duties of the board. Such areas of expertise may include, but are not limited to: Public finance; private finance; commercial law; commercial real estate; real estate development; general contracting; architecture; and administration of baseball operations.

(4) All directors shall reside within the geographical boundaries of the district.

(5) Any director may be removed at any time during his term at the pleasure of the governor. If any director vacates his office during the term for which appointed to the board, a vacancy on the board shall exist, and the governor shall fill such vacancy by appointment for the remainder of such unexpired term, subject to confirmation by the senate.

(6) The directors shall elect a chairman and a vice-chairman from among the membership of the board.

(7) All business of the board shall be conducted at regular or special meetings which shall be held within the geographical boundaries of the district and which shall be open to the public. The provisions of this subsection (7) and part 4 of article 6 of title 24, C.R.S., shall apply to all meetings of the board.

(8) Board action shall require the affirmative vote of a majority of the total membership of the board.

(9) Directors of the board shall receive no compensation for their services but may be reimbursed for their necessary expenses while serving as directors of the board.

Source: **L. 89:** Entire article added, p. 1329, § 1, effective June 6. **L. 90:** (7) amended, p. 1518, § 3, effective April 16. **L. 91:** (7) amended, p. 821, § 9, effective June 1.

32-14-107. Board of directors - powers and duties. (1) In addition to any other powers specifically granted to the board in this article, the board shall have the following powers and duties:

(a) To fix the time and place at which its regular and special meetings shall be held within the geographical boundaries of the district;

(b) To adopt and from time to time amend or repeal rules of procedure and bylaws not in conflict with the constitution and laws of the state;

(c) To hire such permanent and temporary staff as may be necessary to assist the board in its duties;

(d) To promote the acquisition of a major league baseball franchise and the construction of a stadium within the district;

(e) To sue and be sued;

(f) To decide at which general, primary, or special election the question specified in section 32-14-105 (1) shall be submitted to the registered electors within the geographical boundaries of the district;

(g) To contract for the construction, equipment, preservation, operation, and maintenance of a stadium and all necessary works incidental thereto;

(h) To enter into such contracts as may be authorized in this article including, but not limited to, contracts for the lease and sale of a stadium;

(i) To enter into and execute all contracts, leases, intergovernmental agreements, and other instruments in writing necessary or proper to the accomplishment of the purposes of this article, including, but not limited to, intergovernmental agreements concerning revenue sharing;

(j) To conduct such investigations and studies as may be necessary in order to evaluate sites within the district which are suitable for the construction of a stadium including, without limitation, a study of major league baseball stadiums in other cities. In connection with such evaluation process, the board shall consult with representatives of any city, town, city and county, or county included, in whole or in part, in the district, the chambers of commerce located within the district, the Denver baseball commission, and any other individuals, groups of individuals, or entities which may provide any relevant expertise concerning the evaluation of stadium sites. In addition, the board shall consult with the urban land institute pursuant to the provisions of section 32-14-112 concerning the evaluation of stadium sites.

(k) To establish criteria for a stadium site and a stadium;

(l) Upon the approval of the registered electors pursuant to the provisions of section 32-14-105, to select a single site within the district for the location of a stadium after consideration of any recommendations made by the urban land institute pursuant to the provisions of section 32-14-112 concerning such selection;

(m) To acquire on behalf of the district the selected stadium site and such other lands and interests in real and personal property as may be necessary, by gift, contract, or other means. The board may acquire on behalf of the district such lands and interests in real and personal property as may be necessary for parking facilities, stadium facilities, and stadium site access by gift, contract, or other means or through the exercise of the power of eminent domain, pursuant to the applicable provisions of articles 1 to 7 of title 38, C.R.S.; except that the board shall not be authorized to commence an action on behalf of the district to exercise the power of eminent domain after April 30, 1995, and that the board may only exercise the power of eminent domain with respect to real property which is located within the lesser of one thousand feet of the nearest boundary of real property which, as of January 31, 1993, was owned by or under contract to be acquired by the district or to the center line of Blake street or to the center line of 19th street. Any lands and interest in real and personal property acquired by the board through the exercise of the power of eminent domain shall not be sold, leased, rented, or given away except in connection with the sale or lease of the entire stadium; except that this restriction shall not apply to any agreement with the major league baseball franchise which is located in the district.

(n) To maintain an office at such place as it may designate within the geographical boundaries of the district;

(o) To exercise all powers necessary and requisite for the accomplishment of the purposes for which the district is organized and capable of being delegated by the general assembly; and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this article or to limit any such grant to powers of the same class as those so enumerated;

(p) To arrange with the city, town, city and county, or county in which the selected stadium site is located to plan, replan, zone, or rezone any part of the selected stadium site, in connection with the acquisition, construction, maintenance, and operation of the stadium proposed or being undertaken by the district pursuant to the provisions of this article;

(q) To borrow money, contract to borrow money for the purpose of issuing special obligation bonds, and issue obligations for any of its corporate purposes and to fund such obligations and to refund such obligations as provided in this article;

(r) To engage the services of private consultants and legal counsel to render professional and technical assistance and advice in carrying out the purposes of this article;

(s) To procure insurance against any loss in connection with its property and other assets and liability for personal injury to or damage to property of others in such amounts and from such insurers as are necessary and reasonable for governmental entities owning similar facilities in the district;

(t) To procure insurance or guarantees from any public or private entity, including but not limited to the state, any city, town, city and county, or county, or any department, agency, or instrumentality of the United States of America, for payment of any obligations issued by the district, including the power to pay premiums on any such insurance;

(u) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from the state, any city, town, city and county, or county, and any department, agency, or instrumentality of the United States of America for any purpose consistent with the provisions of this article;

(v) To acquire, dispose of, and encumber real and personal property including, without limitation, rights and interests in property, leases, and easements necessary to the functions or the operation of the district;

(w) To fix and from time to time to increase or decrease fees, rentals, rates, tolls, penalties, or other charges for services, programs, or facilities furnished by the district in connection with the operation of the stadium, and the board may pledge such revenues or any portion thereof for the payment of any indebtedness of the district as provided in this article;

(x) To levy and collect a sales tax pursuant to the provisions of this article, and the board may pledge such sales tax revenues or any portion thereof for the payment of any indebtedness of the district;

(y) To invest moneys received by the district pursuant to the provisions of this article in accordance with the provisions of part 6 of article 75 of title 24, C.R.S.;

(z) To administer and use moneys received by the district in accordance with the provisions of this article;

(aa) To develop reporting and review requirements governing the receipt and expenditures of any moneys received by the district pursuant to this article;

(bb) To deposit any moneys of the district in any banking institution or savings and loan association within the state as authorized in section 24-75-603, C.R.S., and to appoint, for purposes of making such deposits, one or more persons to act as custodians of the moneys of the district, who may be required to give surety bonds in such amounts and form and for such purposes as the board may require.

Source: **L. 89:** Entire article added, p. 1330, § 1, effective June 2. **L. 90:** (1)(a), (1)(f), (1)(i), (1)(l), (1)(m), (1)(q), and (1)(s) amended and (1)(bb) added, p. 1518, § 4, effective April 16. **L. 93:** (1)(m) amended, p. 902, § 1, effective May 18.

32-14-108. Conflicts of interest prohibited. (1) No director, employee, or agent of the district shall be interested in any contract or transaction with the district except in his official representative capacity.

(2) No director may vote in favor of a specific stadium site if such director or any member of the immediate family of such director has any direct or indirect financial interest

in the real property on which the stadium would be located or any real property which would be significantly benefited by the construction of a major league baseball stadium.

Source: L. 89: Entire article added, p. 1332, § 1, effective June 2.

32-14-109. Records of board - audits - legislative oversight - powers and duties of state auditor. (1) All resolutions and orders shall be recorded and authenticated by the signature of the chairman of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by directors, employees, and any other agents of the district, and all corporate acts and said record shall be a public record. The board shall keep an account of all moneys received by and disbursed on behalf of the district, and said account shall also be a public record. Any public record of the district shall be open for inspection by any registered elector of the district, by any official representative of the state, or by any official representative of any county, city and county, city, or town included, in whole or in part, within the district. All records shall be subject to audit as provided by law for political subdivisions.

(2) (a) In addition to the audit authorized in subsection (1) of this section, upon the affirmative vote of a majority of the members of the legislative audit committee created pursuant to section 2-3-101, C.R.S., it shall be the duty of the state auditor to conduct or cause to be conducted audits of the district. The state auditor shall prepare for the committee a report and shall make recommendations on such audit and shall include a copy of or the substance of such report in his annual report made pursuant to the provisions of section 2-3-103 (2), C.R.S.

(b) In conducting an audit pursuant to paragraph (a) of this subsection (2), the state auditor or his or her designated representative shall have access at all times, except as otherwise provided in sections 39-1-116, 39-4-103, and 39-5-120, C.R.S., to all of the books, accounts, reports, including confidential reports, vouchers, or other records or information of the district. Nothing in this paragraph (b) shall be construed as authorizing or permitting the publication of information prohibited by law. Any director, employee, or agent who fails or who interferes in any way with such examination commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(c) In verifying any of the audits made, the state auditor shall have the right to ascertain the amounts on deposit in any bank or other depository belonging to the district. In addition, the state auditor shall have the right to audit said account or the books of any such bank or depository. No bank or other depository shall be liable for making available to the state auditor any of the information required pursuant to the provisions of this paragraph (c).

Source: L. 89: Entire article added, p. 1332, § 1, effective June 2. **L. 2002:** (2)(b) amended, p. 1543, § 290, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

32-14-110. Privatization - study and consideration. (1) The board shall study, consider, and pursue opportunities for privatizing the costs of acquiring a stadium site, the costs of constructing a stadium, or the costs of operating a stadium in order to minimize the use of sales tax revenues to the greatest extent possible for the purposes of this article. Such methods to be studied, considered, and pursued by the board in order to achieve such privatization shall include, but not be limited to, the following:

(a) Financial incentives from private sources, including landowners and developers, available to offset the cost of a stadium site and the construction, maintenance, and operation of a stadium, including, but not limited to: Contributions of money, goods, equipment, and services; lease-purchase agreements; sale-leaseback agreements; and joint venture proposals;

- (b) The sale or lease of the name of the stadium, any symbol or image of the general design, appearance, or configuration of the stadium, including trademarks, service marks, trade names, and logos;
- (c) The sale or lease of seat rights;
- (d) The sale or lease of luxury suites, commonly referred to as sky boxes; and
- (e) The sale of long-term advertising, parking, and concession rights.

Source: L. 89: Entire article added, p. 1333, § 1, effective June 2. **L. 90:** IP(1), (1)(a), and (1)(e) amended, p. 1519, § 5, effective April 16.

32-14-111. Criteria - stadium site - stadium. (1) The board shall establish criteria for the stadium site and the stadium. In establishing such criteria, the board shall consider factors which it deems relevant including, but not limited to:

- (a) The need for access to the site by motor vehicles, pedestrians, and others using the stadium, including the proximity to highways, the capacity of surrounding streets and highways to handle traffic, the proximity to actual and proposed public transportation, and the overall convenience to the citizens of the district;
- (b) The extent to which financial incentives from private sources, including landowners and developers, may be maximized in order to reduce the amount of public moneys required to be expended for a stadium site;
- (c) The extent to which the economic potential resulting from the location of a stadium may be maximized, including the compatibility of a stadium with adjacent actual or proposed development;
- (d) The compatibility of a stadium with surrounding neighborhoods;
- (e) The existence of readily available fire and police protection services;
- (f) The existence or the potential for the existence of adequate parking facilities for motor vehicles in the immediately surrounding area; and
- (g) Any criteria which may be established by major league baseball concerning stadium sites or stadiums.

Source: L. 89: Entire article added, p. 1333, § 1, effective June 2.

32-14-112. Consultation with urban land institute - Colorado baseball commission - consideration of recommendations. The board shall consult with and shall consider any recommendations made by the urban land institute or by the Colorado baseball commission in regard to the duties of the board, including but not limited to the selection of a stadium site, the planning and design of the stadium, and the financing of the stadium site acquisition and the construction of the stadium.

Source: L. 89: Entire article added, p. 1334, § 1, effective June 2.

32-14-113. Costs - acquisition of stadium site - construction of stadium - use of public moneys - target percentage. The district shall make every reasonable effort to obtain funding for a target amount of at least fifty percent of the total costs incurred by the district in the acquisition of a stadium site and in the construction of a stadium from moneys acquired from sources other than the levy and collection of the sales tax authorized pursuant to the provisions of section 32-14-114. Such amount constitutes a target which the district shall attempt to achieve but is not a mandatory requirement. Such moneys may include, but are not limited to, private donations or the revenues acquired by the issuance of special obligation bonds to be paid from the financial incentives specified in section 32-14-110 (1) (a) or the operating revenues generated by the district. The sales tax authorized in section 32-14-114 shall be levied only for the period of time for which it is necessary to generate revenues sufficient to pay the percentage of the total costs incurred in said acquisition and construction not funded by other sources of money and for such other purposes specified in section 32-14-115, but such period of time shall not exceed twenty years.

Source: L. 89: Entire article added, p. 1334, § 1, effective June 2. L. 90: Entire section amended, p. 1520, § 6, effective April 16.

32-14-114. Sales tax imposed - collection - administration of tax - discontinuance.

(1) Upon the approval of the registered electors pursuant to the provisions of section 32-14-105 and upon the granting of a major league baseball franchise by major league baseball to be located in the district, the board shall have the power to levy such uniform sales tax for a period not to exceed twenty years throughout the district created in section 32-14-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall not be levied on the sale of cigarettes and shall be levied on:

(a) Purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent that such sales and purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., on and after the January 1 following the adoption of a resolution by the board;

(b) Sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.; and

(c) Vending machine sales of food that are otherwise exempt pursuant to section 39-26-714 (2), C.R.S.

(2) (a) The collection, administration, and enforcement of the sales tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of such sales tax collections to the district. The district shall pay the net incremental cost incurred by the department of revenue in the administration and collection of such sales tax; except that in no event shall the district pay in any given fiscal year commencing on or after July 1, 1994, more than an amount equal to the amount paid by the district in the 1993-94 fiscal year, as adjusted in accordance with changes in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area. The department may make expenditures for such costs subject to annual appropriation by the general assembly.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) If the board levies such uniform sales tax as authorized in subsection (1) of this section, the board shall transmit to the executive director of the department of revenue not later than five days after the adoption of the resolution imposing such sales tax a certified copy of said resolution, whereupon said executive director shall proceed to collect, administer, and enforce such sales tax pursuant to the provisions of subsection (2) of this section for a period of twenty years from the effective date of said resolution, unless the executive director of the department of revenue receives from the board notification of discontinuance of the levy of such sales tax pursuant to the provisions of subsection (4) of this section.

(4) At such time, prior to the end of the twenty-year period, that the board determines that the levy of the sales tax is no longer necessary for the purposes set forth in this article,

the board shall transmit to the executive director of the department of revenue not later than five days after the adoption of the resolution discontinuing the levy of such sales tax a certified copy of said resolution, whereupon said executive director shall discontinue the collection, administration, and enforcement of said sales tax on the January 1 following the adoption of said resolution. Upon the adoption of said resolution discontinuing the sales tax levy, the board shall have no further authority to levy such sales tax on and after the January 1 following the adoption of said resolution.

Source: **L. 89:** Entire article added, p. 1334, § 1, effective June 2. **L. 90:** (1), (3), and (4) amended, p. 1520, § 7, effective April 16. **L. 94:** (2) amended, p. 319, § 7, effective March 29. **L. 99:** (1) amended, p. 983, § 7, effective May 28; (1) amended, p. 1358, § 8, effective January 1, 2000; (2) amended, p. 15, § 9, effective January 1, 2000. **L. 2004:** (1) amended, p. 1042, § 10, effective July 1. **L. 2009:** IP(1) amended, (HB 09-1342), ch. 354, p. 1849, § 9, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 99-1015 and House Bill 99-1271 were harmonized.

32-14-115. Sales tax revenues - use. (1) Sales tax revenues levied and collected pursuant to the provisions of section 32-14-114 shall be used by the board for the following purposes:

(a) To reimburse the board for the day-to-day operating costs incurred in the administration of the district; however, such costs shall not exceed three-fourths of one percent of the amount of sales tax revenues collected annually;

(b) To reimburse the board for any loans made to the board or any direct out-of-pocket expenses incurred by the board for matters directly related to the duties of the board prior to the time that sales tax revenues were available for use by the board;

(c) To reimburse the board for expenses incurred in the investigation, study, and evaluation of potential stadium sites, for preconstruction planning of the design and construction of a stadium, and for the hiring of professionals to assist in these and other related activities;

(d) To acquire a site within the district which shall be suitable for construction of a stadium;

(e) To plan, design, and construct a stadium and all facilities incidental thereto;

(f) To pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article.

(2) If sales tax revenues levied and collected pursuant to the provisions of section 32-14-114 and the operating revenues generated by the district are insufficient for all of the purposes set forth in subsection (1) of this section, the purpose set forth in paragraph (f) of said subsection (1) shall have first priority of such sales tax revenues.

Source: **L. 89:** Entire article added, p. 1335, § 1, effective June 2. **L. 90:** Entire section R&RE, p. 1521, § 8, effective April 16.

32-14-116. Operating revenues - use. (1) Any operating revenues generated by the district, including, but not limited to, lease payments, fees, rentals, rates, tolls, penalties, and charges for services, programs, or facilities furnished by the district, shall be used by the board for the following purposes:

(a) To pay for the expenses incurred by the board in the general operation of the stadium;

(b) To provide for the repair and maintenance of the stadium;

(c) To provide for capital improvements to the stadium;

(d) To pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article.

(2) If operating revenues and sales tax revenues are insufficient for all of the purposes

set forth in subsection (1) of this section, the purpose set forth in paragraph (d) of said subsection (1) shall have first priority of such operating revenues if such operating revenues are pledged to secure the payment of the special obligation bonds.

Source: L. 89: Entire article added, p. 1336, § 1, effective June 2. **L. 90:** Entire section R&RE, p. 1521, § 9, effective April 16.

32-14-117. Issuance of special obligation bonds. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-14-105, the district may borrow money in anticipation of the revenues generated from the operation of a stadium and sales tax revenues of the district and may issue special obligation bonds to evidence the amount so borrowed. If the district issues special obligation bonds after such approval by the registered electors but prior to the granting of a major league baseball franchise by major league baseball to be located within the district, the proceeds of such special obligation bonds shall not be used to pay for any expenses incurred by the district until such time as major league baseball grants a major league baseball franchise to be located within the district. Special obligation bonds or other obligations payable in whole or in part from sales tax revenues or net operating revenues of the district or from moneys or assets of the district held in escrow may be issued or incurred without an election, in anticipation of such sales tax revenues or net operating revenues or such moneys or assets held in escrow.

(2) Special obligation bonds issued pursuant to the provisions of this section shall satisfy the terms, conditions, and requirements as set forth in any resolution adopted by the board authorizing the issuance of such special obligation bonds or in any trust indenture entered into between the board and any commercial bank or trust company having full trust powers which are not inconsistent with the provisions of this article. Such terms, conditions, and requirements may include, but are not limited to, the following:

(a) The execution and delivery of such special obligation bonds by the district and the times of such execution and delivery;

(b) The form and denominations of such special obligation bonds, including the terms and maturities;

(c) Whether such special obligation bonds are subject to optional or mandatory redemption prior to maturity with or without a premium;

(d) Whether such special obligation bonds are in fully registered form or bearer form registrable as to principal or interest, or both;

(e) Whether such special obligation bonds may bear conversion privileges and, if so, such conversion privileges;

(f) Whether such special obligation bonds are payable in installments and, if so, the times of such installment payments; however, the period of time during which such payments may be made shall not exceed twenty years from the date of issuance;

(g) The place or places, within or without the state, at which such special obligation bonds may be paid;

(h) The interest rate or rates which such special obligation bonds bear per annum and which may be fixed or may vary according to index, procedure, formula, or such other method as determined by the district or its agents, without regard to any interest rate limitation specified by the laws of this state;

(i) Whether such special obligation bonds are subject to purchase at the option of the holder or the district;

(j) The manner of evidencing such special obligation bonds;

(k) Whether such special obligations may be executed by the officers of the district, including the use of one or more facsimile signatures so long as at least one manual signature of an officer of the district, or of any agent authenticating the same, appears on the special obligations bonds; and

(l) Whether such special obligation bonds are in the form of coupon bonds which have attached interest coupons bearing a manual or facsimile signature of an officer of the district.

Source: L. 89: Entire article added, p. 1336, § 1, effective June 2. L. 90: Entire section amended, p. 1522, § 10, effective April 16.

32-14-118. Pledge of sales tax revenues and net operating revenues. The payment of special obligation bonds may be secured by the specific pledge of sales tax revenues of the district, operating revenues of the district, or moneys or assets of the district held in escrow as the board, in its discretion, may determine. Operating revenues, sales tax revenues, or moneys or assets held in escrow pledged for the payment of any special obligation bonds, as received by the district, shall immediately be subject to the lien of such pledge, without any physical delivery thereof, any filing, or further act, and the lien of such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument relating thereto shall have priority over all other obligations and liabilities of the district, except as may be otherwise provided in this article or in such resolution or instrument, and subject to any prior pledges and liens previously created. The lien of such pledge shall be valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the district, regardless of whether such persons have notice thereof.

Source: L. 89: Entire article added, p. 1337, § 1, effective June 2. L. 90: Entire section amended, p. 1523, § 11, effective April 16.

32-14-119. Payment, recital, and securities. Special obligation bonds issued pursuant to the provisions of this article and constituting special obligations shall recite in substance that the obligations and the interest thereon are payable solely from operating revenues of the district, sales tax revenues of the district, or moneys or assets of the district held in escrow, as the case may be, pledged to the payment thereof.

Source: L. 89: Entire article added, p. 1337, § 1, effective June 2. L. 90: Entire section amended, p. 1524, § 12, effective April 16.

32-14-120. Incontestable recital in securities. Any authorizing resolution, or other instrument relating thereto pursuant to the provisions of this article, may provide that each security therein designated shall recite that it is issued pursuant to the authority of this article. Such recital shall conclusively impart full compliance with all of the provisions of this article, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 89: Entire article added, p. 1337, § 1, effective June 2.

32-14-121. Limitation upon payment. The payment of special obligation bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the district, other than operating revenues, sales tax revenues, or moneys or assets held in escrow. No property of the district, subject to this exception, shall be liable to be forfeited or taken in payment of the special obligation bonds.

Source: L. 89: Entire article added, p. 1337, § 1, effective June 2. L. 90: Entire section amended, p. 1524, § 13, effective April 16.

32-14-122. Negotiability. Subject to the payment provisions specifically provided in this article, any special obligation bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the board may otherwise provide.

Source: L. 89: Entire article added, p. 1337, § 1, effective June 2.

32-14-123. Sale of special obligation bonds. (1) Any special obligation bonds issued pursuant to this article shall be sold at public or private sale for not less than the principal

amount thereof and accrued interest, or at the option of the board, below par, at a discount not exceeding seven percent of the principal amount thereof, but such special obligation bonds shall never be sold at a price such that the net effective interest rate exceeds the maximum net effective interest rate authorized.

(2) No discount, except as provided in subsection (1) of this section, or commission shall be allowed or paid on or for any sale to any purchaser or bidder, directly or indirectly.

Source: L. 89: Entire article added, p. 1337, § 1, effective June 2.

32-14-124. Contracts. The board shall award contracts in excess of three thousand dollars on a fair and competitive basis for the construction of any works, facility, or project, or portion thereof, or for the performance or furnishing of any labor, material, personal or real property, services, or supplies.

Source: L. 89: Entire article added, p. 1338, § 1, effective June 2. **L. 90:** Entire section R&RE, p. 1524, § 14, effective April 16.

32-14-125. Management agreement - operation of stadium. Upon the approval of the registered electors pursuant to the provisions of section 32-14-105 and upon the granting of a major league baseball franchise by major league baseball to be located within the district, the board shall negotiate and enter into one or more management agreements for the management and operation of the stadium with independent contractors upon such terms and conditions which the board deems reasonable and necessary. Such agreements shall be legally binding contracts between the district and professional management organizations which shall contain appropriate and reasonable provisions with respect to termination, default, and legal remedies. For purposes of this section, "professional management organization" means a person, firm, or corporation having experience, expertise, and specialization in the management and operation of sports, entertainment, or convention facilities, or in a particular area therein.

Source: L. 89: Entire article added, p. 1338, § 1, effective June 2. **L. 90:** Entire section amended, p. 1524, § 15, effective April 16.

32-14-126. Lease of stadium - major league baseball franchise. (1) Any lease agreement entered into by the district and the major league baseball franchise to be located in the district shall include, but is not limited to, the following:

(a) A provision requiring the major league baseball franchise to conduct its complete regular home season schedule and any home play-off events in the stadium;

(b) A provision requiring the major league baseball franchise to advertise and promote events it conducts at the stadium; and

(c) A provision requiring the major league baseball franchise to not unreasonably withhold permission for the holding of other events in the stadium.

Source: L. 89: Entire article added, p. 1338, § 1, effective June 2.

32-14-126.5. Revenue sharing. After all the principal, interest, and premium, if any, of the special obligation bonds issued pursuant to this article are paid in full and the levy and collection of sales tax revenues by the district is discontinued, but prior to the repeal of this article, any funds collected by the district which are, in the sole discretion of the board, deemed not to be necessary for the anticipated expenses and reserves of the district shall be credited at least annually to the general fund of each county, city and county, city, and town which is included, in whole or in part, in the district based upon the proportion of the total amount of sales tax revenues collected pursuant to section 32-14-114 within such county, city and county, city, and town to the total amount of sales tax revenues collected pursuant to section 32-14-114 within the district. For purposes of this section, the total amount of sales tax revenues collected within a county shall not include any sales tax revenues

collected in any city or town located within such county. In addition, in computing said proportion, any sales tax revenues collected in any county, city, or town which is not included, in whole or in part, within the geographical boundaries of the district shall not be included in the total amount of sales tax revenues collected within the district.

Source: L. 90: Entire section added, p. 1525, § 16, effective April 16.

32-14-127. Report. (Repealed)

Source: L. 89: Entire article added, p. 1338, § 1, effective June 2. **L. 2002:** Entire section repealed, p. 867, § 5, effective August 7.

32-14-128. Limitations upon liabilities. Neither the directors nor any person executing any obligations issued pursuant to the provisions of this article shall be personally liable on the obligations by reason of the issuance thereof. Obligations issued pursuant to this article shall not in any way create or constitute any indebtedness, liability, or obligation of the state or of any political subdivision thereof, except the district, and nothing in this article shall be construed to authorize the district to incur any indebtedness on behalf of or in any way to obligate the state or any political subdivision thereof, except the district, and nothing in this article shall be construed to authorize the district to incur any indebtedness on behalf of or in any way to obligate the state or any political subdivision thereof, except as specifically provided in this article.

Source: L. 89: Entire article added, p. 1338, § 1, effective June 2.

32-14-129. Sale of real and personal property of district. Upon completion of the construction of a stadium pursuant to the provisions of this article, the board shall make a good faith effort to sell the real and personal property of the district, including the stadium, to any qualified buyer. The board shall establish criteria to determine qualified buyers. The board shall not accept any offer from any qualified buyer for such real and personal property of the district for an amount less than the total amount of outstanding obligations of the district or the amount of sales tax revenues used by the board to acquire a site for a stadium and to construct a stadium, whichever is greater.

Source: L. 89: Entire article added, p. 1339, § 1, effective June 2.

32-14-130. Limitations upon promotional activities. No moneys of the district shall be used for promotion of the acquisition of a major league baseball franchise or for the passage of a sales tax increase for the construction of a stadium within the district.

Source: L. 89: Entire article added, p. 1339, § 1, effective June 2.

32-14-131. Colorado baseball commission - creation - membership. (1) There is hereby created the Colorado baseball commission which shall consist of no fewer than fifteen commissioners but no more than eighteen commissioners. The commission shall be a body corporate and a political subdivision of the state, shall not be an agency of state government, and shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state. Initial appointments to the commission shall be made within ninety days after June 2, 1989.

(2) Repealed.

(3) (a) Five commissioners shall be appointed by the governor.

(b) Two commissioners shall be appointed by the speaker of the house of representatives.

(c) Two commissioners shall be appointed by the president of the senate.

(d) Six commissioners shall be appointed as follows:

- (I) One commissioner each shall be appointed by the boards of county commissioners of the five counties in the district; and
- (II) One commissioner shall be appointed by the city and county of Denver.
- (e) The remaining commissioners, if any, shall be appointed by the governor.
- (4) All commissioners appointed pursuant to the provisions of paragraph (d) of subsection (3) of this section shall reside within the geographical boundaries of the district.
- (5) Any appointed commissioner may be removed at any time at the pleasure of the person or governing body who appointed such commissioner. If any appointed commissioner vacates his office, a vacancy on the commission shall exist, and the person or governing body who appointed such commissioner vacating his office shall fill such vacancy by appointment.
- (6) The appointed commissioners shall elect such officers as deemed necessary and appropriate from among the appointed membership of the commission.
- (7) Commissioners shall receive no compensation for their services but may be reimbursed for their necessary expenses while serving as commissioners.

Source: L. 89: Entire article added, p. 1339, § 1, effective June 2. **L. 90:** (1), (3)(a), and (6) amended, (2) repealed, and (3)(e) added, pp. 1525, 1526, §§ 17, 18, effective April 16.

32-14-132. Commission - powers and duties. (1) The commission shall have the following powers and duties:

- (a) To advise and make recommendations to the board concerning the performance of the duties of the board as set forth in this article;
- (b) To promote the sport of baseball in the state of Colorado, including but not limited to the acquisition of a major league baseball franchise and the construction of a stadium within the district;
- (c) To formulate and adopt an annual budget to govern the expenses of the commission in undertaking its activities;
- (d) To adopt, and from time to time amend or repeal, such bylaws and rules and regulations as it may consider to be necessary or advisable and to keep a record of its proceedings, which record shall be open to inspection by the public at all reasonable times;
- (e) To contract for those services, including services for necessary personnel, and materials required by the activities of the commission;
- (f) To administer and use moneys received by the commission in accordance with the provisions of this section;
- (g) To receive and expend donations or grants from any private source or from any department, agency, or instrumentality of the United States government to be held, used, and applied to carry out the purposes of this section subject to the conditions upon which the donations or grants are made; however, nothing in this paragraph (g) shall authorize the commission to accept or expend public moneys, whether as gifts, grants, or other forms of contribution, from the state, the board, any city, town, city and county, or county;
- (h) To deposit any moneys received by the commission pursuant to the provisions of this section in any banking institution within the state or in any depository authorized in section 24-75-603, C.R.S., and to appoint, for purposes of making such deposits, one or more persons to act as custodians of the moneys of the commission, who may be required to give surety bonds in such amounts and form and for such purposes as the board may require; and
- (i) To develop reporting and review requirements governing the receipt and expenditures of any moneys received by the commission pursuant to the provisions of this section. The account of all moneys received by and expended by the commission shall be a public record and shall be open for inspection by the public at all reasonable times.

Source: L. 89: Entire article added, p. 1340, § 1, effective June 2.

32-14-133. Repeal of article. (1) This article is repealed, effective as of the earliest occurrence of the following:

(a) Five years after July 1, 1989, if the board has not submitted the question set forth in section 32-14-105 (1) to the registered electors within the geographic boundaries of the district pursuant to the provisions of said section; or

(b) At such time as a majority of the registered electors within the geographical boundaries of the district vote negatively on the question set forth in section 32-14-105 (1); or

(c) Ten years after July 1, 1989, if major league baseball has not granted a major league baseball franchise to be located within the geographical boundaries of the district to any individual, group of individuals, or entity; or

(d) The completion of the sale of the stadium by the board to any qualified buyer pursuant to the provisions of section 32-14-129.

(2) Upon repeal of this article, any funds collected by the district but not used for the purposes set forth in this article shall be credited to the general fund of each county, city and county, city, and town which is included, in whole or in part, in the district based upon the proportion of the total amount of sales tax revenues collected pursuant to section 32-14-114 within such county, city and county, city, and town to the total amount of sales tax revenues collected pursuant to section 32-14-114 within the district. For purposes of this subsection (2), the total amount of sales tax revenues collected within a county shall not include any sales tax revenues collected in any city or town located within such county. In addition, in computing said proportion, any sales tax revenues collected in any county, city, or town which is not included, in whole or in part, within the geographical boundaries of the district shall not be included in the total amount of sales tax revenues collected within the district.

Source: L. 89: Entire article added, p. 1341, § 1, effective June 2.

Editor's note: This article remains in effect since the question of authorizing the district to levy and collect a sales tax was approved on August 14, 1990, by a majority of the registered electors, a major league franchise was granted on July 5, 1991, and the sale of the stadium by the board has not taken place.

ARTICLE 15

Metropolitan Football Stadium District Act

32-15-101.	Short title.	32-15-111.	Sales tax and admissions tax revenues - use.
32-15-102.	Legislative declaration.	32-15-112.	Operating revenues - use.
32-15-103.	Definitions.	32-15-113.	Issuance of special obligation bonds.
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32-15-104.3.	District area - town of Castle Rock in Douglas county.	32-15-115.	Payment, recital, and securities.
32-15-104.5.	Annexation of enclaves.	32-15-116.	Incontestable recital in securities.
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32-15-126.	Sale of real and personal property of district.	32-15-130.	Conflicts of interest prohibited.
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32-15-128.	Football stadium site selection commission - creation - membership.	32-15-132.	Consultation with urban land institute - consideration of recommendations.
32-15-129.	Commission - powers and	32-15-133.	Repeal of article.

32-15-101. Short title. This article shall be known and may be cited as the “Metropolitan Football Stadium District Act”.

Source: L. 96: Entire article added, p. 1054, § 1, effective May 23.

32-15-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) There is a question of whether Mile High stadium is viable physically and economically;

(b) The general assembly and the public are in need of a full and objective review of the viability of Mile High stadium and the possible need for renovating Mile High stadium or for constructing a new football stadium, including the costs and benefits associated with the renovation of Mile High stadium or the construction and operation of a new football stadium in the metropolitan Denver area;

(c) This needed review is best accomplished by an independent body, the metropolitan football stadium district.

(2) Therefore, the general assembly has enacted this article creating the metropolitan football stadium district.

Source: L. 96: Entire article added, p. 1054, § 1, effective May 23. **L. 97:** (1)(b) amended, p. 1487, § 1, effective June 3.

32-15-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Board” means the board of directors of the metropolitan football stadium district created in section 32-15-105.

(2) “Commission” means the football stadium site selection commission created in section 32-15-128.

(3) “Director” means a member of the board.

(4) “District” means the metropolitan football stadium district created in section 32-15-104.

(5) “Franchise” means the contractual right granted to any individual, group of individuals, or entity to own and operate a national football league team in a specified location.

(5.5) “Renovate” means a substantial addition to, or to substantially remodel, redevelop, or otherwise improve, Mile High stadium for use as a stadium, as defined in this section.

(6) “Special obligation bonds” means the bonds issued by the district pursuant to the provisions of section 32-15-113.

(7) “Stadium” means a sports facility that is designed for use primarily as a national football league football stadium, which meets criteria established by the board, which meets criteria that may be established by the national football league, and that may include, but is not limited to, such features as parking areas, sky boxes, and press boxes that are necessary or desirable for such sports facility.

Source: L. 96: Entire article added, p. 1055, § 1, effective May 23. **L. 97:** (5.5) added, p. 1487, § 2, effective June 3.

32-15-104. Creation of district - area of district. (1) There is hereby created a district to be known and designated as the metropolitan football stadium district. The district shall be a body corporate and politic and a political subdivision of the state. Except as provided in subsection (1.5) of this section, the area comprising the district shall consist of:

(a) That area comprising the regional transportation district, as specified in section 32-9-106 as it existed on May 23, 1996; and

(b) That area comprising the regional transportation district as specified in sections 32-9-106.3, 32-9-106.4, and 32-9-106.6 as said sections existed on May 23, 1996, unless rejected by the eligible electors as provided in said sections. Except as otherwise provided by law, the area shall not include areas included in the regional transportation district pursuant to section 32-9-106.7.

(1.5) On and after April 22, 1998, the district shall, in addition to any areas listed under subsection (1) of this section, consist of the following areas:

(a) That area within the city of Lone Tree, state of Colorado, that, as of April 22, 1998, is zoned for commercial use and is within sections 3, 4, and 5, township 6 south, range 67 west of the sixth principal meridian, county of Douglas, state of Colorado; and

(b) That area east of Yosemite street, south of County Line road, west of Interstate 25 and within section 3, township 6 south, range 67 west of the sixth principal meridian, county of Douglas, state of Colorado.

(2) Each of the directors, officers, and employees of the district shall be a public employee for purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: **L. 96:** Entire article added, p. 1055, § 1, effective May 23. **L. 98:** IP(1) amended and (1.5) added, p. 499, § 1, effective April 22. **L. 99:** (1)(b) amended, p. 420, § 6, effective April 30. **L. 2007:** (1) amended, p. 835, § 9, effective May 14.

Editor's note: The Douglas county district court ruled that subsection (1.5) (a), which included the commercial areas of the city of Lone Tree in the stadium district, was unconstitutional. The court's order was not appealed. *City of Lone Tree v. Metropolitan Football Stadium District*, Case No. 98 CV 349, Douglas county district court, order dated October 28, 1998.

32-15-104.3. District area - town of Castle Rock in Douglas county. (1) In consideration of the fact that various noncontiguous parcels containing less than twenty percent of the residents of the town of Castle Rock are included in the district, the voters within the boundaries of the town of Castle Rock may elect to consolidate the status of the town of Castle Rock as completely included in or completely excluded from the boundaries of the district at an election held pursuant to subsection (3) of this section.

(2) The outcome of any election held pursuant to subsection (3) of this section shall apply to any area that is annexed by the town of Castle Rock on or after the date of such election, regardless of whether the area was included within the boundaries of the district before the election.

(3) Pursuant to the provisions of subsection (1) of this section, the area included within the boundaries of the town of Castle Rock may be included in or excluded from the district if the following requirements are met:

(a) Two proposals, one to include the area and one to exclude the area, are initiated by any of the following methods:

(I) Two petitions, one requesting an election for the purpose of including the area in the district and one requesting an election for the purpose of excluding the area from the district, are each signed by at least five percent of the registered electors within the town of Castle Rock and submitted to the governing body of the town of Castle Rock; or

(II) The governing body of the town of Castle Rock adopts two resolutions, one to hold an election for the purpose of including the area in the district and one to hold an election for the purpose of excluding the area from the district.

(b) An election is held and conducted in accordance with articles 1 to 13 of title 1 or article 10 of title 31, C.R.S., as applicable, and the following requirements:

(I) The election is held either at the odd-year election held on the first Tuesday in November of 2005 or any regular local district election for the town of Castle Rock held thereafter, as determined by the governing body of the town of Castle Rock. The town of Castle Rock shall pay the costs of such elections.

(II) One ballot question provides for all of the registered electors in the town of Castle Rock to vote for or against the inclusion of the proposed area in the district and one ballot question provides for all of the registered electors in the town of Castle Rock to vote for or against the exclusion of the area from the district.

(III) Each ballot question specifies that the area proposed to be included in or excluded from the district, as applicable, is all of the area within the boundaries of the town of Castle Rock.

(IV) Each ballot question contains the current rates of sales and use tax levied by the district.

(V) The ballot contains both of the following questions:

(A) "Shall the area described in the ballot be included in the metropolitan football stadium district and subject to taxation by the district?"; and

(B) "Shall the area described in the ballot be excluded from the metropolitan football stadium district and not subject to taxation by the district?".

(4) (a) In the event that either the ballot question to include all of the area within the boundaries of the town of Castle Rock in the district or the ballot question to exclude all of the area within the boundaries of the town of Castle Rock from the district is approved by a majority of the registered electors who voted in the election and the other ballot question is not approved by a majority of the registered electors who voted in the election, the ballot question that was approved by a majority of the registered electors who voted in the election shall take effect.

(b) In the event that both the ballot question to include all of the area within the boundaries of the town of Castle Rock in the district and the ballot question to exclude all of the area within the boundaries of the town of Castle Rock from the district are approved by a majority of the registered electors who voted in the election, only the ballot question that receives the larger number of votes in favor of the question shall take effect.

(c) In the event that neither the ballot question to include all of the area within the boundaries of the town of Castle Rock in the district nor the ballot question to exclude all of the area within the boundaries of the town of Castle Rock from the district is approved by a majority of registered electors who voted in the election, neither of the ballot questions shall take effect and the boundaries of the district shall continue to include the parts of the town of Castle Rock that were included in the district before such election.

(5) In the event that the registered electors of the town of Castle Rock elect to be included within the boundaries of the district, the town of Castle Rock shall grant the department of revenue any costs it incurs in carrying out the requirements of this section.

(6) Under no circumstance shall any moneys from the general fund be appropriated to the department of revenue or any other department to cover the costs incurred in carrying out the requirements of this section.

Source: L. 2004: Entire section added, p. 682, § 2, effective August 4.

32-15-104.5. Annexation of enclaves. (1) When any unincorporated territory is entirely contained within the boundaries of the district, the board may, by resolution, annex the territory to the district. The board shall give notice of a proposed annexation resolution by publishing a copy of the resolution once a week for four successive weeks in a newspaper of general circulation in the territory proposed to be annexed. The board shall also send a copy of the proposed annexation resolution by registered mail to the board of county commissioners and county attorney of the county containing the territory to be annexed, to any special district or school district having territory within the territory to be annexed, and to the executive director of the department of revenue. The first publication of the notice and the mailing of the proposed annexation resolution shall occur at least thirty days prior to the final adoption of the resolution, and the board shall allow interested

persons to testify for or against the resolution at a public hearing held prior to the final adoption of the resolution.

(2) No territory may be annexed pursuant to subsection (1) of this section if any part of the district boundary or area surrounding the territory consists of public rights-of-way, including streets and alleys, that are not immediately adjacent to the district on the side of the right-of-way opposite to the territory.

Source: L. 2001: Entire section added, p. 822, § 3, effective August 8.

32-15-105. Board of directors - membership - qualifications. (1) The district shall be governed by a board of directors which shall consist of nine directors as follows:

(a) Six directors representing the counties and the city and county of Denver in the metropolitan Denver area of which one director shall be appointed by the county commissioners of each of the counties of Adams, Arapahoe, Boulder, Douglas, and Jefferson and one director shall be appointed by the mayor and the city council of the city and county of Denver;

(b) Two directors at large appointed by the governor; and

(c) The chairperson of the board of directors of the Denver metropolitan major league baseball stadium district created in section 32-14-106.

(2) Initial appointments to the board shall be made within forty-five days after May 23, 1996. The directors shall be appointed for four-year terms.

(3) All directors appointed pursuant to paragraph (a) of subsection (1) of this section shall reside within the geographical boundaries of the district. No director shall be a paid employee of the franchise.

(4) All directors appointed pursuant to paragraphs (a) and (b) of subsection (1) of this section shall have expertise in one or more areas that are relevant to the performance of the powers and duties of the board. Such areas of expertise may include, but are not limited to: Public finance; private finance; commercial law; commercial real estate; real estate development; general contracting; architecture; and administration of football operations.

(5) The directors shall elect a chairperson and a vice-chairperson from among the membership of the board.

(6) All business of the board shall be conducted at regular or special meetings that shall be held within the geographical boundaries of the district and that shall be open to the public. The provisions of this subsection (6) and part 4 of article 6 of title 24, C.R.S., shall apply to all meetings of the board.

(7) Board action shall require the affirmative vote of a majority of the total membership of the board.

(8) Directors of the board shall receive no compensation for their services but may be reimbursed for their necessary expenses while serving as directors of the board.

Source: L. 96: Entire article added, p. 1055, § 1, effective May 23.

32-15-106. Board of directors - powers and duties. (1) In addition to any other powers specifically granted to the board in this article, the board shall have the following duties and powers:

(a) To review any reports and studies made and to obtain any additional reports and studies it deems necessary pertaining to the costs of maintaining and repairing Mile High stadium and the costs of renovating Mile High stadium or building a new stadium and to make a determination of whether it is more cost effective and economically viable to renovate Mile High stadium or build a new stadium than to maintain and repair Mile High stadium;

(b) To require such documentation as the board determines necessary showing that the franchise has been or will be released from its existing lease for use of a stadium before a lease between the district and the franchise for use of the new or renovated stadium commences;

(c) To negotiate an agreement with the franchise requiring the franchise to pay twenty-five percent of the actual construction costs of the stadium, including but not limited to professional fees, site acquisition costs, and materials and labor costs and requiring the franchise to pay for twenty-five percent of all costs in excess of the anticipated construction costs;

(d) To negotiate the lease of Mile High stadium if it is renovated or the new stadium as set forth in section 32-15-122;

(e) To provide the counties within the district and the city and county of Denver with a benefit from a portion of the revenues, other than sales tax revenues and admissions tax revenues, derived from the operation of Mile High stadium if it is renovated or the new stadium during the period of time the district is collecting the sales tax or the admissions tax or such longer period as the board may determine appropriate;

(f) After completion of the review, negotiations, and other matters set forth in paragraphs (a) to (e) of this subsection (1) and if the board determines that there is a need to renovate Mile High stadium or to construct a new stadium and that the renovation of Mile High stadium or the construction of a new stadium is more cost effective and economically viable than maintaining and repairing Mile High stadium, the board shall then determine whether it is more cost effective and economically viable to renovate Mile High stadium or to construct a new stadium, after which the board shall adopt a resolution that, in addition to the statements required by section 32-15-107 (1) (b), includes, but shall not be limited to, the following declarations:

(I) That the board has reviewed the reports and studies pertaining to the costs of repairing and maintaining Mile High stadium, the costs of renovating Mile High stadium, and the costs of building a new stadium and has made a determination that there is a need to renovate Mile High stadium or to construct a new stadium and that the renovation of Mile High stadium or the construction of a new stadium is more cost effective and economically viable than maintaining and repairing Mile High stadium;

(I.5) That it is more cost effective and economically viable to renovate Mile High stadium or that it is more cost effective and economically viable to construct a new stadium;

(II) That the board has received adequate documentation assuring the board that the franchise has been or will be released from its existing lease for use of a stadium before a lease between the district and the franchise for use of the renovated or new stadium commences;

(III) That the district has entered into an agreement with the franchise that requires the franchise to provide twenty-five percent of the actual construction costs of the stadium, including but not limited to professional fees, site acquisition costs, and materials and labor costs and that requires the franchise to pay for twenty-five percent of all costs in excess of the anticipated construction costs;

(III.5) That the board, if it has determined that it is more cost effective and economically viable to renovate Mile High stadium than to build a new stadium, has entered into a conditional or option contract or otherwise assured the acquisition of Mile High stadium, including any lands and interests in real and personal property commonly used for parking facilities, stadium facilities, and stadium site access, plus any additional lands and interests in real property as may be necessary for parking facilities, stadium facilities, and stadium site access;

(IV) If the board has determined that it is more cost effective and economically viable to build a new stadium, that the commission has selected a site for construction of the stadium, a statement of the location of the site, and that the board has entered into a conditional or option contract or otherwise assured the acquisition of the selected stadium site and such other lands and interests in real and personal property as may be necessary for parking facilities, stadium facilities, and stadium site access;

(V) That the district has entered into a lease of Mile High stadium if it is renovated or the new stadium with the franchise for the use of the stadium that meets the requirements set forth in section 32-15-122; and

(VI) That the board will provide the counties within the district and the city and county of Denver with a benefit from the revenues, other than sales tax revenues and admissions tax revenues, derived from the operation of Mile High stadium if it is renovated or the new

stadium during the period of time the district is collecting the sales tax or the admissions tax or such longer period as the board may determine appropriate;

(f.5) If the board has determined that it is more cost effective and economically viable to renovate Mile High stadium, to enter into a conditional or option contract on behalf of the district or otherwise assure the acquisition of Mile High stadium, and such other lands and interests in real and personal property commonly used for parking facilities, stadium facilities, and stadium site access, plus any additional lands and interests in real property as may be necessary for parking facilities, stadium facilities, and stadium site access;

(g) If the board has determined that it is more cost effective and economically viable to construct a new stadium, to enter into a conditional or option contract on behalf of the district or otherwise assure the acquisition of the selected site for the new stadium and such other lands and interests in real and personal property as may be necessary for parking facilities, stadium facilities, and stadium site access;

(g.5) In designing and constructing a new stadium, to arrange and coordinate the provision of mass transit, including light rail, buses, and other forms of public transportation to service such stadium with the regional transportation district;

(h) To fix the time and place at which its regular and special meetings shall be held within the geographical boundaries of the district;

(i) To adopt and, from time to time, amend or repeal rules of procedure and bylaws not in conflict with the constitution and laws of the state;

(j) To hire such permanent and temporary staff as may be necessary to assist the board in its duties;

(k) To sue and be sued;

(l) To maintain an office at such place as it may designate within the geographical boundaries of the district;

(m) To exercise all powers necessary and requisite for the accomplishment of the purposes for which the district is organized and capable of being delegated by the general assembly; and no enumeration of particular powers granted shall be construed to impair any general grant of power contained in this article or to limit any such grant to powers of the same class as those so enumerated;

(n) To enter into and execute all contracts, leases, intergovernmental agreements, and other instruments in writing necessary or proper to the accomplishment of the purposes of this article, including, but not limited to, intergovernmental agreements concerning revenue sharing;

(o) To engage the services of private consultants and legal counsel to render professional and technical assistance and advice in carrying out the purposes of this article;

(p) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article subject to the conditions upon which the grants or contributions are made; except that no public moneys from the state, any city, town, city and county, or county, and any department, agency, or instrumentality of the United States of America shall be accepted or expended for any purpose set forth in this article. Notwithstanding any provision set forth in this paragraph (p), the board shall not be prohibited from receiving public moneys from the economic development commission created pursuant to section 24-46-102 (2), C.R.S., that are paid from the economic development fund created pursuant to section 24-46-105, C.R.S.

(2) After the board has completed the review and negotiations set forth in paragraphs (a) to (e) of subsection (1) of this section and if the board has received notice from the secretary of state stating that a valid petition has been filed and verified and has adopted a resolution pursuant to paragraph (f) of subsection (1) of this section, in addition to any powers granted to the board in subsection (1) of this section or in this article, the board shall have the following powers and duties:

(a) To submit the question specified in section 32-15-107 (1) to the registered electors within the geographical boundaries of the district at the 1998 general election;

(b) To contract for the planning, design, renovation, equipment, preservation, operation, maintenance, and public transportation to Mile High stadium, if it is renovated, or the

planning, design, construction, equipment, preservation, operation, maintenance, and public transportation to a new stadium and all necessary works incidental thereto;

(c) Repealed.

(d) To enter into such contracts as may be authorized in this article including, but not limited to, contracts for the lease and sale of a stadium;

(e) To establish criteria for the renovation of Mile High stadium or for the construction and design of a new stadium including, but not limited to, a requirement that the new stadium have a seating capacity at least equivalent to the seating capacity of Mile High stadium;

(f) To acquire on behalf of the district the selected stadium site for a new stadium, or Mile High stadium if it is to be renovated, and such other lands and interests in real and personal property as may be necessary for parking facilities, stadium facilities, and stadium site access, by gift, contract, or other means; except that nothing in this paragraph (f) shall be construed to authorize the board to exercise the power of eminent domain pursuant to the applicable provisions of articles 1 to 7 of title 38, C.R.S.;

(g) (I) If Mile High stadium is to be renovated, to arrange with the City and County of Denver to plan, replan, zone, or rezone any part of the stadium site or any other lands or interests in real property acquired in connection with the acquisition, renovation, maintenance, and operation of the stadium by the district pursuant to the provisions of this article;

(II) If a new stadium is to be built, to arrange with the city, town, city and county, or county in which the selected stadium site is located to plan, replan, zone, or rezone any part of the selected stadium site, in connection with the acquisition, construction, maintenance, and operation of the stadium proposed or being undertaken by the district pursuant to the provisions of this article;

(h) (I) If Mile High stadium is to be renovated, to consult with the franchise and other potential users before acquiring the stadium, establishing criteria for the renovation and redesign of the stadium, or contracting for the renovation of the stadium;

(II) If a new stadium is to be built, to consult with the franchise before acquiring a stadium site, establishing criteria for the construction and design of a stadium, or contracting for the construction of a stadium;

(i) To borrow money, contract to borrow money for the purpose of issuing bond anticipation notes pursuant to article 14 of title 29, C.R.S., contract to borrow money for the purpose of issuing special obligation bonds, and issue obligations for any of its corporate purposes and to fund such obligations, to refinance such obligations even if, in the case of refinancing or refunding bond anticipation notes, such refinancing or refunding is at a higher interest rate, and to refund such obligations as provided in this article subject to the requirements of section 20 of article X of the state constitution;

(j) To procure insurance against any loss in connection with its property and other assets and liability for personal injury to or damage to property of others in such amounts and from such insurers as are necessary and reasonable for governmental entities owning similar facilities in the district;

(k) To procure insurance or guarantees from any public or private entity, including, but not limited to, the state, any city, town, city and county, or county or any department, agency, or instrumentality of the United States of America for payment of any obligations issued by the district, including the power to pay premiums on any such insurance;

(l) To acquire, dispose of, and encumber real and personal property including, without limitation, rights and interests in property, leases, and easements necessary to the functions or the operation of the district; except that nothing in this paragraph (l) shall be construed to authorize the board to exercise the power of eminent domain pursuant to the applicable provisions of articles 1 to 7 of title 38, C.R.S.;

(m) To fix and, from time to time, to increase or decrease fees, rentals, rates, tolls, penalties, or other charges for services, programs, or facilities furnished by the district in connection with the operation of Mile High stadium if it is renovated or the new stadium, and the board may pledge such revenues or any portion thereof for the payment of any indebtedness of the district as provided in this article;

(n) To levy and collect a sales tax pursuant to the provisions of this article, subject to the requirements of section 20 of article X of the state constitution, and the board may

pledge such sales tax revenues or any portion thereof for the payment of any indebtedness of the district;

(n.5) To levy and collect, if the board so determines, a tax upon admissions to a new stadium constructed by the district pursuant to the provisions of this article, subject to the requirements of section 20 of article X of the state constitution;

(o) To invest moneys received by the district pursuant to the provisions of this article in accordance with the provisions of part 6 of article 75 of title 24, C.R.S.;

(p) To administer and use moneys received by the district in accordance with the provisions of this article;

(q) To develop reporting and review requirements governing the receipt and expenditures of any moneys received by the district pursuant to this article;

(r) To deposit any moneys of the district in any banking institution or savings and loan association within the state as authorized in section 24-75-603, C.R.S., and to appoint, for purposes of making such deposits, one or more persons to act as custodians of the moneys of the district, who may be required to give surety bonds in such amounts and form and for such purposes as the board may require.

(3) If Mile High stadium is renovated or if a new stadium is built, the board may sell or lease the name of the stadium and any symbol or image of the general design, appearance, or configuration of the stadium, including trademarks, service marks, trade names, and logos. Prior to making a determination to sell or lease the name of the stadium, the board shall assess the costs and benefits of such sale or lease and specifically consider the public sentiment and any other benefits associated with retaining the name "Mile High stadium" or with using any other name that reflects the geographical, historical, cultural, spiritual, or other qualities of the state. All proceeds from such sale or lease, if any, shall be used by the board to pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article.

(4) The board shall not use any money received from the franchise to accomplish or exercise any powers and duties of the board prior to the holding of the election authorized pursuant to section 32-15-107.

(5) In carrying out its duties in connection with the operation of the stadium, the board shall duly consider:

(a) That all food and beverage concession contracts at the new stadium, or at Mile High stadium if it is renovated, be competitively bid in accordance with the provisions of article 103 of title 24, C.R.S.:

(b) That, for all food and beverage concession contracts, due consideration be given to persons or businesses that are authorized to transact business in Colorado and that:

(I) (A) Maintain their principal place of business in Colorado; or

(B) Maintain a place of business in Colorado and that have filed unemployment compensation reports in at least seventy-five percent of the eight quarters immediately before commencement of the contract; or

(II) Are minority-owned independent businesses; and

(c) That not less than fifteen percent of the total square footage allocated for food and beverage sales at Mile High stadium if it is renovated or at the new stadium shall be occupied, either directly or through subcontracts, by persons or businesses that maintain their principal place of business in Colorado.

(6) (a) The board shall study, consider, and pursue opportunities for privatizing the costs of acquiring Mile High stadium or acquiring a stadium site for a new stadium, the costs of renovating Mile High stadium or constructing a new stadium, or the costs of operating a stadium in order to minimize the use of sales tax revenues to the greatest extent possible for the purposes of this article. Such methods to be studied, considered, and pursued by the board in order to achieve such privatization shall include, but not be limited to, the following:

(I) Financial incentives from private sources, including landowners and developers, available to offset the cost of a stadium site and the construction of a new stadium, the cost of renovating Mile High stadium, and the cost of maintenance, and operation of a stadium,

including, but not limited to: Contributions of money, goods, equipment, and services; lease-purchase agreements; sale-leaseback agreements; and joint venture proposals;

(II) The sale or lease of seat rights;

(III) The sale or lease of luxury suites, commonly referred to as sky boxes; and

(IV) The sale of long-term advertising, parking, and concession rights.

(b) The board shall study and consider whether it would be beneficial to use a tax other than the sales and use tax authorized in section 32-15-110 to fund all or a portion of any multiple-fiscal year financial obligations issued by the board.

(7) In designing and constructing a stadium pursuant to this article, the board may consider the technical and economic feasibility of including a retractable roof over such stadium; except that:

(a) No construction costs for a retractable dome shall be part of the ballot issue proposed, nor shall any such costs be paid by any bonds, taxes, or other revenues issued under this article; and

(b) The board shall not authorize the construction of a retractable roof without prior specific statutory authorization if any portion of the costs of construction of such retractable roof shall be paid or funded by any tax or other revenues of the district.

Source: **L. 96:** Entire article added, p. 1056, § 1, effective May 23. **L. 97:** Entire section amended, p. 1488, § 3, effective June 3. **L. 98:** (1)(c), (1)(e), (1)(f)(III), (1)(f)(VI), (1)(p), (2)(a), (2)(i), (3), and (5)(c) amended and (1)(g.5), (2)(n.5), and (7) added, pp. 500, 502, §§ 2, 3, effective April 22; (2)(c) repealed, p. 154, § 1, effective August 5.

32-15-107. Authorizing election. (1) (a) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution and upon receipt of a notice from the secretary of state stating that a valid petition has been filed and verified and the adoption of a resolution by the board as set forth in section 32-15-106 (1) (f), the board may submit to the registered electors within the geographical boundaries of the district, at the 1998 general election, the question of whether the district shall be authorized:

(I) (A) To levy and collect, for a period commencing after the termination of the sales tax levied and collected by the Denver metropolitan major league baseball stadium district pursuant to section 32-14-105 and continuing for a period not to extend beyond January 1, 2012, a uniform sales tax throughout the district at a rate not to exceed one-tenth of one percent upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent that such purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be held and distributed pursuant to the provisions of section 32-15-111; and

(B) To levy and collect a tax upon admissions to a new stadium pursuant to section 32-15-110.5 for a period not to extend beyond January 1, 2012, and at a rate not to exceed ten percent upon every purchase of admission to such stadium, to be held and distributed pursuant to the provisions of section 32-15-111; and

(II) To incur multiple-fiscal year financial obligations to be repaid from other multiple-fiscal year financial obligations of the district or the revenues collected by the district, or both, and to refund and refinance the bond anticipation notes and special obligation bonds authorized without further approval of the voters even if, in the case of refinancing or refunding of bond anticipation notes, such refinancing or refunding is at a higher interest rate.

(b) The summary for such petition shall include, but shall not be limited to, the following statements:

(I) That the district will levy and collect the sales tax specified in paragraph (a) of this subsection (1) for a period of time commencing after the termination of the sales tax levied and collected by the Denver metropolitan major league baseball stadium district pursuant to section 32-14-105 and continuing for a period not to extend beyond January 1, 2012;

(II) The month, day, and year on which the sales tax levied and collected by the Denver metropolitan major league baseball stadium district is projected to terminate and the month,

day, and year on which the sales tax levied and collected by the metropolitan football stadium district is projected to commence; and

(III) A statement that the maximum principal amount of moneys to be raised by the district for payment of costs of construction of the stadium through the issuance of multiple-fiscal year financial obligations is two hundred sixty-six million dollars.

(c) The board may submit the question set forth in paragraph (a) of this subsection (1) to the registered electors of the district:

(I) After being presented with a notice from the secretary of state stating that a valid petition requesting the submittal of the question that is signed by the registered electors within the geographical boundaries of the district in an amount equal to at least five percent of the total number of votes cast within the geographical boundaries of the district for all candidates for the office of secretary of state at the previous general election has been filed and stating that the signatures on the petition have been verified in accordance with subsections (2) and (3) of this section; and

(II) After the adoption of a resolution by the board as set forth in section 32-15-106 (1) (f).

(d) (I) Except as otherwise provided in subparagraph (III) of this paragraph (d), at the election, the question appearing on the ballot shall be determined as follows:

(A) In the event that the board has determined that it is more cost effective and economically viable to renovate Mile High stadium than to build a new stadium, the question appearing on the ballot shall be as follows:

“SHALL THE METROPOLITAN FOOTBALL STADIUM DISTRICT TAXES BE INCREASED (FIRST FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER FROM THE LEVY AND COLLECTION BY THE DISTRICT OF A ONE-TENTH OF ONE PERCENT SALES AND USE TAX FOR A PERIOD NOT TO EXTEND BEYOND JANUARY 1, 2012, OR UPON PAYMENT OF THE SPECIAL OBLIGATION BONDS, WHICHEVER OCCURS EARLIER, COMMENCING AFTER THE TERMINATION OF THE SALES AND USE TAX LEVIED AND COLLECTED BY THE DENVER METROPOLITAN MAJOR LEAGUE BASEBALL STADIUM DISTRICT, WITH ALL OF THE PROCEEDS TO BE USED AND SPENT, ALONG WITH FUNDS FROM OTHER SOURCES INCLUDING THE PRIVATE SECTOR, FOR THE COSTS RELATING TO THE RENOVATION OF MILE HIGH STADIUM; AND SHALL THE METROPOLITAN FOOTBALL STADIUM DISTRICT BE AUTHORIZED TO ISSUE MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATIONS PAYABLE FROM THE PROCEEDS OF SAID ONE-TENTH OF ONE PERCENT SALES AND USE TAX AND SAID FUNDS FROM OTHER SOURCES, WHICH AUTHORIZATION SHALL INCLUDE THE AUTHORITY TO REFUND SUCH MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATIONS AND REFUNDING SPECIAL OBLIGATION BONDS WITHOUT ADDITIONAL VOTER APPROVAL?”

(B) In the event that the board has determined that it is more cost effective and economically viable to build a new stadium than to renovate Mile High stadium, the question appearing on the ballot shall be as follows:

“SHALL THE METROPOLITAN FOOTBALL STADIUM DISTRICT DEBT BE INCREASED (PRINCIPAL AMOUNT), WITH A REPAYMENT COST OF (MAXIMUM TOTAL DISTRICT COSTS) AND SHALL DISTRICT TAXES BE INCREASED (FIRST FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER FROM THE LEVY AND COLLECTION BY THE DISTRICT OF [A (____) PERCENT ADMISSIONS TAX AND FROM THE LEVY AND COLLECTION OF] [THIS CLAUSE TO BE INSERTED IF DETERMINED TO BE APPROPRIATE BY THE DISTRICT] A ONE-TENTH OF ONE PERCENT SALES AND USE TAX WITH ALL OF THE PROCEEDS OF SUCH DEBT AND TAXES TO BE USED AND SPENT, TOGETHER WITH FUNDS FROM OTHER SOURCES INCLUDING THE PRIVATE SECTOR, FOR THE COSTS

RELATING TO THE CONSTRUCTION OF A NEW FOOTBALL STADIUM TO BE LOCATED WITHIN THE DISTRICT SUBJECT TO THE FOLLOWING LIMITATIONS:

- THE SALES AND USE TAX SHALL COMMENCE AFTER THE TERMINATION OF THE SALES AND USE TAX LEVIED AND COLLECTED BY THE DENVER METROPOLITAN MAJOR LEAGUE BASEBALL STADIUM DISTRICT AND SHALL NOT EXTEND BEYOND JANUARY 1, 2012, OR THE PAYMENT IN FULL OF SUCH DEBT, WHICHEVER OCCURS EARLIER;
- [THE DEBT SHALL BE EVIDENCED BY NOTES, BONDS, OR CONTRACTS INCLUDING NOTES, BONDS, OR CONTRACTS TO REFUND OTHER NOTES, BONDS, OR CONTRACTS EVEN IF THE REFUNDING IS AT A HIGHER RATE OF INTEREST;] [THIS PARAGRAPH TO BE INSERTED IF DETERMINED TO BE APPROPRIATE BY THE DISTRICT]
- THE DEBT SHALL BE PAYABLE FROM THE PROCEEDS OF SUCH TAX, INVESTMENT INCOME, AND SUCH OTHER DISTRICT REVENUES AS THE BOARD OF DIRECTORS MAY PLEDGE FOR SUCH PAYMENT;
- THE DEBT SHALL HAVE SUCH TERMS AND CONDITIONS AS THE BOARD OF DIRECTORS OF THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM;
- [THE ADMISSIONS TAX SHALL NOT EXTEND BEYOND JANUARY 1, 2012, OR THE PAYMENT IN FULL OF SUCH DEBT, WHICHEVER OCCURS EARLIER;] [THIS PARAGRAPH TO BE INSERTED IF DETERMINED TO BE APPROPRIATE BY THE DISTRICT]

AND SHALL THE PROCEEDS OF SUCH DEBT AND TAXES AND ANY INVESTMENT INCOME THEREFROM AND ANY OTHER REVENUES OF THE DISTRICT BE COLLECTED AND SPENT WITHOUT LIMITATION OR CONDITION, AS A VOTER-APPROVED REVENUE CHANGE UNDER SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?"

(II) Except as otherwise provided in subparagraph (III) of this paragraph (d), the ballot title shall be a statement of the language included in the question set forth in subparagraph (B) of subparagraph (I) of this paragraph (d); except that the title shall substitute the words "THE METROPOLITAN FOOTBALL STADIUM DISTRICT DEBT SHALL BE INCREASED" for "SHALL THE METROPOLITAN FOOTBALL STADIUM DISTRICT DEBT BE INCREASED", shall substitute the words "DISTRICT TAXES SHALL BE INCREASED" for the words "SHALL DISTRICT TAXES BE INCREASED", and shall substitute the words "THE PROCEEDS OF SUCH DEBT AND TAXES AND ANY INVESTMENT INCOME THEREFROM AND ANY OTHER REVENUES OF THE DISTRICT SHALL BE" for the words "SHALL THE PROCEEDS OF SUCH DEBT AND TAXES AND ANY INVESTMENT INCOME THEREFROM AND ANY OTHER REVENUES OF THE DISTRICT BE", and the title shall end with a period instead of a question mark.

(III) The ballot question specified in subparagraph (I) of this paragraph (d) may be modified by the proponents of a petition or by the district to the extent necessary to conform to the legal requirements for ballot questions and titles.

(IV) If at any election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question specified in paragraph (d) of this subsection (I), then the sales tax and the admissions tax shall be levied, collected, and distributed as provided for in this article.

(2) The provisions of article 40 of title 1, C.R.S., regarding the following subject matter shall apply to petitions that may be submitted pursuant to subsection (1) of this section: Form requirements and approval; circulation of petitions; elector information and signatures on petitions; affidavits and requirements of circulators of petitions; and verification of signatures, including, but not limited to, cure of an insufficiency of signatures and protests

regarding sufficiency statements and procedures for hearings or further appeals regarding such protests. The provisions of article 40 of title 1, C.R.S., regarding review and comment, the setting of a ballot title, including, but not limited to, the duties of the title board, rehearings and appeals, and the number of signatures required shall not apply to petitions that may be submitted pursuant to subsection (1) of this section.

(3) Any petition shall be filed with the secretary of state at least ninety days before the 1998 general election. Any petition shall be valid only for the 1998 general election. Notice of any question to be submitted to the registered electors within the geographical boundaries of the district after verification of the signatures on any petition filed with the secretary of state and at which election such question shall be submitted shall be filed by the board in the office of the secretary of state prior to fifty-five days before such election.

(4) (a) For purposes of complying with the provisions of section 20 of article X of the state constitution and upon the adoption of a resolution by the board, the board may submit to the registered electors within the geographical boundaries of the district, at a general election or at an election held on the first Tuesday in November of an odd-numbered year, the question of whether the district is authorized to collect and spend revenues in excess of the fiscal year spending limitation of the district.

(b) If at any such election a majority of the registered electors within the geographical boundaries of the district voting on the question vote affirmatively on the question of whether the district is authorized to collect and spend excess revenues, then the district shall collect and spend such revenues as provided for in this article.

(5) The provisions of subsection (1) of this section concerning the sales tax shall not be applicable if the authority of the district to levy and collect any sales tax approved by the registered electors has expired pursuant to the provisions of this article. The provisions of subsection (1) of this section concerning the admissions tax shall not be applicable if the authority of the district to levy and collect any admissions tax approved by the registered electors has expired pursuant to the provisions of this article.

(6) Prior to the general election at which any question is to be submitted to the registered electors pursuant to subsection (1) of this section, the board shall hold at least two public hearings in each of the counties included, in whole or in part, within the district.

(7) No public moneys from the state, any city, town, city and county, or county shall be expended by the public entity or by any private entity or private person to advertise, promote, or purchase commercial promotion or advertisement to urge electors to vote in favor of or against any question submitted at an election pursuant to the provisions of this article.

(8) Prior to submitting a question to the registered electors of the district pursuant to this section, the district shall enter into an agreement with the franchise requiring the franchise to pay for all costs of the district associated with the election at which the question is submitted to the voters pursuant to this section.

Source: L. 96: Entire article added, p. 1063, § 1, effective May 23. L. 97: (1)(d)(I) amended, p. 1494, § 4, effective June 3. L. 98: (1)(a), (1)(b)(III), (1)(d)(I)(B), (1)(d)(II), (1)(d)(III), (1)(d)(IV), (3), (5), and (6) amended and (8) added, p. 503, § 4, effective April 22. L. 2004: (1)(a)(I)(A) amended, p. 1043, § 11, effective July 1.

Editor's note: The measure regarding the new football stadium contained in subsection (1)(d)(I)(B) was approved by the people at the general election held November 3, 1998, and the vote count was as follows:

FOR:	399,064
AGAINST:	303,327

32-15-108. Position of trust - conflicts of interest. (1) The position of director, employee, adviser, or agent of the district is declared to be a position of public trust, and, therefore, in order to ensure the confidence of the people of the state in the integrity of the district and the board, the directors, employees, advisers, and agents of the district shall be subject to this section. While serving as director, employee, adviser, or agent of the district,

no person or any member of such person's family shall be interested directly or indirectly in any contract, subcontract, or transaction with the district or in the profits thereof.

(2) For purposes of this section, "family" means a person's spouse, child, parent, or sibling.

(3) No director, employee, adviser, or agent of the district shall accept employment with the franchise within one year after the director, employee, adviser, or agent of the district has terminated service with the district.

Source: L. 96: Entire article added, p. 1066, § 1, effective May 23.

32-15-109. Records of board - audits - legislative oversight - powers and duties of state auditor. (1) All resolutions and orders shall be recorded and authenticated by the signature of the chairperson of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by directors, employees, and any other agents of the district, and all corporate acts, and said record shall be a public record. The board shall keep an account of all moneys received by and disbursed on behalf of the district, and said account shall also be a public record. Any public record of the district shall be open for inspection by any registered elector of the district, by any official representative of the state, or by any official representative of any county, city and county, city, or town included, in whole or in part, within the district. All records shall be subject to audit as provided by part 6 of article 1 of title 29, C.R.S., for political subdivisions.

(2) (a) In addition to the audit authorized in subsection (1) of this section, upon the affirmative vote of a majority of the members of the legislative audit committee created pursuant to section 2-3-101, C.R.S., it shall be the duty of the state auditor to conduct or cause to be conducted audits of the district.

(b) In conducting an audit pursuant to paragraph (a) of this subsection (2), the state auditor or the state auditor's designated representative shall have access at all times, except as otherwise provided in sections 39-1-116, 39-4-103, and 39-5-120, C.R.S., to all of the books, accounts, reports, including confidential reports, vouchers, or other records or information of the district. Nothing in this paragraph (b) shall be construed as authorizing or permitting the publication of information prohibited by law. Any director, employee, or agent who fails or who interferes in any way with such examination commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(c) In verifying any of the audits made, the state auditor shall have the right to ascertain the amounts on deposit in any bank or other depository belonging to the district. In addition, the state auditor shall have the right to audit said account or the books of any such bank or depository. No bank or other depository shall be liable for making available to the state auditor any of the information required pursuant to the provisions of this paragraph (c).

Source: L. 96: Entire article added, p. 1066, § 1, effective May 23. L. 2002: (2)(a) amended, p. 867, § 6, effective August 7; (2)(b) amended, p. 1543, § 291, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

32-15-110. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the board shall have the power to levy such uniform sales tax upon the adoption of a resolution for a period commencing after the termination of the sales tax levied and collected by the Denver metropolitan major league baseball stadium district pursuant to section 32-14-105 and continuing for a period not to extend beyond January 1, 2012, throughout the district created in section 32-15-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article

26 of title 39, C.R.S.: except that such sales tax shall not be levied on the sale of cigarettes and shall be levied on:

(a) Purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent that such sales and purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S.;

(b) Sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.; and

(c) Vending machine sales of food that are otherwise exempt pursuant to section 39-26-714 (2), C.R.S.

(2) (a) The collection, administration, and enforcement of the sales tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of such sales tax collections to the district. The district shall pay the net incremental cost incurred by the department of revenue in the administration and collection of such sales tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) If the board levies such uniform sales tax as authorized in subsection (1) of this section, the board shall transmit to the executive director of the department of revenue not later than five days after the adoption of the resolution imposing such sales tax a certified copy of said resolution, whereupon said executive director shall proceed to collect, administer, and enforce such sales tax pursuant to the provisions of subsection (2) of this section until January 1, 2012, unless the executive director of the department of revenue receives from the board notification of discontinuance of the levy of such sales tax pursuant to the provisions of subsection (4) of this section.

(4) At such time, prior to January 1, 2012, that the board determines that the levy of the sales tax is no longer necessary for the purposes set forth in this article, the board shall transmit to the executive director of the department of revenue not later than five days after the adoption of the resolution discontinuing the levy of such sales tax a certified copy of said resolution, whereupon said executive director shall discontinue the collection of said sales tax on the January 1, April 1, July 1, or October 1 immediately following the adoption of said resolution, whichever occurs first. Upon the adoption of said resolution discontinuing the sales tax levy, the board shall have no further authority to levy such sales tax on and after the January 1, April 1, July 1, or October 1 immediately following the adoption of said resolution, as applicable.

(5) In no case shall the sales tax authorized by this section be levied for a period of time longer than is necessary to generate revenues sufficient to pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article and for such other purposes specified in section 32-15-111. Unless ended earlier, such sales tax shall not continue beyond January 1, 2012.

(6) Notwithstanding anything in this section to the contrary, the sales and use tax to be collected pursuant to this article shall not exceed an amount necessary to:

(a) Pay up to two hundred sixty-six million dollars for the principal amount of special obligation bonds, plus interest and prepayment penalty, if any, for such bonds, plus an amount the net present value of which shall not exceed seventy-five million dollars, which net present value shall be calculated as of January 1, 2001, based on an eight percent discount rate; and

(b) Provide coverage ratios for the bonds and the net present value amount as determined by the board to be most advantageous to the district and the taxpayers.

Source: **L. 96:** Entire article added, p. 1067, § 1, effective May 23. **L. 98:** (6) added, p. 507, § 5, effective April 22. **L. 99:** (1) amended, p. 983, § 8, effective May 28; (1) amended, p. 1358, § 9, effective January 1, 2000; (2) amended, p. 16, § 10, effective January 1, 2000. **L. 2004:** (1) amended, p. 1043, § 12, effective July 1. **L. 2009:** IP(1) amended, (HB 09-1342), ch. 354, p. 1849, § 10, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 99-1015 and House Bill 99-1271 were harmonized.

32-15-110.5. Admissions tax imposed - collection - discontinuance. (1) (a) Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the board shall have the power to levy an admissions tax upon the adoption of a resolution for a period not to extend beyond January 1, 2012, upon every purchase of an admission to a new stadium constructed by the district pursuant to this article. The amount of the tax shall not exceed ten percent of the price of each admission. The board shall have the authority to determine whether to levy an admissions tax pursuant to this section, and nothing in this article shall be construed to require the district to levy such a tax.

(b) Every vendor making a sale to a purchaser that is taxable under the provisions of this section is required at the time of making such sale to collect the tax imposed by this section from the purchaser. The tax to be collected as provided in this section shall be conspicuously, indelibly, and separately stated and charged from the sales price on the ticket or card evidencing the sale and shown separately from the sales price on any record made thereof at the time of the sale or at the time when evidence of the sale is first issued or employed by the vendor; except that, when added, such tax shall constitute a part of such purchase or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor who, as trustee for and on account of the district, shall be liable to the district for the collection and return thereof.

(c) The district may prescribe forms and procedures in conformity with this section for the adding of the admissions tax to the purchase price of an admission, for the making of returns, for the ascertainment, assessment, and collection of the tax imposed pursuant to this section, and for the proper administration and enforcement thereof.

(2) In no case shall the admissions tax authorized by this section be levied for a period of time longer than is necessary to generate revenues sufficient to pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article and for such other purposes specified in section 32-15-111. Unless ended earlier, such admissions tax shall not continue beyond January 1, 2012.

Source: **L. 98:** Entire section added, p. 507, § 6, effective April 22.

32-15-111. Sales tax and admissions tax revenues - use. (1) Sales tax revenues and admissions tax revenues levied and collected pursuant to the provisions of sections 32-15-110 and 32-15-110.5 shall be used by the board for the following purposes:

(a) To pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article;

(b) Upon the approval of the registered electors of the ballot question set forth in section 32-15-107 (1) (d) (I) (B), to acquire a site within the district that shall be suitable for construction of a stadium;

(c) To plan, design, and renovate Mile High stadium or to plan, design, and construct a stadium and all facilities incidental thereto;

(d) To reimburse the board for the day-to-day operating costs incurred in the administration of the district; however, such costs shall not exceed three-fourths of one percent of the amount of sales tax and admissions tax revenues collected annually;

(e) To reimburse the board for any loans made to the board or any direct out-of-pocket expenses incurred by the board on and after May 23, 1996, for matters directly related to the duties of the board prior to the time that sales tax or admissions tax revenues were available for use by the board;

(f) To reimburse the commission for expenses incurred on and after May 23, 1996, in the investigation, study, evaluation, and selection of a stadium site;

(g) To reimburse the board for preconstruction planning of the design and renovation of Mile High stadium or the construction of a new stadium and for the hiring of professionals to assist in these and other related activities.

(2) If sales tax revenues and admissions tax revenues levied and collected pursuant to the provisions of sections 32-15-110 and 32-15-110.5 and the operating revenues generated by the district are insufficient for all of the purposes set forth in subsection (1) of this section, the purpose set forth in paragraph (a) of said subsection (1) shall have first priority of such sales and admissions tax revenues.

Source: L. 96: Entire article added, p. 1069, § 1, effective May 23. L. 97: (1)(b), (1)(c), and (1)(g) amended, p. 1496, § 5, effective June 3. L. 98: 1P(1), (1)(d), (1)(e), and (2) amended, p. 508, § 7, effective April 22.

32-15-112. Operating revenues - use. (1) Any operating revenues generated by the district, including, but not limited to, lease payments, fees, rentals, rates, tolls, penalties, and charges for services, programs, or facilities furnished by the district, shall be used by the board for the following purposes:

(a) To pay the principal, interest, and prepayment premium, if any, on outstanding special obligation bonds issued by the board pursuant to the provisions of this article;

(b) To pay for the expenses incurred by the board in the general operation of the stadium;

(c) To provide for the repair and maintenance of the stadium;

(d) To provide for capital improvements to the stadium;

(e) To provide the counties within the district and the city and county of Denver with a benefit from the revenues, other than sales tax revenues or admissions tax revenues, derived from the operation of the stadium during the period of time the district is collecting the sales tax.

(2) If operating revenues and sales tax revenues are insufficient for all of the purposes set forth in subsection (1) of this section, the purpose set forth in paragraph (a) of said subsection (1) shall have first priority of such operating revenues if such operating revenues are pledged to secure the payment of the special obligation bonds.

Source: L. 96: Entire article added, p. 1069, § 1, effective May 23. L. 98: (1)(e) amended, p. 508, § 8, effective April 22.

32-15-113. Issuance of special obligation bonds. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the district may borrow money in anticipation of the revenues generated from the operation of a stadium and sales tax revenues and from admissions tax revenues, if any, of the district and may issue special obligation bonds in the maximum principal amount of two hundred sixty-six million dollars to evidence the amount so borrowed.

(2) Special obligation bonds issued pursuant to the provisions of this section shall satisfy the terms, conditions, and requirements as set forth in any resolution adopted by the board authorizing the issuance of such special obligation bonds or in any trust indenture entered into between the board and any commercial bank or trust company having full trust

powers that are not inconsistent with the provisions of this article. Such terms, conditions, and requirements may include, but are not limited to, the following:

- (a) The execution and delivery of such special obligation bonds by the district and the times of such execution and delivery;
- (b) The form and denominations of such special obligation bonds, including the terms and maturities;
- (c) Whether such special obligation bonds are subject to optional or mandatory redemption prior to maturity with or without a premium;
- (d) Whether such special obligation bonds are in fully registered form or bearer form registrable as to principal or interest, or both;
- (e) Whether such special obligation bonds may bear conversion privileges and, if so, such conversion privileges;
- (f) Whether such special obligation bonds are payable in installments and, if so, the times of such installment payments; however, the period of time during which such payments may be made shall not extend beyond January 1, 2012;
- (g) The place or places, within or without the state, at which such special obligation bonds may be paid;
- (h) The terms and timing of payment of interest and the interest rate or rates which such special obligation bonds bear per annum and that may be fixed or may vary according to index, procedure, formula, or such other method as determined by the district or its agents, without regard to any interest rate limitation specified by the laws of this state;
- (i) Whether such special obligation bonds are subject to purchase at the option of the holder or the district;
- (j) The manner of evidencing such special obligation bonds;
- (k) Whether such special obligations may be executed by the officers of the district, including the use of one or more facsimile signatures so long as at least one manual signature of an officer of the district, or of any agent authenticating the same, appears on the special obligations bonds; and
- (l) Whether such special obligation bonds are in the form of coupon bonds that have attached interest coupons bearing a manual or facsimile signature of an officer of the district.

Source: L. 96: Entire article added, p. 1070, § 1, effective May 23. L. 98: (1) amended, p. 509, § 9, effective April 22.

32-15-114. Pledge of sales and admissions tax revenues and net operating revenues. The payment of special obligation bonds may be secured by the specific pledge of sales tax revenues and admissions tax revenues of the district, operating revenues of the district, or moneys or assets of the district held in escrow, as the board, in its discretion, may determine. Operating revenues, sales tax revenues, admissions tax revenues, or moneys or assets held in escrow pledged for the payment of any special obligation bonds, as received by the district, shall immediately be subject to the lien of such pledge, without any physical delivery thereof, any filing, or further act, and the lien of such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument relating thereto shall have priority over all other obligations and liabilities of the district, except as may be otherwise provided in this article or in such resolution or instrument, and subject to any prior pledges and liens previously created. The lien of such pledge shall be valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the district, regardless of whether such persons have notice thereof.

Source: L. 96: Entire article added, p. 1071, § 1, effective May 23. L. 98: Entire section amended, p. 509, § 10, effective April 22.

32-15-115. Payment, recital, and securities. Special obligation bonds issued pursuant to the provisions of this article and constituting special obligations shall recite in substance that the obligations and the interest thereon are payable solely from operating revenues of

the district, sales tax revenues of the district, admissions tax revenues of the district, or moneys or assets of the district held in escrow, as the case may be, pledged to the payment thereof.

Source: L. 96: Entire article added, p. 1072, § 1, effective May 23. **L. 98:** Entire section amended, p. 509, § 11, effective April 22.

32-15-116. Incontestable recital in securities. Any authorizing resolution, or other instrument relating thereto pursuant to the provisions of this article, may provide that each security therein designated shall recite that it is issued pursuant to the authority of this article. Such recital shall conclusively impart full compliance with all of the provisions of this article, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 96: Entire article added, p. 1072, § 1, effective May 23.

32-15-117. Limitation upon payment. The payment of special obligation bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the district, other than operating revenues, sales tax revenues, admissions tax revenues, or moneys or assets held in escrow. No property of the district, subject to this exception, shall be liable to be forfeited or taken in payment of the special obligation bonds.

Source: L. 96: Entire article added, p. 1072, § 1, effective May 23. **L. 98:** Entire section amended, p. 509, § 12, effective April 22.

32-15-118. Negotiability. Subject to the payment provisions specifically provided in this article, any special obligation bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the board may otherwise provide.

Source: L. 96: Entire article added, p. 1072, § 1, effective May 23.

32-15-119. Sale of special obligation bonds. (1) Any special obligation bonds issued pursuant to this article shall be sold at public or private sale for not less than the principal amount thereof and accrued interest, or at the option of the board, below par, at a discount not exceeding seven percent of the principal amount thereof, but such special obligation bonds shall never be sold at a price such that the net effective interest rate exceeds the maximum net effective interest rate authorized.

(2) No discount, except as provided in subsection (1) of this section, or commission shall be allowed or paid on or for any sale to any purchaser or bidder, directly or indirectly.

Source: L. 96: Entire article added, p. 1072, § 1, effective May 23.

32-15-120. Contracts. The board shall award contracts in excess of three thousand dollars on a fair and competitive basis for the renovation or construction of any works, facility, or project, or portion thereof, or for the performance or furnishing of any labor, material, personal or real property, services, or supplies.

Source: L. 96: Entire article added, p. 1072, § 1, effective May 23. **L. 97:** Entire section amended, p. 1496, § 6, effective June 3.

32-15-121. Management agreement - operation of stadium. Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the board shall negotiate and enter into one or more management agreements for the management and operation of the stadium upon such terms and conditions that the board deems reasonable

and necessary. Such agreements shall be legally binding contracts between the district and management organizations that shall contain appropriate and reasonable provisions with respect to termination, default, and legal remedies.

Source: L. 96: Entire article added, p. 1073, § 1, effective May 23.

32-15-122. Lease of stadium. (1) Any lease agreement entered into by the district and the franchise shall include, but is not limited to, the following:

(a) A lease term that is, at a minimum, for the same length of time as the length of time the sales tax is levied and collected by the district;

(b) A provision requiring the franchise and its successors and assigns to conduct its complete regular home season schedule and any home play-off events in the stadium for a period of at least twenty years and that such provision shall be specifically enforceable against the franchise and its successors and assigns;

(c) A provision requiring the franchise to advertise and promote events it conducts at the stadium;

(d) A provision requiring the franchise to not unreasonably withhold permission for the holding of other events in the stadium;

(e) A provision requiring the franchise to agree that, during the lease term, the franchise will not limit the broadcast of any game to a pay-per-view broadcast; except that this provision may be waived if the board deems it would violate national football league requirements and except that, if the board waives this provision, the lease agreement shall include a provision requiring the franchise, in addition to the lease payments otherwise required, to pay an amount equal to the amount received by the franchise as a result of any pay-per-view broadcast;

(f) A provision requiring the franchise to guarantee that two thousand tickets for each game held at the stadium are available for sale to the general public. The tickets for preseason and regular season games shall be made available at a cost equal to fifty-percent of the regular ticket price;

(g) A provision requiring the franchise to purchase, or cause to be purchased, any unsold tickets to any football game played by the franchise in the stadium;

(h) A provision requiring the franchise, upon the sale of the franchise or eighty percent of the beneficial interest in the entity owning the franchise, to pay to the district, as a one-time payment, an amount equal to the sharing amount to be used for youth activity programs. As used in this paragraph (h), "sharing amount" means an amount equal to two percent of the net profit realized by the franchise or the persons or entities selling interests, as the case may be, not to be less than one million dollars. Net profit means the gross proceeds of the sale less capital contributions to the franchise (or capital contributions of the person's selling interests), plus six percent imputed annual return on such capital contributions, and less franchise debt if such debt is not assumed or paid by the purchasing entity. Individual sales of the franchise's beneficial interests will not trigger this profit-sharing provision if such sales do not, over a one-year period, result in the sale of eighty percent or more of the beneficial interests of the franchise to a person or entity or related persons or entities that have not been beneficial owners of interests of this franchise.

Source: L. 96: Entire article added, p. 1073, § 1, effective May 23. **L. 98:** (1)(b) amended and (1)(h) added, p. 510, § 16, effective April 22.

32-15-123. Revenue sharing. After all the principal, interest, and premium, if any, of the special obligation bonds issued pursuant to this article are paid in full and the levy and collection of sales tax and admissions tax revenues by the district is discontinued, but prior to the repeal of this article, any funds collected by the district that are, in the sole discretion of the board, deemed not to be necessary for the anticipated expenses and reserves of the district shall be credited at least annually to the general fund of each county, city and county, city, and town which is included, in whole or in part, in the district based upon the proportion of the total amount of sales tax revenues collected pursuant to section 32-15-110

within such county, city and county, city, and town to the total amount of sales tax revenues collected pursuant to section 32-15-110 within the district. For purposes of this section, the total amount of sales tax revenues collected within a county shall not include any sales tax revenues collected in any city or town located within such county. In addition, in computing said proportion, any sales tax revenues collected in any county, city, or town which is not included, in whole or in part, within the geographical boundaries of the district shall not be included in the total amount of sales tax revenues collected within the district.

Source: L. 96: Entire article added, p. 1073, § 1, effective May 23. L. 98: Entire section amended, p. 509, § 13, effective April 22.

32-15-124. Report. (Repealed)

Source: L. 96: Entire article added, p. 1074, § 1, effective May 23. L. 98: Entire section amended, p. 510, § 14, effective April 22. L. 2001: Entire section repealed, p. 1180, § 20, effective August 8.

32-15-125. Limitations upon liabilities. Neither the directors nor any person executing any obligations issued pursuant to the provisions of this article shall be personally liable on the obligations by reason of the issuance thereof. Obligations issued pursuant to this article shall not in any way create or constitute any indebtedness, liability, or obligation of the state or of any political subdivision thereof, except the district, and nothing in this article shall be construed to authorize the district to incur any indebtedness on behalf of or in any way to obligate the state or any political subdivision thereof, except the district, and nothing in this article shall be construed to authorize the district to incur any indebtedness on behalf of or in any way to obligate the state or any political subdivision thereof, except as specifically provided in this article.

Source: L. 96: Entire article added, p. 1074, § 1, effective May 23.

32-15-125.5. No action maintainable. An action or proceeding, at law or in equity, to review any act, resolution, or proceeding or to question the validity or to enjoin the performance of any act, resolution, or proceeding related to the issuance of any bonds or for any other relief against or from any act, resolution, or proceeding done under this article with respect to the financing of the stadium, the election provided in this article, or the actions of the board pursuant to section 32-15-106 (1) (a) to (1) (g), (3), or (5), section 32-15-107, or sections 32-15-110 to 32-15-113, or the validity or execution of the management agreement pursuant to section 32-15-121 or the validity or execution of the lease pursuant to section 32-15-122, whether based upon irregularities or jurisdictional defects, shall not be maintained, unless commenced within thirty days after the performance of the act, resolution, or proceeding or after the effective date thereof, whichever is earlier, and shall be thereafter perpetually barred.

Source: L. 98: Entire section added, p. 511, § 17, effective April 22.

32-15-126. Sale of real and personal property of district. Upon completion of the renovation of Mile High stadium or the construction of a new stadium pursuant to the provisions of this article, the board shall make a good faith effort to sell the real and personal property of the district, including the stadium, to any qualified buyer subject to the leasehold interest and other contract rights of the franchise. The board shall establish criteria to determine qualified buyers. The board shall not accept any offer from any qualified buyer for such real and personal property of the district for an amount less than the total amount of outstanding obligations of the district or the amount of sales tax revenues used by the board to acquire a site for the stadium and to construct the stadium, whichever is greater. Notwithstanding any other provision of this section to the contrary, the district shall not be

required to sell the real and personal property of the district if such sale would adversely affect the federal tax exempt status of the interest on the special obligation bonds issued by the district pursuant to this article.

Source: **L. 96:** Entire article added, p. 1074, § 1, effective May 23. **L. 97:** Entire section amended, p. 1496, § 7, effective June 3. **L. 98:** Entire section amended, p. 510, § 15, effective April 22.

32-15-127. Limitations upon promotional activities. No moneys of the district shall be used for promotion of the passage of any question submitted to the voters pursuant to the provisions of this article.

Source: **L. 96:** Entire article added, p. 1075, § 1, effective May 23.

32-15-128. Football stadium site selection commission - creation - membership.

(1) There is hereby created the football stadium site selection commission which shall consist of eighteen commissioners. The commission shall be a body corporate and a political subdivision of the state, shall not be an agency of state government, and shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state or by the district or the board. Initial appointments to the commission shall be made within forty-five days after August 6, 1996.

(2) (a) Three commissioners shall be appointed by the governor.

(b) One commissioner shall be appointed by the speaker of the house of representatives.

(c) One commissioner shall be appointed by the president of the senate.

(d) Eleven commissioners shall be appointed as follows:

(I) Two commissioners shall be appointed by the boards of county commissioners of the five counties in the district; and

(II) One commissioner shall be appointed by the mayor and the city council of the city and county of Denver.

(e) One commissioner from state representative district 4 shall be appointed by the mayor of the city and county of Denver after consultation with the members of the general assembly representing state senatorial district 34 and state representative district 4.

(f) One commissioner from state representative district 5 shall be appointed by the mayor of the city and county of Denver after consultation with the members of the general assembly representing state senatorial district 34 and state representative district 5.

(3) No more than three commissioners shall reside in any one county within the district and no more than three commissioners shall reside in the city and county of Denver.

(4) No commissioner shall also serve as a director of the board of the district.

(5) All commissioners appointed pursuant to the provisions of subsection (2) of this section shall reside within the geographical boundaries of the district.

(6) Any appointed commissioner may be removed at any time at the pleasure of the person or governing body who appointed such commissioner. If any appointed commissioner vacates the office, a vacancy on the commission shall exist, and the person or governing body who appointed such commissioner vacating the office shall fill such vacancy by appointment.

(7) The appointed commissioners shall elect such officers as deemed necessary and appropriate from among the appointed membership of the commission.

(8) Commissioners shall receive no compensation for their services but may be reimbursed for their actual and necessary expenses while serving as commissioners.

Source: **L. 96:** Entire article added, p. 1075, § 1, effective May 23.

32-15-129. Commission - powers and duties. (1) The commission shall have the following powers and duties:

(a) To advise and make recommendations to the board concerning the performance of the duties of the board as set forth in this article;

(b) To establish criteria for selection of a site for a new stadium, including the present Mile High stadium site;

(c) To conduct such investigations and studies as may be necessary in order to evaluate sites within the district that may be suitable for the construction of a stadium, including, without limitation, a study of sports facilities in other cities. In connection with such evaluation process, the commission shall consult with representatives of any city, town, city and county, or county included, in whole or in part, in the district, the chambers of commerce located within the district, the board of directors of the Denver metropolitan major league baseball stadium district, the Colorado baseball commission, and any other individuals, groups of individuals, or entities that may provide any relevant expertise concerning the evaluation of sites for a new stadium. In addition, the commission shall consult with the urban land institute pursuant to the provisions of section 32-15-132 concerning the evaluation of sites, including Mile High stadium.

(d) To select a single site within the district for the location of a new stadium or the Mile High stadium site after consideration of the results of the investigations, studies, evaluation, and consultations set forth in paragraph (c) of this subsection (1);

(e) To prepare and transmit a report notifying the board of the site selected by the commission;

(f) To formulate and adopt an annual budget to govern the expenses of the commission in undertaking its activities;

(g) To adopt, and from time to time amend or repeal, such bylaws and rules and regulations as it may consider to be necessary or advisable and to keep a record of its proceedings, which record shall be open to inspection by the public at all reasonable times;

(h) To contract for those services, including services for necessary personnel, and materials required by the activities of the commission;

(i) To administer and use moneys received by the commission in accordance with the provisions of this section;

(j) To receive and expend donations or grants from any private source or from any department, agency, or instrumentality of the United States government to be held, used, and applied to carry out the purposes of this section subject to the conditions upon which the donations or grants are made; however, nothing in this paragraph (j) shall authorize the commission to accept or expend public moneys, whether as gifts, grants, or other forms of contribution, from the state, the board, the franchise, any city, town, city and county, or county;

(k) To deposit any moneys received by the commission pursuant to the provisions of this section in any banking institution within the state or in any depository authorized in section 24-75-603, C.R.S., and to appoint, for purposes of making such deposits, one or more persons to act as custodians of the moneys of the commission, who may be required to give surety bonds in such amounts and form and for such purposes as the board may require; and

(l) To develop reporting and review requirements governing the receipt and expenditures of any moneys received by the commission pursuant to the provisions of this section. The account of all moneys received by and expended by the commission shall be a public record and shall be open for inspection by the public at all reasonable times.

Source: L. 96: Entire article added, p. 1076, § 1, effective May 23. L. 97: (1)(b) to (1)(d) amended, p. 1496, § 8, effective June 3; (1)(c) amended, p. 1028, § 60, effective August 6.

Editor's note: Amendments to subsection (1)(c) by House Bill 97-1220 and Senate Bill 97-230 were harmonized.

32-15-130. Conflicts of interest prohibited. No commissioner may vote in favor of a specific stadium site if such commissioner or any member of the immediate family of such commissioner has any direct or indirect financial interest in the real property on which the stadium would be located or any real property which would be significantly benefited by the

construction of a stadium. No commissioner shall accept employment with the franchise within a one-year period after the commissioner has terminated service as a member of the site selection commission.

Source: L. 96: Entire article added, p. 1077, § 1, effective May 23.

32-15-131. Criteria - stadium site - stadium. (1) The commission shall establish criteria for any stadium site. In establishing such criteria, the commission shall consider factors that it deems relevant, including, but not limited to:

(a) The need for access to the site by motor vehicles, pedestrians, and others using the stadium, including the proximity to highways, the capacity of surrounding streets and highways to handle traffic, the proximity to actual and proposed public transportation, and the overall convenience to the citizens of the district;

(b) The extent to which financial incentives from private sources, including landowners and developers, may be maximized in order to reduce the amount of public moneys required to be expended for a stadium site;

(c) The extent to which the economic potential resulting from the location of a stadium may be maximized, including the compatibility of a stadium with other actual or proposed development;

(d) The compatibility of a stadium with surrounding neighborhoods;

(e) The existence of readily available fire and police protection services;

(f) The existence or the potential for the existence of adequate parking facilities for motor vehicles in the immediately surrounding area.

(2) Any incentive offered by a city, city and county, county, or other local government to induce the commission to select a site within such city, city and county, county, or other local government shall be binding and enforceable against the city, city and county, county, or other local government if the commission selects a site located within the boundaries of such city, city and county, county, or other local government.

(3) The commission shall not select a site located within the jurisdiction of a governmental entity having the authority to impose any construction- or land development-related permits and fees unless such governmental entity agrees to waive such permits and fees to the extent the charge for such permits and fees exceeds the actual cost incurred by the governmental entity for the service provided by the governmental entity in connection with such permits and fees.

Source: L. 96: Entire article added, p. 1077, § 1, effective May 23. L. 97: IP(1) amended, p. 1497, § 9, effective June 3.

32-15-132. Consultation with urban land institute - consideration of recommendations. The commission shall consult with and shall consider any recommendations made by the urban land institute in regard to the duty of the commission to select a stadium site.

Source: L. 96: Entire article added, p. 1078, § 1, effective May 23.

32-15-133. Repeal of article. (1) This article is repealed, effective as of the earliest occurrence of the following:

(a) Five years after July 1, 2003, if the board has not submitted the question set forth in section 32-15-107 (1) to the registered electors within the geographic boundaries of the district pursuant to the provisions of said section; or

(b) At such time as a majority of the registered electors within the geographical boundaries of the district vote negatively on the question set forth in section 32-15-107 (1) and the board has adopted a resolution declaring that the affairs of the district have been wound up or ninety days have passed since such negative vote, whichever occurs first; or

(c) Upon the completion of the sale of the stadium by the board to any qualified buyer pursuant to the provisions of section 32-15-126.

(2) Upon repeal of this article, any funds collected by the district but not used for the purposes set forth in this article shall be credited to the general fund of each county, city and county, city, and town that is included, in whole or in part, in the district based upon the proportion of the total amount of sales tax revenues collected pursuant to section 32-15-110 within such county, city and county, city, and town to the total amount of sales tax revenues collected pursuant to section 32-15-110 within the district. For purposes of this subsection (2), the total amount of sales tax revenues collected within a county shall not include any sales tax revenues collected in any city or town located within such county. In addition, in computing said proportion, any sales tax revenues collected in any county, city, or town that is not included, in whole or in part, within the geographical boundaries of the district shall not be included in the total amount of sales tax revenues collected within the district.

Source: **L. 96:** Entire article added, p. 1078, § 1, effective May 23. **L. 98:** (1)(b) amended, p. 511, § 18, effective April 22.

ARTICLE 16

Colorado Intermountain
Fixed Guideway Authority

32-16-101 to 32-16-109. (Repealed)

Editor’s note: (1) This article was added in 1998. For amendments to this article prior to its repeal in 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.
(2) Section 32-16-109 provided for the repeal of this article, effective January 1, 2004. (See L. 1998, p. 913.)

ARTICLE 17

Mental Health Care
Service Districts

32-17-101.	Short title.	32-17-108.	Approval by municipality.
32-17-102.	Legislative declaration.	32-17-109.	Public hearing on service plan
32-17-103.	Definitions.		- procedures - decision -
32-17-104.	Applicability of “Special Dis- trict Act”.		judicial review - modifica- tions - enforcement.
32-17-105.	Special districts file - notice of organization or dissolu- tion.	32-17-110.	Organization.
		32-17-111.	Persons entitled to vote at mental health care service district elections.
32-17-106.	Service area of district - gov- ernmental immunity.	32-17-112.	Financial powers.
		32-17-113.	Sales tax imposed - collection - administration of tax.
32-17-107.	Service plan required - con- tents - action on plan.	32-17-114.	District revenues.

32-17-101. Short title. This article shall be known and may be cited as the “Mental Health Care Service District Act”.

Source: **L. 2005:** Entire article added, p. 1036, § 4, effective June 2.

32-17-102. Legislative declaration. (1) The general assembly hereby finds, deter- mines, and declares that, although the state of Colorado has dedicated financial resources to the diagnosis and treatment of mental illness for specific populations in this state, many adults, children, and families who do not qualify for or cannot obtain these state- and federally-funded services have mental health care needs that are not being addressed and lack of mental health care services often results in increased taxpayer costs for law

enforcement, schools, health facilities, hospitals, social services, corrections, and health insurance.

(2) The general assembly also finds and declares that local residents and local governments are best able to determine whether it is desirable to authorize the creation of mental health care service districts for the purpose of generating tax revenues to be used to address the mental health care needs of adults, children, and families in their communities.

Source: L. 2005: Entire article added, p. 1036, § 4, effective June 2.

32-17-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "District" means a mental health care service district created pursuant to this article to provide, directly or indirectly, mental health care services to residents of the district who are in need of mental health care services and to family members of such residents.

(2) "Eligible elector" means a person who, at the designated time or event, is registered to vote pursuant to the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(3) "Interested party" means a resident or eligible elector of the district and a municipality located in the district.

Source: L. 2005: Entire article added, p. 1036, § 4, effective June 2.

32-17-104. Applicability of "Special District Act". (1) Except as provided in this article, a mental health care service district created pursuant to this article shall be governed by the applicable provisions of the "Special District Act", article 1 of this title, including, but not limited to:

- (a) Part 1 of article 1 of this title containing general provisions;
- (b) Parts 2 and 3 of article 1 of this title concerning the organization of a special district;
- (c) Part 6 of article 1 of this title concerning the consolidation of special districts;
- (d) Part 7 of article 1 of this title concerning the dissolution of special districts;
- (e) Part 8 of article 1 of this title concerning elections;
- (f) Parts 9, 10, and 11 of article 1 of this title concerning the board of directors for a special district and the board's general and financial powers; and
- (g) Parts 13 and 14 of article 1 of this title concerning refunding of bonds and special district indebtedness.

(2) The following provisions shall not apply to a mental health care service district created pursuant to this article:

- (a) Parts 4 and 5 of article 1 of this title concerning the inclusion and exclusion of territory in a special district;
- (b) Part 12 of article 1 of this title concerning the levy and collection of ad valorem taxes; and
- (c) Part 16 of article 1 of this title concerning certification and notice of special district taxes for general obligation indebtedness.

Source: L. 2005: Entire article added, p. 1037, § 4, effective June 2.

32-17-105. Special districts file - notice of organization or dissolution. (1) For purposes of complying with section 32-1-104 (2), a mental health care service district created pursuant to this article shall provide the required notice to the department of revenue instead of the county assessor.

(2) For purposes of complying with section 32-1-105, the county clerk and recorder shall file a certified copy of the decree or order confirming the organization or dissolution of a mental health care service district created pursuant to this article with the department of revenue instead of notifying the county assessor of the action.

Source: L. 2005: Entire article added, p. 1037, § 4, effective June 2.

32-17-106. Service area of district - governmental immunity. (1) A mental health care service district may include all of the territory of one or more municipalities or counties, as may be proposed. The district shall be a body corporate and politic and a political subdivision of the state.

(2) Each of the directors, officers, and employees of the district shall be a public employee for purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2005: Entire article added, p. 1037, § 4, effective June 2.

32-17-107. Service plan required - contents - action on plan. (1) Persons proposing the organization of a mental health care service district, except for a district that is contained entirely within the boundaries of a municipality and subject to the provisions of section 32-17-108, shall submit a service plan in accordance with the requirements of section 32-1-202 (1) and shall pay any fee required pursuant to section 32-1-202 (3).

(2) Notwithstanding the provisions of section 32-1-202 (2), the service plan for the district shall contain the following information:

(a) A description of the proposed mental health services to be provided and the persons who will be eligible to receive those services;

(b) Quality assurance measures;

(c) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from sales taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality, whichever is applicable, of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.

(d) A map of the proposed district boundaries;

(e) If the district plans to construct facilities, a general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed district are compatible with facility and service standards of any county or municipality within which all or any portion of the proposed district is to be located;

(f) If applicable, a general description of the estimated cost of acquiring or leasing land or facilities, acquiring engineering, legal, and administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;

(g) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;

(h) Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met; and

(i) Such additional information as the board of county commissioners or the governing body of the municipality, whichever is applicable, may require on which to base its findings pursuant to section 32-1-203.

(3) Except as provided in section 32-17-108, the board of county commissioners of each county that has territory included within the proposed district shall constitute the approving authority for the proposed district and shall review any service plan filed by the petitioners of a proposed district in accordance with the provisions of section 32-1-203. The provisions of section 32-1-203 (3.5) shall not apply to a mental health care service district proposed pursuant to this article.

Source: L. 2005: Entire article added, p. 1038, § 4, effective June 2.

32-17-108. Approval by municipality. If the boundaries of a mental health care service district proposed pursuant to this article are wholly contained within the boundaries of a municipality, the persons proposing the organization of the district shall comply with the provisions of section 32-1-204.5; except that the service plan submitted to each governing body shall contain the information required by section 32-17-107 (2). The governing body of each municipality shall have the authority set forth in section 32-1-204.5 with regard to the review of the service plan.

Source: L. 2005: Entire article added, p. 1039, § 4, effective June 2.

32-17-109. Public hearing on service plan - procedures - decision - judicial review - modifications - enforcement. (1) For purposes of section 32-1-204 (1) and (1.5), the board of county commissioners or the governing body of the municipality, whichever is applicable, shall be deemed to have complied with such provisions if the board or governing body provides written notice of the date, time, and location of the hearing to the petitioners and, at least twenty days prior to the hearing date, publishes notice of the date, time, location, and purpose of the hearing. The published notice shall constitute constructive notice to the interested parties in the proposed district.

(2) The provisions of section 32-1-204 (2) shall not apply to a mental health care service district proposed pursuant to this article.

(3) The board of county commissioners or the governing body of the municipality, whichever is applicable, shall conduct the hearing and make its decision in accordance with the requirements of section 32-1-204 (3) and (4). The decision of the board of county commissioners or the governing body of the municipality, whichever is applicable, is subject to judicial review in accordance with section 32-1-206; except that, for purposes of judicial review, "interested party" shall have the same meaning as set forth in section 32-17-103 (3).

(4) Upon final approval by the court for the organization of a mental health care service district, the district shall conform as much as possible to the approved service plan, and any material modifications to the plan shall be approved in accordance with section 32-1-207 (2). Any material departure from the approved service plan may be enjoined in accordance with section 32-1-207 (3); except that, for purposes of enforcement of the plan, "interested party" shall have the same meaning as set forth in section 32-17-103 (3).

Source: L. 2005: Entire article added, p. 1039, § 4, effective June 2.

32-17-110. Organization. (1) Except as provided in this section, the organization of a mental health care service district pursuant to this article shall be governed by the provisions of part 3 of article 1 of this title.

(2) For purposes of complying with the provisions of section 32-1-301 (1), a petition for the organization of a district proposed pursuant to this article shall be signed by not less than thirty percent or two hundred eligible electors of the proposed district, whichever number is smaller.

(3) For purposes of complying with the provisions of section 32-1-301 (2) (d.1), the petition for organization shall set forth the estimated sales tax revenues for the district's first budget year.

(4) For purposes of complying with the provisions of section 32-1-304, when the court with whom a petition for organization of a mental health care service district has been filed sets a hearing date, the clerk of court shall publish notice of the hearing and mail the required notice to the appropriate board of county commissioners or governing body of the municipality, but the clerk of court shall not be required to mail notice of the hearing to all interested parties.

(5) For purposes of complying with the provisions of section 32-1-305 (1), the court shall determine whether the required number of eligible electors of the proposed district have signed the petition.

(6) For purposes of the filing requirements in section 32-1-306, instead of filing a map of the district with the county assessor, the district shall file a certified copy of the findings and order of the court organizing the district with the department of revenue.

Source: L. 2005: Entire article added, p. 1040, § 4, effective June 2.

32-17-111. Persons entitled to vote at mental health care service district elections. Notwithstanding the provisions of section 32-1-806, any person who is an eligible elector as defined in section 32-17-103 (2) shall be eligible to vote in an organizational election or any election conducted by the board of directors for a mental health care service district.

Source: L. 2005: Entire article added, p. 1040, § 4, effective June 2.

32-17-112. Financial powers. Notwithstanding the provisions of section 32-1-1101 (1) (a), a mental health care service district created pursuant to this article shall not be authorized to levy and collect ad valorem taxes. Such district shall have all other financial powers described in section 32-1-1101. The district shall also have the power, upon voter approval, to levy and collect a uniform sales tax throughout the entire geographical area of the district at a rate not to exceed one-fourth of one percent upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall not be levied on the sale of cigarettes. Any sales tax authorized pursuant to this section shall be levied and collected as provided in section 32-17-113.

Source: L. 2005: Entire article added, p. 1040, § 4, effective June 2. **L. 2009:** Entire section amended, (HB 09-1342), ch. 354, p. 1850. § 11, effective July 1.

32-17-113. Sales tax imposed - collection - administration of tax. (1) (a) Upon the approval of the eligible electors in the district at an election held in accordance with section 20 of article X of the state constitution and part 8 of article 1 of this title, the district shall have the power to levy such uniform sales tax throughout the entire geographical area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.

(b) The sales tax imposed pursuant to paragraph (a) of this subsection (1) shall also be levied on the following sales and purchases:

(I) Purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent that such sales and purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S.;

(II) Sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.; and

(III) Vending machine sales of food that are otherwise exempt pursuant to section 39-26-714 (2), C.R.S.

(c) The sales tax imposed pursuant to paragraph (a) of this subsection (1) shall not be levied on:

(I) The sale of tangible personal property delivered by a retailer or a retailer's agent or to a common carrier for delivery to a destination outside the district;

(II) The sale of tangible personal property on which a specific ownership tax has been paid or is payable when such sale meets the following conditions:

(A) The purchaser does not reside in the district or the purchaser's principal place of business is outside the district; and

(B) The personal property is registered or required to be registered outside the geographical boundaries of the district under the laws of this state; and

(III) The sale of cigarettes.

(d) The sales tax imposed pursuant to paragraph (a) of this subsection (1) is in addition to any other sales or use tax imposed pursuant to law.

(2) (a) The collection, administration, and enforcement of the sales tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of sales tax collections to the district. The district shall pay the net incremental cost incurred by the department of revenue in the administration and collection of the sales tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of any sales tax imposed on the sale that is paid for directly from the qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

Source: L. 2005: Entire article added, p. 1041, § 4, effective June 2. **L. 2008:** (1)(d) amended, p. 992, § 12, effective August 5. **L. 2009:** (1)(c)(I) and (1)(c)(II)(B) amended and (1)(c)(III) added, (HB 09-1342), ch. 354, p. 1850, § 12, effective July 1.

32-17-114. District revenues. Any revenues raised or generated by the district shall be in addition to and shall not be used to replace any state funding the counties in the district would otherwise be entitled to receive from the state.

Source: L. 2005: Entire article added, p. 1042, § 4, effective June 2.

ARTICLE 18

Forest Improvement Districts

32-18-101.	Short title.	32-18-106.	Financial powers.
32-18-102.	Definitions.	32-18-107.	Sales tax - collection - admin- istration.
32-18-103.	Creation.	32-18-108.	Use of revenue.
32-18-104.	Board of directors - appoint- ment - removal.	32-18-109.	Wildfire mitigation measures - private land - reimburse- ment.
32-18-105.	Board of directors - powers and duties.		

32-18-101. Short title. This article shall be known and may be cited as the "Forest Improvement District Act".

Source: L. 2007: Entire article added, p. 425, § 2, effective April 9.

32-18-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Board" means the board of directors of a forest improvement district.
- (2) "Director" means a member of the board of directors of a forest improvement district.
- (3) "District" means a forest improvement district created pursuant to this article.
- (4) "Eligible elector" has the same meaning as set forth in section 32-1-103 (5) (a).

Source: L. 2007: Entire article added, p. 425, § 2, effective April 9.

32-18-103. Creation. (1) A forest improvement district may be created in the following manner:

(a) The governing body of a municipality or county may enact an ordinance or resolution proposing the creation of a forest improvement district. The ordinance or resolution shall set forth the boundaries of the proposed district and the proposed name of the district.

(b) A governing body of a municipality or county that has territory within the boundaries of the district proposed in the ordinance or resolution may enact an ordinance or resolution proposing to join the district.

(c) The clerk of a governing body that enacts an ordinance or resolution pursuant to paragraph (a) or (b) of this subsection (1) shall transmit a certified copy to the governing body of each other municipality or county that has territory within the boundaries of the district proposed in the original ordinance to be a part of the proposed district.

(d) The governing body of a municipality or county that enacts an ordinance or resolution pursuant to paragraph (a) or (b) of this subsection (1) shall submit the question of the creation of a forest improvement district to the eligible electors of the municipality or county within the boundaries of the proposed district at a general or special election conducted in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S. The district shall be deemed created if a majority of the votes cast by the eligible electors within the boundaries of the proposed district in the election held in any municipality or county that has territory within the boundaries of the district proposed in the ordinance or resolution are in favor of the creation of the district. The territory of the district may comprise all or a portion of the territory of one or more municipalities or counties in which the eligible electors approve the creation of the district and may consist of noncontiguous tracts or parcels of property.

Source: L. 2007: Entire article added, p. 426, § 2, effective April 9. L. 2010: Entire section amended, (SB 10-046), ch. 21, p. 92, § 1, effective March 10.

32-18-104. Board of directors - appointment - removal. (1) The ordinance or resolution proposing the creation of a forest improvement district shall specify the number of directors of the district. A district shall have no fewer than seven directors. The governing body of each county or municipality in the district shall have the power to appoint and remove at least one director. The board shall include one director representing the Colorado state forest service, who shall be appointed and may be removed by the state forester. The board shall include at least one representative of an environmental protection organization, one representative of a conservation district created pursuant to article 70 of title 35, C.R.S., any part of which is within the proposed forest improvement district, one representative of a water conservancy district created pursuant to article 45 of title 37, C.R.S., any part of which is within the proposed forest improvement district, and one representative of a federal land management agency, to be appointed and removed in the manner prescribed by the ordinance or resolution proposing the creation of the district.

(2) A director appointed to the board shall serve for a term of five years unless removed pursuant to subsection (1) of this section. A director may be appointed to additional terms without limitation.

Source: L. 2007: Entire article added, p. 426, § 2, effective April 9.

32-18-105. Board of directors - powers and duties. (1) In addition to the powers specified in section 32-1-1001, the board has the following powers for and on behalf of the district:

(a) To review any reports and studies made and to obtain any additional reports and studies it deems necessary pertaining to the cost and implementation of forest improvement projects;

(b) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article subject to the conditions upon which the grants or contributions are made;

(c) To develop reporting and review requirements governing the receipt and expenditures of moneys received by the district; and

(d) To review and take action on a landowner's application to claim the reimbursement authorized by section 32-18-109.

(2) In exercising its power under this article to enter into contracts on behalf of the district, the board shall:

(a) To the extent possible, use competitive bidding in accordance with article 103 of title 24, C.R.S.; and

(b) Give due consideration to persons and businesses that are authorized to transact business in Colorado.

Source: L. 2007: Entire article added, p. 427, § 2, effective April 9.

32-18-106. Financial powers. (1) In addition to the general financial powers specified in section 32-1-1101, the board has the power, for and on behalf of the district, to:

(a) Levy and collect a sales tax in accordance with section 32-18-107, subject to the requirements of section 20 of article X of the state constitution; and

(b) Pledge sales tax revenues or any portion thereof for the payment of any indebtedness of the district.

(2) The ordinance or resolution proposing the creation of a forest improvement district may specify a limit on the amount of revenue that a district may receive.

Source: L. 2007: Entire article added, p. 427, § 2, effective April 9.

32-18-107. Sales tax - collection - administration. (1) Upon the approval of the eligible electors in the district at an election held in accordance with section 20 of article X of the state constitution and part 8 of article 1 of this title, the district shall have the power to levy a uniform sales tax throughout the entire geographical area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall not be levied on the sale of cigarettes. A sales tax levied by a district shall take effect on either January 1 or July 1 of the year specified in the ballot issue submitted to the eligible electors of the district.

(2) (a) The executive director of the department of revenue shall collect, administer, and enforce the sales tax authorized by this section in the same manner as the state sales tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall distribute sales tax collections to the district monthly. The district shall pay the net incremental cost incurred by the department of revenue in the administration and collection of the sales tax.

(b) (I) A qualified purchaser, as defined in section 39-26-102 (7.5), C.R.S., may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on any sale made to the qualified purchaser pursuant to this section. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of any sales tax imposed on the sale that is paid for directly from the qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on any sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) A sales tax levied in accordance with this section is in addition to any other sales or use tax imposed pursuant to law.

Source: L. 2007: Entire article added, p. 428, § 2, effective April 9. **L. 2008:** (3) amended, p. 992, § 13, effective August 5. **L. 2009:** (1) amended, (HB 09-1342), ch. 354, p. 1850, § 13, effective July 1.

32-18-108. Use of revenue. (1) The board may use the revenue received pursuant to section 32-18-106 to:

- (a) Plan and implement forest improvement projects in wildland-urban interface areas, including projects to reduce hazardous fuels and protect communities, in cooperation with the state forest service, the division of parks and wildlife in the department of natural resources, conservation districts created pursuant to article 70 of title 35, C.R.S., the United States forest service, and the federal bureau of land management and other agencies in the United States department of the interior;
- (b) Establish financial incentives for private landowners to mitigate wildfire risks on their property, including reimbursement of expenses pursuant to section 32-18-109;
- (c) Establish incentives for local wood products industries to improve the use of or add value to small-diameter or beetle-infested trees;
- (d) Match state and federal grants for bioheating conversion and infrastructure support for biomass collection and delivery; and
- (e) Assist the state forest service in ensuring that all communities at risk of wildfire within the district have adopted a community wildfire protection plan and are using appropriate planning, education, and outreach tools.

Source: L. 2007: Entire article added, p. 429, § 2, effective April 9.

32-18-109. Wildfire mitigation measures - private land - reimbursement. (1) A landowner who performs wildfire mitigation measures on his or her land in a district in any year may request reimbursement from the district, in an amount not to exceed fifty percent of the landowner’s direct costs of performing the wildfire mitigation measures in that year or ten thousand dollars, whichever is less.

(2) A landowner who performs wildfire mitigation measures on his or her land may request reimbursement from a district in accordance with this section if the wildfire mitigation measures are:

- (a) Performed within the boundaries of the district;
 - (b) Performed in a wild land-urban interface area;
 - (c) Authorized by a community wildfire protection plan adopted by a local government within the district; and
 - (d) Approved by the board.
- (3) A landowner who intends to request reimbursement from a district as authorized by this section shall file an application with the board in the form prescribed by the board. If the board determines that the wildfire mitigation measures performed by the landowner meet the requirements of this section, the board may reimburse the landowner in an amount determined by the board in its discretion; except that the amount of reimbursement paid to a landowner in any year shall not exceed fifty percent of the landowner’s direct costs of performing the wildfire mitigation measures in that year or ten thousand dollars, whichever is less.

Source: L. 2007: Entire article added, p. 429, § 2, effective April 9.

ARTICLE 19

Health Assurance and Health Service Districts

32-19-101.	Legislative declaration.		of organization or dissolution.
32-19-102.	Definitions.		
32-19-103.	Applicability of “Special District Act”.	32-19-105.	Service area of district - governmental immunity.
32-19-104.	Special districts file - notice	32-19-106.	Service plan required - con-

	tents - action on plan.	32-19-111.	Financial powers.
32-19-107.	Approval by municipality.	32-19-112.	Sales tax imposed - collection
32-19-108.	Public hearing on service plan		- administration of tax.
	- procedures - decision -	32-19-113.	District revenues.
	judicial review - modifica-	32-19-114.	Cooperation between districts
	tions - enforcement.		or other existing providers
32-19-109.	Organization.		permitted.
32-19-110.	Time for holding elections -	32-19-115.	Levy and collection of ad
	persons entitled to vote at		valorem taxes.
	district elections.		

32-19-101. Legislative declaration. The general assembly hereby finds, determines, and declares that access to health care services is an increasing problem in Colorado and that some Coloradans do not have access to a primary care provider. It is the intent of the general assembly to ease the strain on Coloradan's health care needs by allowing a special district to be created to provide health care services and facilities.

Source: L. 2007: Entire article added, p. 1194, § 15, effective July 1.

32-19-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Court" means the district court in any county in which the petition for organization of the district was originally filed and which entered the order organizing said district or the district court to which the file pertaining to the district has been transferred pursuant to section 32-1-303 (1) (b).

(2) "District" means:

(a) A health assurance district created pursuant to this article to organize, operate, control, direct, manage, contract for, furnish, or provide, directly or indirectly, health care services to residents of the district who are in need of such services; or

(b) A health service district created pursuant to this article that may establish, maintain, or operate, directly or indirectly through lease to or from other parties or other arrangement, public hospitals, convalescent centers, nursing care facilities, intermediate care facilities, emergency facilities, community clinics, or other facilities providing health and personal care services and may organize, own, operate, control, direct, manage, contract for, or furnish ambulance service.

(3) "Eligible elector" means a person who, at the designated time or event, is registered to vote pursuant to the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) "Interested party" means a resident or eligible elector of the district or a municipality located in the district.

Source: L. 2007: Entire article added, p. 1194, § 15, effective July 1.

32-19-103. Applicability of "Special District Act". (1) Except as provided in this article, a district created pursuant to this article shall be governed by the applicable provisions of the "Special District Act", article 1 of this title, including, but not limited to:

(a) Part 1 of article 1 of this title containing general provisions;

(b) Parts 2 and 3 of article 1 of this title concerning the organization of a special district;

(c) Part 6 of article 1 of this title concerning the consolidation of special districts;

(d) Part 7 of article 1 of this title concerning the dissolution of special districts;

(e) Part 8 of article 1 of this title concerning elections;

(f) Parts 9, 10, and 11 of article 1 of this title concerning the board of directors for a special district and the board's general and financial powers; and

(g) Parts 13 and 14 of article 1 of this title concerning refunding of bonds and special district indebtedness.

(2) The following provisions shall not apply to a district created pursuant to this article:

(a) Parts 4 and 5 of article 1 of this title concerning the inclusion and exclusion of territory in a special district;

(b) Part 12 of article 1 of this title concerning the levy and collection of ad valorem taxes; and

(c) Part 16 of article 1 of this title concerning certification and notice of special district taxes for general obligation indebtedness.

Source: L. 2007: Entire article added, p. 1194, § 15, effective July 1.

32-19-104. Special districts file - notice of organization or dissolution. (1) For purposes of complying with section 32-1-104 (2), a district created pursuant to this article shall provide the required notice to the department of revenue instead of the county assessor.

(2) For purposes of complying with section 32-1-105, the county clerk and recorder shall file a certified copy of the decree or order confirming the organization or dissolution of a district created pursuant to this article with the department of revenue instead of notifying the county assessor of the action.

Source: L. 2007: Entire article added, p. 1195, § 15, effective July 1.

32-19-105. Service area of district - governmental immunity. (1) A district shall include all of the territory of one or more municipalities, counties, or other existing taxing entities, as may be proposed. The district shall be a body corporate and politic and a political subdivision of the state.

(2) Each of the directors, officers, and employees of the district shall be a public employee for purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2007: Entire article added, p. 1195, § 15, effective July 1.

32-19-106. Service plan required - contents - action on plan. (1) Persons proposing the organization of a district, except for a district that is contained entirely within the boundaries of a municipality and subject to the provisions of section 32-19-107, shall submit a service plan in accordance with the requirements of section 32-1-202 (1) and shall pay any fee required pursuant to section 32-1-202 (3).

(2) Notwithstanding the provisions of section 32-1-202 (2), the service plan for the district shall contain the following information:

(a) (I) If the proposed district is a health assurance district, a description of the proposed health services to be provided and the persons who will be eligible to receive those services; or

(II) If the proposed district is a health service district, a description of the proposed facilities to be established, maintained, or operated;

(b) If the proposed district is a health assurance district, a description of the proposed health services to be provided in conjunction with a health service district, if any, and if the proposed district is a health service district, a description of the proposed health services to be provided in conjunction with a health assurance district;

(c) Quality assurance measures;

(d) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from sales taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners of the county in which the district will be located or the governing body of the municipality in which the district will be located, whichever is applicable, of any alteration or revision of the proposed schedule of debt issuance set forth in the plan.

(e) A map of the proposed district boundaries;

(f) If the district plans to construct facilities, a general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility

and service standards of the proposed district are compatible with facility and service standards of any county or municipality within which all or any portion of the proposed district is to be located;

(g) If applicable, a general description of the estimated cost of acquiring or leasing land or facilities, acquiring engineering, legal, and administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;

(h) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed district and such other political subdivision, including the form contract to be used, if available;

(i) Information, along with other evidence presented at the hearing pursuant to section 32-1-204, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met; and

(j) Such additional information as the board of county commissioners of the county in which the district will be located or the governing body of the municipality in which the district will be located, whichever is applicable, may require on which to base its findings pursuant to section 32-1-203.

(3) Except as provided in section 32-19-107, the board of county commissioners of each county that has territory included within the proposed district shall constitute the approving authority for the proposed district and shall review any service plan filed by the petitioners of a proposed district in accordance with the provisions of section 32-1-203. The provisions of section 32-1-203 (3.5) (a) shall not apply to a district proposed pursuant to this article.

Source: L. 2007: Entire article added, p. 1195, § 15, effective July 1.

32-19-107. Approval by municipality. If the boundaries of a district proposed pursuant to this article are wholly contained within the boundaries of a municipality, the persons proposing the organization of the district shall comply with the provisions of section 32-1-204.5; except that the service plan submitted to each governing body of each municipality shall contain the information required by section 32-19-106 (2). The governing body shall have the authority set forth in section 32-1-204.5 with regard to the review of the service plan.

Source: L. 2007: Entire article added, p. 1197, § 15, effective July 1.

32-19-108. Public hearing on service plan - procedures - decision - judicial review - modifications - enforcement. (1) For purposes of section 32-1-204 (1) and (1.5), the board of county commissioners of the county in which the district will be located or the governing body of the municipality in which the district will be located, whichever is applicable, shall be deemed to have complied with the provisions of such section if the board or governing body provides written notice of the date, time, and location of the hearing to the petitioners and, at least twenty days prior to the hearing date, publishes notice of the date, time, location, and purpose of the hearing. The published notice shall constitute constructive notice to the interested parties in the proposed district.

(2) The provisions of section 32-1-204 (2) (a) shall not apply to a district proposed pursuant to this article.

(3) The board of county commissioners of the county in which the district will be located or the governing body of the municipality in which the district will be located, whichever is applicable, shall conduct the hearing pursuant to section 32-1-204 (1.5) and make its decision in accordance with the requirements of section 32-1-204 (3) and (4). The decision of the board or governing body, whichever is applicable, is subject to judicial review in accordance with section 32-1-206; except that, for purposes of judicial review, "interested party" shall have the same meaning as set forth in section 32-19-102 (4).

(4) Upon final approval by the court for the organization of a district pursuant to section 32-1-304.5, the district shall conform as much as possible to the approved service plan, and

any material modifications to the plan shall be approved in accordance with section 32-1-207 (2). Any material departure from the plan may be enjoined in accordance with section 32-1-207 (3); except that, for purposes of enforcement of the plan, "interested party" shall have the same meaning as set forth in section 32-19-102 (4).

Source: L. 2007: Entire article added, p. 1197, § 15, effective July 1.

32-19-109. Organization. (1) Except as provided in this section, the organization of a district pursuant to this article shall be governed by the provisions of part 3 of article 1 of this title.

(2) For purposes of complying with the provisions of section 32-1-301 (1), a petition for the organization of a district proposed pursuant to this article shall be signed by not less than thirty percent or two hundred eligible electors of the proposed district, whichever number is smaller.

(3) For purposes of complying with the provisions of section 32-1-301 (2) (d.1), the petition for organization shall set forth the estimated sales tax revenues for the district's first budget year.

(4) For purposes of complying with the provisions of section 32-1-304.5 (2), the court shall determine whether the required number of eligible electors of the proposed district have signed the petition.

(5) For purposes of the filing requirements in section 32-1-306, instead of filing a map of the district with the county assessor, the district shall file a certified copy of the findings and order of the court organizing the district with the department of revenue.

Source: L. 2007: Entire article added, p. 1198, § 15, effective July 1.

32-19-110. Time for holding elections - persons entitled to vote at district elections.

(1) For a district, regular special district elections shall be held on the date of the general election or on the first Tuesday in November of an odd-numbered year, and any election on the proposal shall be conducted by the county clerk and recorder as part of a coordinated election in accordance with the provisions of section 1-7-116, C.R.S.

(2) Notwithstanding the provisions of section 32-1-806, any person who is an eligible elector as defined in section 32-19-102 (3) shall be eligible to vote in an organizational election or any election conducted by the board of directors for a district.

Source: L. 2007: Entire article added, p. 1198, § 15, effective July 1.

32-19-111. Financial powers. Any district created pursuant to this article shall have all of the financial powers described in section 32-1-1101; except that the levy and collection of ad valorem taxes shall be subject to the provisions of section 32-19-115. The district shall also have the power, upon voter approval, to levy and collect a uniform sales tax throughout the entire geographical area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall not be levied on the sale of cigarettes. Any sales tax authorized pursuant to this section shall be levied and collected as provided in section 32-19-112.

Source: L. 2007: Entire article added, p. 1198, § 15, effective July 1. **L. 2009:** Entire section amended, (HB 09-1342), ch. 354, p. 1851, § 14, effective July 1.

32-19-112. Sales tax imposed - collection - administration of tax. (1) (a) Upon the approval of the eligible electors in the district at an election held in accordance with section 20 of article X of the state constitution and part 8 of article 1 of this title, the district shall have the power to levy a uniform sales tax throughout the entire geographical area of the district upon every transaction or other incident with respect to which a sales tax is levied

by the state pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall not be levied on the sale of cigarettes.

(b) The sales tax imposed pursuant to paragraph (a) of this subsection (1) is in addition to any other sales tax imposed pursuant to law.

(2) (a) The collection, administration, and enforcement of the sales tax shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of sales tax collections to the district. The district shall pay the net incremental cost incurred by the department in the administration and collection of the sales tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to a vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of a sales tax imposed on a sale that is paid for directly from the qualified purchaser's funds and not the personal funds of an individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

Source: L. 2007: Entire article added, p. 1199, § 15, effective July 1. **L. 2008:** (1)(b) amended, p. 992, § 14, effective August 5. **L. 2009:** (1)(a) amended, (HB 09-1342), ch. 354, p. 1851, § 15, effective July 1.

32-19-113. District revenues. Any revenues raised or generated by the district shall be in addition to and shall not be used to replace any funding the counties in the district would otherwise be entitled to receive from the state or federal government.

Source: L. 2007: Entire article added, p. 1199, § 15, effective July 1.

32-19-114. Cooperation between districts or other existing providers permitted. A health assurance district and a health service district shall each have the authority to contract with or work cooperatively and in conjunction with another health assurance district or health service district, or any existing health care providers or services to provide health care services and facilities to the residents of such districts.

Source: L. 2007: Entire article, p. 1200, § 15, effective July 1.

32-19-115. Levy and collection of ad valorem taxes. (1) Any district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect ad valorem taxes on and against all taxable property within the district subject to the following provisions:

(a) For purposes of this section, "eligible elector" shall have the same meaning as set forth in section 32-1-103 (5).

(b) The levy and collection of ad valorem taxes shall be subject to the applicable provisions of the "Special District Act", article 1 of this title.

Source: L. 2007: Entire article added, p. 1200, § 15, effective July 1.

ARTICLE 20

Colorado New Energy Improvement District

32-20-101.	Short title.		ments - certification of assessment roll - manner of collection.
32-20-102.	Legislative declaration.		
32-20-103.	Definitions.		
32-20-104.	Colorado new energy improvement district - creation - board - meetings - quorum - expenses - records.	32-20-107.	Special assessment constitutes lien - filing - sale of property for nonpayment.
32-20-105.	District - purpose - general powers and duties - new energy improvement program.	32-20-108.	Special assessment bonds - legal investment - exemption from taxation.
32-20-106.	Special assessments - determination of special benefits - notice and hearing require-	32-20-109.	Credit towards demand-side management goals for public utilities.
		32-20-110.	Repeal of article - inapplicable if the district has outstanding bond obligations.

32-20-101. Short title. This article shall be known and may be cited as the “New Energy Jobs Creation Act of 2010”.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2201, § 1, effective June 11.

32-20-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the best interest of the state and its citizens and a public purpose to enable and encourage the owners of eligible real property to invest in new energy improvements, including energy efficiency improvements and renewable energy improvements, sooner rather than later by creating the Colorado new energy improvement district and authorizing the district to establish, develop, finance, implement, and administer a new energy improvement program that includes both energy efficiency improvements and renewable energy improvements to assist any such owners who choose to join the district in completing new energy improvements to their property because:

(I) New energy improvements, including energy efficiency improvements and renewable energy improvements, help protect owners of eligible real property from the financial impact of the rising cost of electricity produced from nonrenewable fuels and can even provide positive cash flow in many instances in which the costs of the improvements are spread out over a long enough time so that the owners’ utility bill cost savings exceed the special assessments levied on the eligible real property to pay for the improvements;

(II) The inclusion of both energy efficiency improvements and renewable energy improvements in the new energy improvement program will help to promote informed choices and maximize the benefits of the program for both individual owners of eligible real property and society as a whole;

(III) Reduction in the amount of emissions of greenhouse gases and environmental pollutants resulting from decreased use of traditional nonrenewable fuels will improve air quality and may help to mitigate climate change;

(IV) New energy improvements, including energy efficiency improvements and renewable energy improvements, increase the value of the eligible real property improved;

(V) The commitment of a significant amount of sustainable funding for increased construction of new energy improvements will create jobs and stimulate the state economy:

(A) By directly creating jobs for contractors and other persons who complete new energy improvements; and

(B) By reinforcing the leadership role of the state in the Colorado energy economy and thereby attracting new energy manufacturing facilities and related jobs to the state; and

(VI) The new energy improvement program provides a meaningful, practical opportunity for average citizens to take action that will benefit their personal finances and the

economy of the state, promote their own and the nation's energy independence and security, and help sustain the environment; and

(b) In many cases, the owner of eligible real property is unable to fund a new energy improvement because the owner does not have sufficient liquid assets to directly fund the improvement and is unable or unwilling to incur the negative net cash flow likely to result if the owner uses a typical home equity loan or line of credit or other loan to fund the improvement.

(2) The general assembly further finds and declares that it is necessary, appropriate, and legally permissible under section 20 of article X of the state constitution and all other constitutional provisions and laws to authorize the Colorado new energy improvement district, without voter approval in advance, to generate the capital needed to reimburse owners of eligible real property who voluntarily join the district for, or directly pay for all or a portion of the cost of, completing new energy improvements, including energy efficiency improvements and renewable energy improvements, to the property by levying special assessments and issuing special assessment bonds to be paid from the revenues generated by the special assessments because:

(a) Under the Colorado supreme court's decision in *Campbell v. Orchard Mesa Irrigation District*, 972 P.2d 1037 (Colo. 1998), the Colorado new energy improvement district is neither the state nor a local government and therefore is not a district, as defined in section 20 (2) (b) of article X of the state constitution, subject to the requirements of section 20 of article X of the state constitution because:

(I) The district is not authorized to levy general taxes;

(II) Although the district is a public corporation that serves the public purposes of promoting new energy improvements and creating jobs, it does not have elected board members and primarily exists to serve the interests of owners of eligible real property who voluntarily join the district in order to fund new energy improvements to the property; and

(III) The district is endowed by the state pursuant to this article with only the powers necessary to perform its predominantly private objective;

(b) There is no legal impediment to the imposition of special assessments and the issuance of special assessment bonds without an election by an entity like the Colorado new energy improvement district that is formed by law, has statewide jurisdiction, and is governed by an appointed board;

(c) The burden of a special assessment is voluntarily assumed by the owner of the eligible real property on which the special assessment is levied because:

(I) A special assessment may only be levied on eligible real property if the owner of the property has voluntarily joined the district, agreed to accept reimbursement or a direct payment, and consented to the levy of a special assessment; and

(II) A subsequent purchaser of eligible real property upon which a special assessment has been levied purchases the property with full knowledge of the special assessment; and

(d) Both an owner of eligible real property who joins the district and receives reimbursement or a direct payment and any subsequent owner of the property receive the special benefit of the new energy improvement for which the district has made reimbursement or a direct payment in proportion to or in excess of the amount of the special assessment paid.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2202, § 1, effective June 11. **L. 2012:** (1)(a)(V)(B) amended, (HB 12-1315), ch. 224, p. 975, § 39, effective July 1.

32-20-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the board of directors of the district.

(2) "District" means the Colorado new energy improvement district created in section 32-20-104 (1).

(3) "District member" means a qualified applicant whose application to join the district, receive reimbursement or a direct payment, and consent to the levying of a special assessment is approved by the district.

(4) "Eligible real property" means a residential building, located within a county in which the district has been authorized to conduct the program as required by section 32-20-105 (3), on which or in which a new energy improvement to be financed by the district has been or will be completed.

(5) "Energy efficiency improvement" means one or more installations or modifications to eligible real property that are designed to reduce the energy consumption of the property and that are not required by a building code as part of new construction or a major renovation and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in a building;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of eligible real property unless the increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(g) Energy recovery systems;

(h) Daylighting systems; and

(i) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the district.

(6) "Loan balance" means the outstanding principal balance of loans secured by a mortgage or deed of trust with a first or second lien on eligible real property.

(7) "New energy improvement" means one or more on-site energy efficiency improvements or renewable energy improvements, or both, made to eligible real property that will reduce the energy consumption of or add energy produced from renewable energy sources only to any portion of the eligible real property that is used predominantly as a place of residency.

(8) "Program" means the new energy improvement program established by the district in accordance with section 32-20-105.

(9) "Program administrator" or "administrator" means an entity hired by the district to administer the program on behalf of the district to the extent specified in a contract between the district and the administrator. Neither the district nor its program administrator shall offer rebates for the purchase of renewable energy credits. The district's activities shall be limited to funding new energy improvements and to marketing that funding.

(10) "Qualified applicant" means a person who:

(a) Owns eligible real property that has a ratio of loan balance to its actual value of ninety-five percent or less at the time the person's program application is approved, as shown in the records of the county assessor, unless the holder of the deed of trust or mortgage recorded against the eligible real property that has priority over all other deeds of trust or mortgages recorded against the eligible real property has consented in writing to the levying of a special assessment against the eligible real property.

(b) Timely submits to the district a complete application, which notes the existence of any first priority mortgage or deed of trust on the eligible real property and the identity of the holder thereof, to join the district, have the eligible real property included in the district's boundaries, receive reimbursement or a direct payment, and consent to the levying of a special assessment on the property. Within thirty days of a person's submission of an application to the district, the district shall provide written notice to the holder of any first priority mortgage or deed of trust on the eligible real property that the person is participating in the district.

(c) Meets any standard of credit-worthiness that the district may establish.

(11) “Reimbursement or a direct payment” means the payment by the district to a district member, or on behalf of such a district member to a contractor that has completed a new energy improvement to the district member’s eligible real property, of all or a portion of the cost of completing a new energy improvement. Utility rebates offered to program participants by a qualifying retail utility for the purpose of compliance with renewable energy targets established in section 40-2-124, C.R.S., shall be subject to the retail rate impact cap established pursuant to section 40-2-124 (1) (g) (I), C.R.S. The maximum amount of reimbursement or a direct payment that may be made shall be the lowest of the full cost of completing a new energy improvement, twenty percent of the actual value, as specified in the records of the county assessor, of the eligible real property to which the new energy improvement is made, or twenty-five thousand dollars; except that the twenty-five thousand dollar limit shall be adjusted by the district for each calendar year commencing on or after January 1, 2012, based on the consumer price index for the Denver-Boulder-Greeley metropolitan statistical area for the state fiscal year that ends in the preceding calendar year.

(12) “Renewable energy improvement” means one or more fixtures, products, systems, or devices, or an interacting group of fixtures, products, systems, or devices, that directly benefit eligible real property through a qualified community location, as defined in section 30-20-602 (4.3), C.R.S., enacted by Senate Bill 10-100, enacted in 2010, or that are installed behind the meter of any eligible real property and that produce energy from renewable resources, including, but not limited to, photovoltaic, solar thermal, small wind, low-impact hydroelectric, biomass, or geothermal systems such as ground source heat pumps, as may be approved by the district; except that no renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. Nothing in this article shall limit the right of a public utility, subject to article 3 or 3.5 of title 40, C.R.S., or section 40-9.5-106, C.R.S., to assess fees for the use of its facilities or modify or expand the net metering limitations established in sections 40-9.5-118 and 40-2-124 (7), C.R.S. Primary jurisdiction to hear any disputes as to whether a renewable energy improvement interferes with such a right shall lie:

(a) In the case of a regulated utility, with the public utilities commission; and

(b) In the case of a municipally-owned electric utility, with the governing body of the municipality.

(13) “Residential building” means an improvement to real property that is designed for use predominantly as a place of residency. The term also includes any other improvement or connected land that is billed with the improvement for purposes of ad valorem property taxation.

(14) “Special assessment” or “assessment” means a charge levied by the district against eligible real property specially benefited by a new energy improvement for which the district has made or will make reimbursement or a direct payment that is proportional to the benefit received from the new energy improvement and does not exceed the estimated amount of special benefits received.

(15) “Special assessment bond” or “bond” means any bond, note, interim certificate, loan agreement, contract, or other evidence of borrowing of the district issued by the district pursuant to this article that is payable, in whole or in part, from revenues generated by special assessments levied as authorized in this article and, at the discretion of the board, from any other legally available source of moneys lawfully pledged for their repayment.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2204, § 1, effective June 11.

32-20-104. Colorado new energy improvement district - creation - board - meetings - quorum - expenses - records. (1) The Colorado new energy improvement district is hereby created as an independent public body corporate, and the boundaries of the district shall include the eligible real property that is owned by a person who has voluntarily joined the district. The district constitutes a public instrumentality, and its exercise of the powers conferred by this article shall be deemed and held to be the performance of an essential public function, but the district:

- (a) Shall not be an agency of state government or of any local government;
- (b) Shall not be subject to administrative direction by any department, commission, board, or agency of the state or any local government; and
- (c) Shall not be a district, as defined in section 20 (2) (b) of article X of the state constitution, for purposes of section 20 of said article X.

(2) (a) The district shall be governed by a board of directors, which shall exercise the powers of the district, shall, by a majority vote of a quorum of its members, select from its membership a chair and a vice-chair, and shall be composed of nine members, including:

(I) The following two ex officio members or their designees:

(A) The director of the Colorado energy office created in section 24-38.5-101 (1), C.R.S.; and

(B) The director of the Colorado office of economic development created in section 24-48.5-101 (1), C.R.S.;

(II) The following five members appointed by the governor:

(A) One member who has executive-level experience in the affordable housing industry;

(B) One member who has executive-level experience in the lending industry;

(C) One member who is an attorney licensed to practice law in Colorado and who shall serve as the secretary of the board;

(D) One member who represents the energy efficiency industry; and

(E) One member who represents local governments;

(III) One member appointed by the president of the senate who has executive-level experience in the renewable energy industry;

(IV) One member appointed by the speaker of the house of representatives who has executive-level experience in the financial industry;

(V) One member appointed by the minority leader of the senate who has executive-level experience in the utility industry; and

(VI) One member appointed by the minority leader of the house of representatives who has executive-level experience in the housing industry.

(b) The terms of the appointed members shall be four years; except that the terms of the members initially appointed by the governor, the speaker of the house of representatives, and the minority leader of the senate shall be two years.

(c) (I) Notwithstanding any other law, it is not a conflict of interest for a trustee, director, officer, or employee of any public utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, insurance company, law firm, or other firm, corporation, or business entity to serve as a board member, the executive director of the district, or an employee of the district. However, a board member, executive director, or other employee who is also such a trustee, director, officer, or employee shall disclose his or her business affiliation to the board and shall abstain from voting or otherwise taking action in any instance in which his or her business affiliation is directly involved.

(II) A member of the board, any executive director of the district, and any employee of the district shall be immune from civil liability for any action taken in good faith in the course of the member's, director's, or employee's duties for the district.

(d) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including travel and lodging expenses, incurred in the discharge of their official duties. Any payments for compensation and expenses shall be paid from funds of the district.

(3) Six members of the board shall constitute a quorum for the purpose of conducting business and exercising the powers of the board. Action may be taken by the board upon the affirmative vote of at least six of its members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(4) The district shall be subject to the open meetings provisions of the "Colorado Sunshine Act of 1972", part 4 of article 6 of title 24, C.R.S., and the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. The board shall also promulgate and adhere to policies and procedures that govern its conduct, provide meaningful opportunities for public input, and establish standards and procedures for calling emergency meetings.

One or more members of the board may participate in a meeting of the board and may vote through the use of telecommunications devices, including, but not limited to, a conference telephone or similar communications equipment. Participation through telecommunications devices shall constitute presence in person at a meeting. The use of telecommunications devices shall not supersede any requirements for a public hearing otherwise provided by law.

(5) The district shall be subject to the "Local Government Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S., and the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, C.R.S.

(6) The district shall be considered a special district included within the definition of the state or any of its political subdivisions set forth in section 2 (14.6) of article XXVIII of the state constitution and shall, accordingly, be subject to the sole source contracting provisions of sections 15 to 17 of said article XXVIII.

(7) Because the district is not a part of state government or a county or municipality, neither the district nor any member of the board, executive director of the district, or employee of the district shall be subject to the provisions of article XXIX of the state constitution.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2207, § 1, effective June 11. **L. 2012:** (2)(a)(I)(A) amended, (HB 12-1315), ch. 224, p. 976, § 40, effective July 1.

Editor's note: Sections 2 (14.6) and 15 to 17 of article XXVIII of the state constitution referenced in subsection (6) were declared unconstitutional. See *Dallman v. Ritter*, 225 P.3d 610 (Colo. 2010).

32-20-105. District - purpose - general powers and duties - new energy improvement program. (1) The purpose of the district is to help provide the special benefits of new energy improvements to owners of eligible real property who voluntarily join the district by establishing, developing, financing, and administering a new energy improvement program through which the district can provide assistance to such owners in completing new energy improvements. The district may exercise any of the powers granted to the district in this article before any eligible real property is included within the boundaries of the district; except that the district shall exercise the powers to levy special assessments and issue special assessment bonds only after eligible real property is included within the boundaries of the district.

(2) In order to allow the district to achieve its purpose, in addition to any other powers and duties of the district specified in this article, the district shall have the following general powers and duties:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To adopt bylaws for the regulation of its affairs and conduct of its business;
- (d) To set an annual budget;
- (e) To sue and be sued and to be a party to suits, actions, and proceedings;
- (f) To enter into contracts and agreements needed for its functions or operations;
- (g) To acquire, dispose of, and encumber real and personal property needed for its functions or operations;

(h) To borrow money for the purpose of defraying district expenses, including, but not limited to, the funding of appropriate loss reserves, or for any other purpose deemed appropriate by the board;

(i) To invest any moneys of the district in accordance with part 6 of article 75 of title 24, C.R.S.;

(j) (I) To hire and set the compensation of a program administrator and to appoint, hire, retain, and set the compensation of other agents and employees and contract for professional services.

(II) The board may delegate any of the powers and duties of the district that specifically pertain to the establishment, development, financing, and administration of the program to any program administrator the district hires; except that the district shall not delegate the

power to establish assessment units, the power to determine the method of calculating special assessments, or the power to issue special assessment bonds.

(k) In accordance with sections 32-20-106 to 32-20-108, to establish special assessment units, levy and collect special assessments on eligible real property specially benefited by a renewable energy improvement for which the district made reimbursement or a direct payment, and issue special assessment bonds;

(l) To accept gifts and donations and apply for and accept grants upon such terms or conditions as the board may approve; and

(m) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to the district by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(3) The district shall establish, develop, finance, and administer a new energy improvement program. However, the district may conduct the program within any given county only if the board of county commissioners of the county has adopted a resolution authorizing the district to conduct the program within the county. The program shall be designed to allow an owner of eligible real property to apply to join the district, receive reimbursement or a direct payment from the district, and consent to the levying of a special assessment on the eligible real property specially benefited by a new energy improvement for which the district makes reimbursement or a direct payment. The district shall establish an application process for the program, which may allow an owner of eligible real property to become a qualified applicant by submitting an application to the district and which may include one or more deadlines for the filing of an application. The district may charge program application fees. In order to administer the program, the district, acting directly or through a program administrator or such other agents, employees, or professionals as the district may appoint, hire, retain, or contract with, shall:

(a) Market the program to owners of eligible real property, encourage such owners to obtain the special benefits of completing new energy improvements to their property by providing more attractive and accessible means of funding the completion of new energy improvements, and accept and process program applications from any such owners who are qualified applicants;

(b) Specify the information to be included in a program application. The district shall require an owner of eligible real property who submits a program application to include, at a minimum, a postal address or electronic mail address at which the district may contact the owner, the name and postal or electronic mailing address of any person holding a lien against the eligible real property, and any information that the district requires to verify that the owner will complete a new energy improvement, verify the cost of completing the new energy improvement, determine the appropriate amount of reimbursement or a direct payment to be made to the applicant or a contractor after the new energy improvement has been completed, and estimate the value of the special benefit provided by the completed new energy improvement to the applicant's eligible real property.

(c) Establish such standards, guidelines, and procedures, including but not limited to standards of credit-worthiness for qualification of program applicants, as are necessary to ensure the financial stability of the program and otherwise prevent fraud and abuse;

(d) Encourage any qualified applicant to obtain an online or on-site home energy audit in order to ensure the efficient use of new energy improvement funding pursuant to this article;

(e) Inform prospective program applicants and qualified applicants of private financing options not provided by the district, including but not limited to home equity loans and home equity lines of credit, that may, with respect to a particular applicant, represent viable alternatives for financing new energy improvements;

(f) Take appropriate steps to establish qualifications for the certification of contractors to construct or install new energy improvements; and

(g) Take appropriate steps to monitor the quality of new energy improvements for which the district has made reimbursement or a direct payment if deemed necessary by the board, measure the total energy savings achieved by the program, monitor the total number of program participants, the total amount paid to contractors, the number of jobs created by

the program, the number of defaults by program participants, and the total losses from the defaults, and calculate the total amount of bonds issued by the district. On or before March 1, 2011, and on or before each subsequent March 1, the district shall report to the state, veterans, and military affairs committees of the general assembly, or any successor committees regarding the information obtained as required by this paragraph (g).

(4) The district shall establish underwriting guidelines that consider program applicants' qualifications, credit-worthiness, home equity, and other appropriate factors, including but not limited to credit reports, credit scores, and loan-to-value ratios, consistent with good and customary lending practices, and as required in order for the district to obtain a bond rating necessary for a successful bond sale. The district shall also arrange for an appropriate loss reserve in order to obtain the necessary bond rating.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2209, § 1, effective June 11.

32-20-106. Special assessments - determination of special benefits - notice and hearing requirements - certification of assessment roll - manner of collection. (1) The approval by the district of a program application shall establish the qualified applicant who submitted the application as a district member, include the qualified applicant's eligible real property within the boundaries of the district, entitle the district member to reimbursement or a direct payment, and, subject to the provisions of subsection (3) of this section, constitute the consent of the district member to the levying of a special assessment on the district member's eligible real property in an amount that does not exceed the value of the special benefit provided to the eligible real property by the new energy improvement.

(2) For the purpose of determining the amount of the special assessment to be levied on a particular unit of eligible real property within the district, "special benefit" includes, but is not limited to:

(a) Any increase in the market value of the eligible real property resulting from the completion of a new energy improvement;

(b) Any cost of completing a new energy improvement that is defrayed by reimbursement or a direct payment;

(c) Any reduction in energy-related utility bills for the eligible real property caused by a quantifiable reduction in the energy consumption of the eligible real property resulting from the completion of a new energy improvement; and

(d) Any acknowledged value of a new energy improvement to a district member's eligible real property set forth in the program application submitted by the district member.

(3) (a) The district may levy a special assessment against eligible real property specially benefited by a new energy improvement based on the cost to the district of the new energy improvement. The district shall initiate the levy of any assessment by the adoption of a resolution of the board that sets the assessment, approves the preparation of a preliminary assessment roll, and sets a date for a public hearing regarding the assessment roll. The district shall prepare a preliminary assessment roll listing all special assessments to be levied. The district may post notice of the hearing on the assessment on any district internet web site and shall send notice that the assessment roll has been completed and notice of a hearing on the assessment roll no later than thirty days before the hearing date to:

(I) Each district member at the postal address or electronic mail address, or both if both are specified, specified in the member's program application; and

(II) Each person, by first-class mail or electronic mail, who has a lien against a unit of eligible real property listed on the assessment roll.

(b) The notice required by paragraph (a) of this subsection (3) shall specify:

(I) The amount of the special assessment proposed to be levied on the unit of eligible real property owned by the district member or subjected to a lien by the lienholder to whom the notice is sent;

(II) That any complaints or objections that are made by a district member or lienholder in writing to the board, and filed in writing on or prior to the date of the hearing, will be

heard and determined by the board before the passage of any resolution levying a special assessment; and

(III) The date when and place where the hearing will be held at which complaints or objections made in person will be heard.

(c) Following the hearing required by paragraph (a) of this subsection (3) and notice pursuant to paragraphs (a) and (b) of this subsection (3), the board shall adopt a resolution resolving all complaints or objections made and levying the special assessments. A district member or lienholder whose complaint or objection is denied by the board shall have thirty days from the date of the denial to appeal the denial to a court of competent jurisdiction. Thereafter, the complaint or objection shall be perpetually barred.

(4) The board shall prepare or cause to be prepared a district assessment roll in book form showing in suitable columns each unit of eligible real property assessed, the total amount of assessment, the amount of each installment of principal and interest if the assessment is payable in installments, and the date when each installment will become due. The assessment roll shall have suitable columns for use in case of payment of the whole amount or of any installment or penalty. The board shall deliver the assessment roll, duly certified, under the corporate seal, for collection to the treasurer of each county in which the district has assessed eligible real property. After delivery of the assessment roll, the district may reduce the amount of any special assessment with the consent of the owner of the eligible real property on which the special assessment is levied.

(5) All special assessments shall be due and payable within thirty days after the effective date of the assessing resolution without demand, but all such assessments may be paid, at the election of the owner, in installments with interest as provided in subsection (6) of this section; except that the board may provide that special assessments be due and payable at such alternate time as set forth in the assessing resolution. Failure of a district member to pay the whole special assessment within said period of thirty days shall be conclusively considered and held to be an election on the part of the district member to pay in installments.

(6) In case of an election to pay in installments, the special assessments shall be payable in two or more installments of principal, which shall be payable as prescribed by the board over a period of not more than twenty years, with interest in all cases on the unpaid principal. The number and amounts of payment of installments, the period of payment, and the rate and times of payment of interest shall be determined by the board and set forth in the assessing resolution. The times of payment of installments shall be the same as the times of payment for installments of property taxes as specified in section 39-10-104.5 (2), C.R.S.; except that special assessments may be payable at such alternate times as provided by the board in the assessing resolution.

(7) Failure to pay any installment on special assessments, whether of principal or interest, when due shall give the district the right to declare the delinquent installments due and collectible immediately, and upon such a declaration the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the day of sale. At any time prior to the day of sale, the district member may pay the amount of all unpaid installments, with interest at the penalty rate set by the assessing resolution, and all costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. A district member not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal.

(8) (a) Payment of special assessments may be made to a county treasurer at any time within thirty days after the effective date of the assessing resolution, and the county treasurer shall promptly forward all special assessment payments received to the district. At the expiration of the thirty-day period, each county treasurer of a county that includes eligible real property in the district shall return the district assessment roll for the county to the board, therein showing all payments made thereon, with the date of each payment. The roll shall be certified by the board under the seal of the board and by the board delivered to each county treasurer, with the treasurer's warrant for its collection. The county treasurer

shall receipt the roll, and all such rolls shall be numbered or identified by county for convenient reference.

(b) The owner of any divided or undivided interest in eligible real property assessed may pay the owner's share of any assessment, upon producing evidence of the extent of the owner's interest satisfactory to the treasurer having the roll in charge; except that the assessment lien shall remain on the entire property assessed until the entire assessment is paid, except as otherwise provided pursuant to section 32-20-107.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2212, § 1, effective June 11.

32-20-107. Special assessment constitutes lien - filing - sale of property for non-payment. (1) A special assessment, together with all interest thereon and penalties for default in payment thereof, and associated collection costs shall constitute, from the date of the recording of the assessing resolution and assessment roll pursuant to subsection (2) of this section, a perpetual lien in the amount assessed against the assessed eligible real property and shall have priority over all other liens; except that general tax liens shall have priority over district special assessment liens, and liens for assessments imposed by other governmental entities shall have coequal priority with district special assessment liens. Neither the sale of eligible real property in the district to enforce the payment of general ad valorem taxes nor the issuance of a treasurer's deed in connection with such a sale shall extinguish the lien of a special assessment. If eligible real property assessed is subdivided, the assessment lien may be apportioned by the board in such manner as may be provided in the assessing resolution.

(2) The district shall transmit to a county clerk and recorder of a county that includes eligible real property included in the district copies of the district's assessing resolution after its final adoption by the board and the assessment roll for recording on the land records of each unit of eligible real property assessed within the county as provided in article 30, 35, or 36 of title 38, C.R.S. The assessing resolution and assessment roll shall be indexed in the grantor index under the name of the district member and in the grantee index under the Colorado new energy improvement district. In addition, the county clerk and recorder shall file copies of the assessing resolution, after its final adoption by the board, and the assessment roll with the county assessor and the county treasurer. The county assessor is authorized to create separate schedules for each unit of eligible real property assessed within the county pursuant to the resolution.

(3) No delays, mistakes, errors, or irregularities in any act or proceeding authorized or required by this article shall prejudice or invalidate any final assessment, and such mistakes, errors, or irregularities may be remedied by subsequent filings, amending acts, or proceedings. A remedied assessment shall take effect as of the date of the original filing, act, or proceeding. If a court of competent jurisdiction sets aside any final assessment or if, for any other reason, the board determines it to be necessary to alter any final assessment, the board, upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this article.

(4) (a) In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell the assessed eligible real property tax lien defaulted upon for the payment of the whole of the unpaid installment of principal and interest. Advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate tax liens in default of payment of the general property tax.

(b) At any sale by a county treasurer of any eligible real property for the purpose of paying a special assessment, the board may purchase the property for the district without paying for the property in cash and shall receive certificates of purchase for the property in the name of the district. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessment installment in pursuance of which the sale was made. The certificates may thereafter be sold by the board at their face value, with all interest and penalties accrued, and assigned to the purchaser in the name of the district. The proceeds of the sale shall be credited to the fund created by

resolution for the payment of such assessments respectively. If the district has repaid all special assessment bonds in full, the certificates may be sold by the board for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as provided in paragraph (d) of this subsection (4). Such assignments shall be without recourse, and the sale and assignments shall operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property tax.

(c) The board, as a purchaser, has the right to apply for tax deeds on certificates of purchase at any time after three years from the date of issuance of the certificates, and the deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of the general property tax.

(d) Cumulatively with all other remedies, the district, as the owner of property by virtue of a tax deed or of property otherwise acquired, in satisfaction or discharge of the liens represented by certificates of sale, may sell the property for the best price obtainable at public sale, at auction, or by sealed bids. A sale shall be held after public notice by the board to all persons having or claiming any interest in the eligible real property to be sold or in the proceeds of the sale by publication of the notice three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. The notice shall describe the property and state the time, place, and manner of receiving bids; except that the time fixed for the sale shall not be less than ten days after the last publication. The board may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the board a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest is denied, the protestor, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the board from completing the sale. If no such action is commenced, all protests or objections to the sale shall be waived, and the board shall then convey the property to the successful bidder by quitclaim deed.

(e) In addition to all other remedies, the district, as a holder of certificates of purchase, may bring a civil action for foreclosure thereof in accordance with article 38 of title 38, C.R.S., joining as defendants all persons holding record title, persons occupying or in possession of the property, persons having or claiming any interest in the property or in the proceeds of a foreclosure sale, all governmental taxing units having taxes or other claims against the property, and all unknown persons having or claiming any interest in the property. Any number of certificates may be foreclosed in the same proceeding. In such a proceeding, the district, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property, including actions to quiet title.

(f) The proceeds of any sale of property shall be credited to the appropriate special assessment fund. The district shall deduct therefrom the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

(5) When the district has sold or conveyed at a fair market value certificates of purchase or property that the district has acquired in satisfaction or discharge of special assessment liens, the sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in the property or sale proceeds.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2215, § 1, effective June 11.

32-20-108. Special assessment bonds - legal investment - exemption from taxation.

(1) The district shall issue special assessment bonds in an aggregate principal amount of not more than eight hundred million dollars for the purpose of generating the moneys needed to make reimbursement or a direct payment to district members and to pay other costs of the district. The bonds shall be issued pursuant to a resolution of the board or a trust indenture, shall not be secured by an encumbrance, mortgage, or other pledge of real or personal property of the district, and shall be payable from special assessments and any other lawfully pledged district revenues unless the bond resolution or trust indenture specifically limits the source of district revenues from which the bonds are payable. The

bonds shall not constitute a debt or other financial obligation of the state. The board may adopt one or more resolutions creating special assessment units comprised of multiple units of eligible real property on which the board has levied a special assessment and may issue special assessment bonds payable from special assessments imposed within the entire district or from special assessments imposed only within one or more specified special assessment units.

(2) Bonds may be executed and delivered at such times; may be in such form and denominations and include such terms and maturities; may be subject to optional or mandatory redemption prior to maturity with or without a premium; may be in fully registered form or bearer form registrable as to principal or interest or both; may bear such conversion privileges; may be payable in such installments and at such times not exceeding twenty years from the date thereof; may be payable at such place or places whether within or without the state; may bear interest at such rate or rates per annum, which may be fixed or vary according to index, procedure, or formula or as determined by the district without regard to any interest rate limitation appearing in any other law of the state; may be subject to purchase at the option of the holder or the district; may be evidenced in such manner; may be executed by such officers of the district, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either of the chair of the board or of an agent of the district authenticating the same; may be in the form of coupon bonds that have attached interest coupons bearing a manual or facsimile signature of the chair or the agent; and may contain such provisions not inconsistent with this article, all as provided in the resolution of the board under which the bonds are authorized to be issued or as provided in a trust indenture between the district and any bank or trust company having full trust powers.

(3) Bonds may be sold at public or private sale at such price or prices, in such manner, and at such times as determined by the district, and the district may pay all fees, expenses, and commissions that it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the district. Any outstanding bonds may be refunded by the district pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments.

(4) The resolution or a trust indenture authorizing the issuance of the bonds may pledge all or a portion of any special fund created by the district, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds as the district deems appropriate, may set forth the rights and remedies of the holders of any of the bonds, and may contain provisions that the district deems appropriate for the security of the holders of the bonds, including, but not limited to, provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds, including the redemption price or the purchase price. The resolution or trust indenture shall contain a provision that states that the bonds do not constitute a debt or other financial obligation of the state, and the same or a similar provision shall also appear on the bonds.

(5) Any pledge of moneys or other property made by the district or by any person or governmental unit with which the district contracts shall be valid and binding from the time the pledge is made. The moneys or other property so pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party regardless of whether the claiming party has notice of the lien. The instrument by which the pledge is created need not be recorded or filed.

(6) No member of the board, employee, officer, or agent of the district, or other person executing bonds shall be liable personally on the bonds or subject to any personal liability by reason of the issuance thereof.

(7) The district may purchase its bonds out of any available moneys and may hold, pledge, cancel, or resell such bonds subject to and in accordance with agreements with the holders thereof.

(8) The state hereby pledges and agrees with the holders of any bonds and with those parties who enter into contracts with the district pursuant to this article that the state will not limit, alter, restrict, or impair the rights vested in the district or the rights or obligations of any person with which the district contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of bonds until the bonds have been paid or until adequate provision for payment has been made. The district may include this provision and undertaking for the district in its bonds.

(9) Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued under this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in bonds only if the bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(10) Bonds shall be exempt from all taxation and assessments in the state. In the resolution or indenture authorizing bonds, the district may waive the exemption from federal income taxation for interest on the bonds. Bonds shall be exempt from the provisions of article 51 of title 11, C.R.S. The board may elect to apply any or all of the provisions of the "Supplemental Public Securities Act", part 2 of article 57 of title 11, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2218, § 1, effective June 11.

32-20-109. Credit towards demand-side management goals for public utilities. For any gas utility or electric utility for which the public utilities commission has developed expenditure and natural gas savings targets pursuant to section 40-3.2-103, C.R.S., or established energy saving and peak demand reduction goals pursuant to section 40-3.2-104, C.R.S., the commission shall determine the extent to which the marketing, promotional, and other efforts of the utility have contributed to energy efficiency improvements funded by the district. To the extent that the commission finds that the utility's efforts have created energy savings, the commission shall allow the utility to count the related energy savings towards compliance with the gas utility's expenditure and natural gas savings targets or with the electric utility's energy savings and peak demand reduction goals, as applicable, using any method deemed appropriate by the commission.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2220, § 1, effective June 11.

32-20-110. Repeal of article - inapplicable if the district has outstanding bond obligations. (1) Except as otherwise provided in subsection (2) of this section, this article is repealed, effective January 1, 2016.

(2) In accordance with section 32-20-108 (8), this article shall not be repealed as provided in subsection (1) of this section if the district has issued bonds that have not been repaid in full as of January 1, 2016. However, the district shall not accept any new application for the program or issue any additional bonds on or after January 1, 2016.

Source: L. 2010: Entire article added, (HB 10-1328), ch. 426, p. 2220, § 1, effective June 11.

